

# Language barriers

Can the Ministry of Justice's new contract for interpreting in the courts and tribunals be salvaged? **Grania Langdon-Down** reports

**T**he furore over the new courts and tribunals interpreter service has shone a spotlight on the sector like never before.

In February, the Ministry of Justice (MoJ) launched a new framework agreement, outsourcing language services to a single commercial agency which would provide a centralised booking service – a radical step which it trumpeted would save taxpayers an estimated £18m a year.

But the national roll-out proved disastrous, with interpreters supplied in only 58% of hearings against the contract target of 98%. While that figure has now improved to 95%, concerns raised by whistleblowers, MPs, interpreters, judges and practitioners prompted the National Audit Office (NAO), the Public Accounts Committee (PAC) and the Justice Committee to investigate.

Much of the focus has been on the procurement process but the committees also posed the critical question – can the contract be made to work or do the problems that became clear during the roll-out make it unsalvageable?

## Support for change

At the time of going to press the committees' reports have still to be published. The NAO report meanwhile accepted that the MoJ had "strong reasons" for changing the previous "inadequate" system, but said its due diligence of the contract was not thorough enough. The ministry underestimated the project risks, it added, while lack of data means it is impossible to validate its claims that the contract saved taxpayers' money even during the early months of disruption.

PAC chair Margaret Hodge didn't mince her words following the NAO report – the MoJ had made an "appalling" decision in giving the contract to Applied Language Solutions (ALS) when its own due diligence process had said the company was too small to cope.

The ministry had taken no account of the resolve of experienced interpreters not to work for the company, which had led to "unacceptably poor performance" causing "courtroom chaos" and a steep

rise in abandoned trials. Where interpreters were supplied, the quality was sometimes "inexcusably bad". Overall, she said, victims, witnesses and defendants had suffered distress, taxpayers had faced additional costs and the justice system's reputation had been damaged.

Ms Hodge set clear tasks for the MoJ and business process outsourcing giant Capita, which acquired ALS for £7.5m shortly before the contract went live. The MoJ must take immediate steps to strengthen its approach to conducting due diligence for complex contracts, she said. ALS, now renamed Capita Translation and Interpreting, must improve performance and complete checks on all interpreters working on the contract without delay.

The question whether the contract is workable remains highly contentious. The MoJ and Capita gave the Journal identical statements in its support – the MoJ had strong reasons to change the old booking system; there have been major improvements in performance; complaints have dropped dramatically; they will push for further improvements; and they remain confident that the contract will make savings, now expected to be £15m a year.

But many experienced interpreters are still boycotting the new agreement, complaints are still coming in and concerns remain about quality. Capita admitted at the committee hearings that it has no current in-work assessment process, as required by the contract, though it is working on one with the MoJ.

Justice minister Helen Grant told the Justice Committee that the service is better than in her days as a family lawyer and she is "mystified" by claims the contract is unsalvageable. But what are practitioners experiencing on the ground?

## Talking the talk

Claire Parrott is a Chartered Legal Executive Advocate with Tuckers in Manchester. "I e-mailed colleagues and was inundated with problems from interpreters failing to turn up, turning up late or having no experience of the court process," she says.

At one police station interview, the interpreter stopped and asked for a consultation with the client because they didn't like one of the client's answers. "That is shockingly bad," she says. "The police ended up sending the interpreter away, so our client had to spend another night in custody before being re-

interviewed in the morning.”

She has experienced interpreters giving summaries of what the client says or interpreting what they think the person is saying rather than doing it word for word – “you can ask a question, the client speaks for a few minutes and the interpreter just responds ‘yes’ or ‘no’.”

Earl Chambers, who was admitted as a Fellow before qualifying as a solicitor, is a partner in London practice Campbell Chambers. He recently represented a Bangladeshi defendant in the Inner London Crown Court. The interpreter failed to turn up. The court requested another one but the system requires 24 hours’ notice so they couldn’t get anyone for the afternoon.

“We asked if the case could be re-listed for the next day but even that was too simple,” he says. “Since it was now the afternoon, there was no guarantee that anybody would be available the following morning so the case had to be re-listed two days later.”

In another recent case, a Bengali interpreter travelled from Manchester as no one was available in London. “Given the proliferation of Bengali interpreters, this appears to be a direct consequence of interpreters’ withdrawal from the scheme,” he says.

The MoJ and Capita maintain the furore has quietened down. But that, says Ms Parrott, “is because people don’t have a lot of fight left in them to go on protesting. Money needs to be saved but everything is being squeezed without any thought about keeping standards high.

“The justice minister claims the situation is ‘considerably better’ – but that isn’t good enough because it couldn’t have got much worse. I don’t think the contract is salvageable unless interpreters’ wages and terms and conditions are improved.”

## New deal

Under the previous national agreement, interpreters employed in criminal proceedings had to be registered with the National Register of Public Service Interpreters (NRPSI), an independent, non-statutory regulator overseeing more than 2,200 interpreters, covering 101 languages, and funded by the £198 registration fee.

Under the new framework agreement, Capita has split interpreters into three tiers, with those in tier 1 and 2 able to work in courts or tribunals. Their required experience is 100 hours compared with NRPSI’s 400 hours’ proven experience. In response to concerns about quality, Capita has been organising unpaid, day-long courtroom familiarisation sessions.

The MoJ expected Capita to have 1,200 interpreters on its database when the contract was rolled out – but just 280 were assessed and marked. According to Capita, there are now 655 tier 1 interpreters covering 1,242 languages; 321 tier 2 interpreters covering 582 languages; and 191 tier 3 interpreters covering 370 languages.

The company says all the interpreters are now

vetted to eCRB level and to Non-Police Personnel Vetting Level 2 or above and their qualifications have been verified except for a small number of NRPSI interpreters where they are still waiting for the evidence. Those who had not provided it by the end of November would be removed from the supplier base.

As with the previous agreement, the interpreters remain self-employed. Problems arose when many balked at having their fees cut from £29 an hour for a minimum of three hours, plus travel, to between £16 and £22 an hour with no minimum and no travel for the first hour.

## Problems arose when many interpreters balked at having their fees cut

At the height of the problems, the MoJ had to act as ‘wicket keeper’ for Capita, taking back 20% of the workload – all the short-notice bookings – at a cost of £500,000 a month. That has reduced to £90,000 a month and it hoped to move those bookings and other outstanding aspects of the original contract over to Capita by the end of November.

What is critical if progress is to be made is for Capita to attract more interpreters. But, as the NAO report says, that will require “creativity” on the part of the MoJ and Capita, given the continuing boycott.

Ted Sangster, chair of NRPSI’s board of directors, says: “I can see the criticisms of the old system that it was wasteful and created significant burdens on justice agencies in having to phone round to find an interpreter rather than using a central point. But we don’t believe the contract as it stands can be salvaged.”

It needs to be stripped apart to introduce independence between the service and the certification and regulation, he says, adding: “The MoJ needs to re-engage with the interpreting profession and work together to find a long-term solution. This could still involve a third-party agency as long as standards are kept high and it has the backing of interpreters.”

The MoJ has a duty to taxpayers to get value for money, says Richard Atkinson, chair of the Law Society’s criminal law committee. “But ALS massively drove down costs to the point where

no one was prepared to work for them,” he says. “They thought interpreters would have no choice but to join them but many said ‘no, thank you’.

“I hope the MoJ will learn a lesson about procurement and realise the limitations and the risks involved, and think very carefully before entering into any future arrangements which impact on the criminal justice service.”

## Baptism of fire

It has certainly been an introduction by fire into the language services business for Capita but its joint chief operating officer Andy Parker told the PAC it did not regret buying ALS. He said the main attraction was not the MoJ contract but the potential in the language services market generally, which KPMG valued in 2010 at £1.7bn in the UK, with a global translation market worth £20bn a year.

Capita has its work cut out convincing some of its new partners in the justice sector that it can deliver. The contract is non-exclusive, so if they are not won over they can source interpreters by tapping into other government contracts or by contracting independently with other language services suppliers.

Longstanding supplier Prestige Network has several government contracts and supplies interpreting and translation services to more than 200 law firms. Its chairman, Shawn Khorassani, says it is increasingly being used by solicitors for legal aid and commercial work.

He says the Capita contract is a “mess”. He is angry that, “by paying peanuts, they have skewed the market and it has affected our police and court service massively. They have alienated interpreters, so when a court comes to us and says ‘can you help, Capita can’t meet our request’, they won’t do it on principle, even for more money”.

Officials admitted to the PAC that, with hindsight, they would have carried out the due diligence and implementation differently. But the MoJ remains staunchly defensive of the new contract. It has now conducted audits on Capita’s register and has claimed back service credits when the performance KPI has not been met.

But neither are out of the woods yet. PAC chair Margaret Hodge has a “dossier” of recent problems, including a case in Amersham where she noted the judge said Capita “should not hold this contract if it is too difficult for them” and the government needed to consider whether “the contract was even remotely viable”.

After the West Coast line train debacle, the last thing a government department wants is to be criticised for its procurement process. Both it and Capita will be waiting for the select committee reports – with considerable trepidation.

*Grania Langdon-Down is a freelance journalist*