

Language barriers in the criminal justice system

Summary



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Summary

This report details findings of exploratory research that investigated how speaking English as a second or additional language (ESL) affects experiences and outcomes for adults who are in contact with the criminal justice system (CJS) as victims, witnesses, suspects, defendants and people with convictions – both in prison and under probation supervision.

The research aimed to:

- enhance understanding of the nature and implications of language barriers in the CJS;
- raise awareness of how language barriers might impact the quality of contact;
- identify areas for improvement in policy and practice; and
- support improvements through engagement and co-production with practitioners in statutory and voluntary sector organisations.

Research activities comprised a review of policy and national-level data and a more focused examination of how requirements for language support for those who speak ESL are being met. This included 63 in-depth interviews with practitioners working in statutory (police, probation and prisons) and voluntary sector organisations in two geographic areas, and with interpreters who work across the CJS; a national survey of Victim Support frontline staff and volunteers about their experiences of supporting victims who speak ESL, 26 in-depth interviews and written correspondence with those with lived experience of the CJS who speak ESL; and workshops with practitioners to ‘test’ findings and develop guidance to enhance language support.

Context

Rights and entitlements to language support

Individuals have various rights and entitlements to language support when in contact with criminal justice agencies. These should align with legal principles, statutory codes and agreed good practice for enabling the delivery of justice, as well as UK obligations under international treaties. Language support also has a more instrumental purpose in the process of delivering justice: that is, to ensure witnesses and defendants can provide their ‘best evidence’.

Across this legislative and policy framework, responsibilities are assigned to police, prosecutors, defence lawyers, and prison staff to organise ‘competent’ or ‘accredited’ interpreters and the translation of key documents – and the expectations of the criminal justice inspectorates reinforce these requirements. In brief, this correlates to language support for victims and witnesses when reporting crimes and providing evidence to the police or in court (**The Victims Code of Practice, 2020; The Witness Charter, 2013**); for arrestees and defendants to ensure their understanding of charges against them and their right to independent legal advice (**Police and Criminal Evidence Act, 1984**) and to a fair trial (**enshrined in Article 6 of the European Convention on Human Rights**); and for those held in prison to be informed in a language they understand about prison regulations, the regime, the range of health and education services available, and any disciplinary action against them (**Prison Rules, 1999; ‘the Bangkok Rules’, 2010; ‘the Nelson Mandela Rules’, 2015**).

Assessing scale

There are no robust data on the scale of language needs and the range of different languages spoken by those in contact with the CJS. This information is not collated routinely by criminal justice agencies in an easily retrievable form. Language is not included in demographic data used to monitor differential treatment and disproportionality in the CJS nor mentioned in assessments of a range of equality objectives for people who offend. This study had to rely on flawed proxy measures, to glean even rough estimates of numbers of speakers of ESL in the CJS. For example, numbers of 'foreign nationals' in prison – a category that includes those who speak English as a main language, or with a high degree of proficiency, and excludes British citizens who speak ESL, and requests made by criminal justice agencies for interpretation and translation services.

Key findings

Exploring how speakers of ESL are accommodated in the CJS, we found:

- Practitioners were mostly aware of rights and entitlements to interpretation and translation for speakers of ESL, but access to language support was influenced by other factors, including time and resource pressures.
- Information about an individual's language needs was not always collated or shared across agencies in a routine or direct way and could depend on quality of notes or might have to be inferred from other information.
- 'Professional judgement' was commonly used to assess whether someone required an interpreter or could 'manage' in English. However, there was no standard approach or guidance about the level of English language proficiency that might be needed to participate effectively in criminal justice processes.
- Many of the practitioners we interviewed – from statutory and voluntary sectors – had never received training about supporting those who speak ESL and were unaware of any specific professional guidance on this, beyond how to book interpreters.
- Shortcomings in interpretation services noted by criminal justice practitioners included a lack of capacity to cater for rarer languages or dialects and the inability to request the same interpreter to cover contacts over time, thereby undermining consistency that was considered crucial for building trust.
- Interview accounts also highlighted gaps in understanding among some criminal justice practitioners about how interpreters work, including in relation to what 'good interpreting practice' looks like and how best to accommodate interpreters in criminal justice processes. Similarly, interpreters' expectations – that criminal justice practitioners should facilitate their work through things like advance briefings about likely content of discussions or the pacing of conversation, were not always met.
- Some criminal justice staff had wider expectations of interpreters, to offer relevant cultural information that might have some bearing on the quality and detail of communication, thus raising interesting questions about the role and boundaries of interpretation.
- Practical and financial factors limited access to professional interpretation and translation, even in statutory services. Less formal methods for responding to language support needs included using *Google Translate*, drawing on the language skills of staff, volunteers, friends and family and peer support.

- Greater ethnic and linguistic diversity of staff in the CJS strengthened service capacities for accommodating language needs, and volunteers had a key role in bolstering language support for those who spoke ESL.
- But 'getting by' also involved adapting use of English language and being mindful to reduce terminology and complex or technical vocabulary.
- Criminal justice services are largely monolingual – aside from provision in the Welsh language, which is protected in law. The lack of written materials and web-based content providing service information and advice in languages other than English was mentioned as a barrier to engagement with the CJS.

Lived experience

- Language needs often intersected with other vulnerabilities, including being victims of trafficking and having legally insecure and 'unsettled' immigration status. This was indicative of having few resources – immigration status also limits what intervention and support can be offered by probation and in prison.
- Language barriers can limit access to general help and information to guide one through criminal justice processes; access to legal advice, especially in relation to immigration issues; rehabilitative interventions as part of community supervision under the probation service; and various services, interventions, and activities provided in prison.
- Accounts from victims and witnesses highlighted experiences of poor practice by police, including being denied rights to interpretation and translation where this was needed to report crimes and understand and navigate criminal justice processes.
- Fellow prisoners appear to be a major source of language support in navigating life in prison – helping to plug the large gaps in formal language provision for speakers of ESL as well as providing day-to-day informal help in all areas of prison life.

Overall, speakers of ESL can be disadvantaged, both in that they may be denied fair justice outcomes, and in terms of constraints on access to services and support, including rehabilitative initiatives. In addition, language needs intersect with other vulnerabilities, and taken together, these can further reduce access to services and support in the CJS.

Recommendations

Our research identified five key areas in which policy and practice reforms are urgently needed if language barriers are to be addressed and support is to be enhanced for those in the CJS who speak ESL.

The recommendations span contexts in which professional interpretation and translation are more readily available as well as those in which access to language services is more limited. They are directed at all agencies operating in the CJS – unless specifically named. This includes agencies that commission or procure services where due consideration should be given to ESL need, and delivery partners properly funded to uphold service users' rights and entitlements to language support.

Collecting data to build understanding and raise awareness of language barriers in the CJS

- Agencies should record first and other languages of individuals at every point of contact. This could be done when protected characteristics are recorded, to comply with the Equality Act (2010).
- Agencies should ensure these data are easily retrievable to routinely review outcomes for those who speak ESL.

Rights and Entitlements

- The right to understand and be understood must be enshrined in the upcoming Victims' Law, actively promoted and its implementation monitored by agencies working with victims, whether statutory or voluntary.
- Accountability for upholding legal and procedural rights and entitlements to language support must sit with a senior body in each area – policing, courts, prisons, probation, and victim support services – as is the case for upholding rights related to protected characteristics.
- Inspectorates must be strict in their evaluation of whether expectations are being met, ensuring language support is not a 'nice to have'.
- Statutory agencies should provide practitioners with training and guidance on procedural rights and entitlements to language support in the CJS and where they must be applied.
- A right to equitable access to rehabilitation services should be introduced for speakers of ESL in prison and under probation supervision.

Improving services and widening access

- Agencies should be aware of and remove barriers to access for speakers of ESL. This should include regularly reviewing service users' language requirements to ensure service information is translated and appropriately targeted.
- HM Prison and Probation Service should ensure that service users who speak ESL have access to the appropriate level of ESOL (English for speakers of other languages) classes as part of their rehabilitation.
- Voluntary sector organisations supporting asylum seekers and victims of human trafficking should explore opportunities to provide ESOL with people in contact with the CJS as part of service provision in the community.
- Agencies should provide all written communications in easy read or pictorial formats.

Empowering practitioners to support service users

- The Ministry of Justice and Home Office should hold an information and awareness campaign aimed at practitioners on language barriers and gaps in language support.
- Agencies should introduce training and guidance for frontline staff on the nature and impacts of language barriers, and best practice in overcoming them, including how to communicate with service users both with and without language support.
- Agencies should introduce guidance and tools for screening for ESL.

- Agencies should have access to a high-quality interpretation service, where interpreters are familiar with the workings and vocabulary of the CJS.
- Agencies should introduce training for frontline staff in how to work with interpreters.
- Agencies should introduce training and guidance on communicating when there is no immediate access to a professional interpreter.
- Agencies should introduce guidance for frontline staff on potential cultural barriers, how these might impact understanding and communication and good practice in overcoming them.

Deploying innovative solutions

- Agencies should review existing staff and volunteer language skills and aim to have a workforce that reflects the linguistic diversity of service users.
- Agencies should explore how staff and volunteers might enhance language support wherever possible.
- HM Prison and Probation Service should explore opportunities to formalise peer language support and offer educational opportunities for those who wish to undertake such peer work.

These wide-ranging recommendations could have far-reaching effects across the CJS. In order for this to be achieved, their further elaboration and implementation will demand commitment and action by many parties. These include policy-makers in the MoJ and associated agencies and services, such as HM Courts and Tribunals Service and HM Prison and Probation Service; and senior managers and practitioners across the many statutory and voluntary agencies that deliver services on the ground – in police stations, prisons, probation, criminal courts and community organisations. Other bodies such as regulators, inspectorates, ombudsmen and professional associations also have a part to play in bringing about the changes needed to enhance access to justice for people who speak ESL.

This document is part of the series *Language barriers in the criminal justice system* from the Institute for Crime & Justice Policy Research, Victim Support and the Centre for Justice Innovation, funded by The Bell Foundation. The series was produced following a wide-ranging research project exploring the impact of language barriers on individuals' experiences of the criminal justice system, whether as victims, witnesses, suspects, defendants, or people with convictions. The series aims to strengthen the evidence base around the impact of language barriers as well as provide practical tools to allow practitioners to improve their practice in working with individuals who speak English as a second or additional language.

For more information and to view the whole series, please go to www.bell-foundation.org.uk

The Bell Foundation is a charity which aims to overcome exclusion for individuals who speak English as a second or additional language by working with partners on innovation, research, training, and practical interventions.

About the Institute for Crime & Justice Policy Research

ICPR, Birkbeck undertakes academically-grounded, policy-orientated research on justice. All our research is informed by concerns with justice, fairness human rights and commitment to bringing about improvements in justice policy and practice.

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