

# Public Services Committee

## Corrected oral evidence: Interpreting and translation in the Courts Service

Wednesday 30 October 2024

11 am

Watch the meeting

Members present: Baroness Morris of Yardley (The Chair); Lord Bach; Lord Blencathra; Lord Carter of Coles; Lord Laming; Lord Mott; Lord Porter of Spalding; Lord Shipley; B. Stedman-Scott; Lord Willis of Knaresborough.

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Questions 15 - 40

### Witnesses

[I](#): Mark Stewart, Courts and Tribunals Director, Ministry of Justice; Julie Howkins, Deputy Director, Commercial for HM Courts and Tribunal Service, Ministry of Justice; Kris Hamson, Deputy Director, Intelligent Client Capability & Contract Services Division, Ministry of Justice.

### Examination of witnesses

Mark Stewart, Julie Howkins and Kris Hamson.

**The Chair:** Welcome to this open session of our inquiry into interpreting and translation services. I would like to welcome our three witnesses today and ask them to introduce themselves and their roles. Julie, would you like to start?

**Julie Howkins:** Good morning. I am the deputy director for commercial, responsible for supporting HMCTS with its contracts and services.

**Mark Stewart:** Good morning, everybody. I am the director of courts and tribunals. I am the senior civil servant responsible for, as the title suggests, all the administration of the courts and tribunals—the courts in England and Wales and reserve tribunals in Scotland.

**Kris Hamson:** Good morning. I am the deputy director in HMCTS for the contracted services division, so the operational management of a number of contracted services and their contracts.

Q15 **The Chair:** Thank you. You are very welcome. Between you all, you run

the service that we are doing our inquiry into. Can I start by asking you to explain from your own point of view how the service is delivered, and your particular role in that? I am not asking each of you to describe everything and then go to your role, because then we will get that three times. We will fit it together somehow. It makes sense to start with Mark.

**Mark Stewart:** From a court and tribunal perspective, I am here, effectively, representing the consumer of the contracted services, if I can put it in those terms. All the jurisdictions in the courts and tribunals—crime, civil, family, and the four major tribunal types: employment, immigration, asylum, and social security and child support—all use interpreter services to varying degrees.

The criminal courts—that is, the magistrates' courts and the Crown Court—account for probably 50% of activity. A defendant has an automatic right to access to foreign language or non-spoken word interpretation, should they need it to participate effectively in proceedings.

In civil and family, which is the county courts and the family courts, it is a slightly different arrangement in so far as, for certain types of hearing—effectively anything involving liberty, children or possession of property—we would routinely provide an interpreter where they were needed for effective participation in proceedings. For other types that fall outside those categories, it would be a matter for the relevant member of the judiciary to determine whether they had access to private means, public funds, or somebody who is suitable and appropriate to act for them in those proceedings so it is the more lower-level activity.

Similarly in tribunals, we routinely provide it in immigration and asylum, because it is predominantly about people's liberty to remain in or to come out of detention. Therefore, we provide services as a matter of course. For social security and child support, again it is about the extent to which the individual is able to participate in proceedings. In an employment tribunal, it is down to the judge to determine the extent to which they need public financial support or whether that is something they can provide themselves.

In its simplest terms, where it is state against party or party against state, we will always intervene and help and provide free of charge. Where it is party against party—if I can use those terms for the type of proceedings—we get a bit more forensic and it is down to the individual member of the judiciary to determine the most appropriate arrangements for the hearing.

My staff book through the service contracts that Kris and Julie's teams provide, and they are the ones who are responsible for making sure that we get the right interpreter at the right time and the right place and that we account for their activity once they have been and gone off premises. That is my team's responsibility, in a nutshell.

**Kris Hamson:** My team, in the actual service day to day, manages the contract and the supplier or suppliers for these services. We monitor their performance, follow up on problems and help to resolve them. We manage day-to-day incidents and the responses to those, and we respond to problems raised by court users, HMCTS employees, the suppliers themselves, and the interpreters. We are the day-to-day management of the contract and the service.

**Julie Howkins:** I lead the team that looks after the commercial contract management, so we work very closely with Kris's team in managing the services. The commercial contract management involves the administration of the contract and anything that needs to be changed within that to keep it up to date, and ensuring that the performance measures are adhered to and monitoring those. The other aspect is running the re-procurement activity.

**The Chair:** Kris, you say that you are responsible for the day-to-day management. I would have thought that was the responsibility of the person you have contracted.

**Kris Hamson:** We are in day-to-day contact with the suppliers and monitor fulfilment weekly, but if there is an incident or a complaint we will be trying to help Mark's team and the court staff to respond to that. We will be following up with the supplier and finding out why there has been a problem. So the monitoring and management of that service is quite intensive, because it is a really important service and a big service. At the moment, there are, I think, 17,000 bookings a month. It is a really large-scale operation. The suppliers provide that, but we have to monitor and help them.

**The Chair:** That is a good link into the next question.

Q16 **Lord Shipley:** Good morning, and thank you very much for the written evidence that you have supplied to the committee. I noted that you have identified a problem that we have, which is that there is an increasing number of cases requiring interpreting and translating but a decreasing supply of people to do the work.

I have a general question first, which I will follow with something very specific. What data does the MoJ gather and publish on the performance and quality of ITS services in the courts? The words here matter, because you can gather data but you may not publish it. I would like to know more about your data gathering, what you have, and what you publish.

**Kris Hamson:** I will start with what we publish. We publish three sets of data. They are all available on the MoJ statistical publication website. The *Criminal Court Statistics Quarterly* provides information about the number of bookings that we make of the interpreter services. It goes through cancellations and the fulfilment rates, so what the suppliers manage to fulfil of those bookings. It publishes the unfulfilled numbers. It also publishes the number of off-contract bookings where we step away from these contracts in order to keep the show on the road. It also goes through complaints about interpreters and provides a breakdown by

category of what the complaints are about, how many complaints there are and broadly what category they fall into.

There is another publication on the same website that talks about effective trials/ineffective trials and the overall statistics. We publish the number of trials that are ineffective because there was no interpreter available. That is the MoJ statistical data pack that is published regularly. We also publish specific key performance indicators for these contracts, which are in the commercial functional regime, so I will pass to Julie on that in a minute.

I will go back to where we get this data from. The suppliers provide this data regularly to us. We do a check to make sure that it looks reasonable, based on the intelligence that we have. It then goes to our statistics teams, who check it, sort it and ultimately publish it. To make sure that that data is true, we exercise our right to do an annual audit. We spend time at the suppliers, take a random selection of bookings and follow them end to end to make sure that that matches the data that we have received. That is the second level of control.

The Government Internal Audit Agency has the right to come and audit and has done that a number of times in the last five years. The National Audit Office also has audit rights and will occasionally spot check. So although we use the data supplied by the suppliers, we do various checks to make sure that it is verified and correct and I can say that it is.

**Julie Howkins:** I will come in on the key performance indicators. As part of the Cabinet Office transparency data that is required from all departments for the most important contracts across government, we publish three key performance indicators for each of our contracts here.

Those do not include fulfilment rates, because all the things are already covered by the data that is already published, so we have chosen separate ones in order to do that. We have the speed of the operator to answer the telephone, which is within 40 seconds of ringing. Then we have complaints or issues, and then the timeliness of attendance of interpreters at hearings. That is for face to face or remote. That is in the spoken word contract that we have.

In our visual and tactile contract, we again have a complaints and issues category. We have the availability of their booking service, and timely attendance of the interpreter at a booking.

Our quality assurance contract is about completion, so obviously we use slightly different KPIs for that. They include the completion of spot-check assessments. For any appeals against an assessment done by the quality assurance provider—if somebody decides that they want to appeal an assessment that has been made of them—the success rate of those appeals appears as a KPI. Complaints are also included in that. Those are published on the Cabinet Office website.

Q17 **Lord Shipley:** I want to pursue a specific issue about MoJ data for 2023.

That indicates that there were 618 ineffective trials, the reason given being “no interpreter available”, but only 322 complaints were submitted with the reason “no interpreter available”. Are those figures right? Is it possible that in a significant number of cases complaints are not being submitted when interpreting or translation services fail?

**Kris Hamson:** I think that is a reasonable assessment. We try to make it as easy as possible for all users—judiciary, court users, court staff, legal professionals, the police—to raise complaints. I think we will come later to the way you can complain and how we monitor those complaints. It is probably quite likely that people do not always submit a complaint, but we know that the ineffective trial data will be good, so we are talking about 618 ineffective trials due to no interpreter being available.

**The Chair:** This is really difficult to get your head around, to be honest.

**Lord Porter of Spalding:** Are the complaints all broken down into a professional or a defendant making a complaint, or just an angry member of the TaxPayers’ Alliance who turned up to court to watch a case that fell over making a complaint?

**Kris Hamson:** I cannot remember whether we break down who makes the complaint. I am not sure whether we have that data available.

**Lord Porter of Spalding:** Clearly, if your number of complaints does not match up to the number of aborted cases, there must be a lot of angry people who are just silent. Something needs to be done to make the angry people less silent so that there are complaints to back up all the aborted cases, I would have thought. That might just be certain groups needing to be encouraged to make complaints.

**Lord Bach:** Can I back that up by asking whether it would not be useful to have some kind of list of who the complainants are in each case to add to the information that you already have?

**Mark Stewart:** I am just conscious of the Chair’s comment. We are here to try—and grateful for the opportunity—to explain how we use interpreting services. If we are not doing our job as effectively as we need to, apologies for that. We stand by to try to break things down a bit more if we have explained things in a fairly complicated fashion. Apologies to the committee if we are not getting our explanation across.

**The Chair:** I honestly did not mean that. I think that the system you are trying to explain is very complicated. I did not mean to say that you have not explained it well. I am sorry.

Let me give you an example. If you are a taxpaying member of the public, or even a person in the legal profession, it is very difficult to work out what “fulfilled job”, “cancelled bookings”, “unfulfilled bookings”, “ineffective trials” all mean. I have tried several times to read through the data, and, to be honest, I could not sum up what data you collect, who it is from and how you report it. Part of it is the mystery of the language that you use for the different categories, and when you

subdivide that even further it does not seem to make sense. It is not the way you have described it. It is the system you are trying to describe.

**Mark Stewart:** We do like our acronyms. Lord Bach will know from his time in the ministry that we do like to hide behind terminology that only we understand.

**Lord Bach:** I think I have forgotten.

**Mark Stewart:** Fulfilment in its simplest terms is how many bookings have been achieved and how many interpreters have been provided against that particular booking. Cancellations are where the booking is cancelled, but in advance of the day it is needed. That is quite important.

The “ineffective” terminology, as in the ineffective trial rate, is a completely separate thing. That is about the extent to which a trial that has been listed for hearing takes place or falls, or fails, for a whole range of reasons, one of which can be that it needed an interpreter to carry on because, for example, a defendant needed foreign language services and one did not materialise. In those situations, the trial judge would have decided that it would have been wholly inappropriate for that trial or hearing to carry on. Therefore, it is deemed ineffective. Everybody has turned up on the day and will be in the room, metaphorically speaking, and for the want of a language service professional it cannot proceed.

Ineffectiveness is more about whether the trial or hearing is successful or not. Fulfilment and cancellation go to the extent to which the contract and contracted service supplier have been able to meet the booking.

**The Chair:** An ineffective trial would never be because the translator did not turn up.

**Mark Stewart:** It can be, in the instances that Lord Porter has highlighted. I think it was in 62 cases in the Crown Court in 2023. A number of reasons can be given, but the main reason recorded in our dataset will have been the fact that an interpreter was not available and was needed.

Q18 **Lord Willis of Knaresborough:** You have not commented at all on whether the quality of the data that you collect and supply is, in fact, as meaningful as it should be. You now have contractors who are supplying the data to you. Is that more effective than when they did not exist, when the Government did not invite change by asking you to be supplied by one or two major contractors?

**Mark Stewart:** I will ask Kris in a minute to talk about the main point of your question. I am one of the few people on the panel who was around in the Courts Service.

**Lord Willis of Knaresborough:** I know. We have looked you up.

**Mark Stewart:** We did not have any data, really. That is part of the issue. We had no real control over the use of foreign language interpretation, and it was all on the basis of local court and tribunal

relationships and procurement, so not only did we not have data, but we could not assure ourselves about quality, value for money, and appropriateness of the interpreter for the particular hearing or trial that they were supporting. Some data is better quality than what we had pre 2012.

**Lord Willis of Knaresborough:** There is a difference between the quality of the data and the appropriateness of it, because they are two very different things, or they can be.

**Kris Hamson:** The data we collect from the suppliers gives us a really good idea about whether they are performing and the challenges in finding sufficient interpreters for particular languages and locations and the qualification level. I will concede that what we publish might be quite difficult for a layperson to understand—and beyond the layperson, because I have gone through it and it is complicated.

On the data that we collect on supplier performance, we have monthly performance meetings with them where we get the data back. We go into which languages we are struggling to source. Challenges with locations will encourage the suppliers to come up with solutions and trial different things to incentivise interpreters in those languages and those locations. There is a whole series of things that we can do because it is a national contract, so we can see the data across the country.

As an example, in 2020 we found that demand for Albanian interpretation was outstripping thebigword's ability to supply it. So we worked with the Language Shop and with thebigword. There was no vocational qualification available in Albanian, which put a limit on the number of trained people in Albanian interpretation. As a result of the work justifying creating, and creating, a vocational qualification in Albanian, we were able to increase the number of interpreters coming through who were qualified in Albanian. A number of them followed through the training, took the exam, passed. The statistics are that we have gone from about 80% fulfilment in Albanian in August 2021 up to hitting 95% for the whole of 2024.

That has been a real success for us, and that is what you can do with a national contract, because you can identify that and work with the different providers. Our quality assessor, who was also involved in the training and helping to develop a trainee scheme, works with thebigword to source those interpreters, incentivise them, and deploy them into the right locations. That has also helped with the Illegal Migration Act demand that was created for certain languages to help with immigration tribunals. We are looking at trying to use that for some other languages as well. Our supplier is issuing grants to help pay for training in some languages that we struggle to source.

Q19 **Lord Willis of Knaresborough:** The evidence we have from the interpreters themselves is highly critical of some of the things that you claim are the basis for which you give the data and report it to government. That is what worries us a little: that it does not seem to be

synced in the way it should be, perhaps. How would you respond to that?

**Kris Hamson:** It is challenging in that people who are unhappy with the situation will speak up and make complaints.

**Lord Willis of Knaresborough:** Is that a fault?

**Kris Hamson:** No, but based on the feedback we get from the majority of interpreters, they are okay with the system and our quality complaints process. Our quality assurance process demonstrates that broadly it is working okay. We know that there is a real challenge with the increased number of sitting days and the increased demand, and at that margin we are struggling. We are not hitting 100% fulfilment, so we are not getting every interpreter sourced through thebigword, and that is a problem for us that we are trying to address.

The basis of all of it, particularly the complaints, is remuneration. The contracts were let in 2016. There has been a lot of inflation since then. The contracts were priced then. Thebigword operates a dynamic pricing. It will try to incentivise to get coverage for languages and location. I do not want to go too much into pricing, because we are in the middle of a procurement, and price information could affect that procurement at this stage. We could write to the committee after the sensitive period is completed and provide more information on that.

Q20 **Lord Willis of Knaresborough:** My slight worry about the contracts is that once they are there, they are established for an indefinite or a definite period of time. This is such a flexible situation that the courts are having to deal with that surely it needs to be much more open-ended than it is at the moment.

You talked about the Albanians, and yes, there was this massive rise in demand. We know that in other directions a legal agreement has had to be made with Albania itself to stop some of the passing of immigrants into this country, both legally and non-legally. My big worry is that you have a contract here and it will not move according to what has happened with Covid or these huge price rises, or what have you.

**Mark Stewart:** We are confident that we had sufficient flexibility in operational terms—the method of delivery. You mentioned Covid. We were fairly flexible in terms of working with the supplier to move much more on to virtual and remote interpretation. As you probably are aware, we had a little bit of downtime, but we carried on operating through the pandemic. That was with full access to interpreter services throughout.

On the commercial flexibility—Julie might kick me under the table a little bit—I am sufficiently satisfied that we have robust data collection methods and robust quality assurance arrangements. The independent third-party organisation works with us as our specialist adviser to make sure of the accuracy of the data and that what the data says about quality and fulfilment is correct—picking up Lord Shipley's point about data quality of interpreter services. We can also use that in a commercial

setting to make sure that we are responsive to market pressures or fulfilment problems.

I am dredging my memory, but at one point we were having geographical fulfilment problems in particular locations, for example. You might appreciate that in some locations it is harder to get interpreters, full stop, or certain types of interpreters. By using the data, we were able to enter commercial negotiations and introduce new pay rates for particular types of interpreters in particular locations, whether language specific or even just geographically specific, to try to incentivise fulfilment.

Does that make sense? So we have that, but it does need, as your Lordship has correctly identified, sensible understanding of the data and use of the data in a commercial setting.

**Q21 Lord Laming:** You will have to put this down to my ignorance, and I am very slow to pick up on these complex matters, but listening to your introductions and the way you described the service I was led to believe that it is pretty good—not to say outstanding—in that there is a clear focus, clear arrangements, clear accountability, all those things.

The evidence that we received, from my point of view, could not be more different from that: zero-hour contracts, no pay increases for years, interpreters walking away because it is not worth their while doing the job, interpreters being late to arrive at court and having difficulty getting in the courts, some interpreters not understanding the complexity of the subject that they are being asked to interpret, and even the position in some of the courts where it has been known that family members have been used to interpret for the person concerned.

What I find very difficult—as I say, I put this down to my ignorance, but please help me—is that the contrast between the way you have described the service and the way it has been written up to us by those who are using the service, be they lawyers or people in the courts who depend on the service, could not be greater. I am a bit lost, so can you help, please?

**Mark Stewart:** I will deal with the operational things, and then I will bring my colleagues in. You are correct. We have operational problems. Fulfilment is one of them. You have identified a few there, such as interpreter access to premises. Where we book an interpreter and they turn up, we do our best to fast-track them through front of house security measures, but you will appreciate that those are in place for good reasons. Sometimes they get caught up in the daily volume of people attending courts or tribunals.

We do not routinely provide interpreters in all court and tribunal settings. In the family setting, which I am just using as an illustration, we will certainly provide them in family cases involving children.

**Lord Laming:** They are the cases I have in mind.

**Mark Stewart:** It is for us to book and ensure that they are there then, and in possession cases and any cases involving domestic violence or female genital mutilation. Where it is not a case that we would routinely

provide an interpreter for, it is legitimate for the court or tribunal to agree to a family member or a friend who is appropriate and equipped to interpret on their behalf.

I would not want you to think from the evidence you have been provided that in circumstances where a friend or family member has been invited to interpret that is not without some scrutiny, particularly by the presiding member of the judiciary. The pay and conditions aspects of it I will leave to Kris or Julie.

**Q22 Lord Blencathra:** I have a little supplementary on this Albanian interpreter situation. Does anyone check the validity of their claims that they do not speak English? We have seen that Albanian gangsters are now the top racketeers in London. They are running all the prostitution, the drugs, the criminal rackets and people trafficking, and they have a perfect command of English when doing that. Are we just taking them at their word—"I don't speak English. I need an interpreter"—and delay the case, or do we check out whether they are telling the truth or not?

**Mark Stewart:** If I might use the criminal court context, which is the one you might be alluding to, unfortunately we have to go on the representations made by the legal reps, on the whole. If we are presented with a case and "Mark needs this particular language interpretation to participate effectively in proceedings", we are obliged, in the interest of justice, to provide them.

**Lord Blencathra:** In every case their legal representative will be Albanian, I assume.

**Mark Stewart:** Not necessarily, because part of the service that the language professional provides is not just interpreting the proceedings around them but enabling client-to-party consultation. In the crime setting it is quite different: where we are asked or alerted to a foreign language need, we will book and fulfil.

**Q23 Lord Porter of Spalding:** Following up on that, and this relates a bit to the answer to the Chair's first question, do you keep stats on how many people could have had a state-provided interpreter and how many choose not to have a state-provided interpreter and source their own, the same as their legal beagles?

**Mark Stewart:** We do not keep data because, if I can put it in these terms, we do not give them a choice. If they are in the criminal setting, the only privately commissioned foreign language interpretation will be for prosecution witnesses—as in, the CPS will arrange that itself. It can use ours, but it will have its own arrangements. Defence witnesses can make their own arrangements, but again we will pay. For a defendant in criminal proceedings, the expectation is that the state will fund and provide.

**Lord Porter of Spalding:** So if I was a foreign criminal with sufficient means to choose a very good legal team to look after me, because I was a good criminal apart from this one time when I got caught, we as a state

would insist that they took a state-provided interpreter as the link in that chain.

**Mark Stewart:** That is the approach we adopt now. It is in the interest of justice. There has been case law and criticism in the past, I believe, for us not having done that, so now and for the foreseeable we will provide a state-provided interpreter.

**Lord Porter of Spalding:** One that we choose as a state, not one that they choose as a defendant.

**Mark Stewart:** Yes.

**The Chair:** Very interesting.

Q24 **Lord Blencathra:** I have another question, and it relates partly to the answer you gave Lord Laming. Mr Stewart, I think you in your introduction you said that when it is party against party, the judge decides. In the criminal cases, yes, the state pays. Are you suggesting there are circumstances where individuals are suing each other in court and we are paying for the interpreter? You mentioned family cases. Are there any other cases where we end up paying for personal disputes?

**Mark Stewart:** It will be where the judge decides that it is in the interests of justice for a person to be provided with foreign language interpretation to enable them to effectively participate in those proceedings where they do not have access to public funds, where they have no means to fund it themselves, or, picking up the Lord Laming's point, where there is not an appropriate acquaintance or family member who might be able to interpret for them in that setting, given the nature of the conversation. Sometimes simpler conversations are easier for friends and family to interpret. More complex ones, particularly those that involve technical evidence, require a professional interpretation.

**Lord Blencathra:** Hypothetically, Mrs Shostakovich is suing Mr Shostakovich in our divorce courts, and we might pay for their interpreter.

**Mark Stewart:** Yes, unless children are involved or there are allegations of domestic violence, in which case we would provide.

Q25 **The Chair:** I suppose with these complaints that the complaint comes in, you analyse it, and you publish it, so there are three stages. There may be weaknesses in each stage. Going back to how the complaints come in, the Bar Council and the Law Society talked to us last week, and they do not know anyone who has ever made a complaint. They are busy people, it is not their job, and their explanation, which I think was quite understandable, was that if they get to court and there is no interpreter or it does not work for some reason, their main job is to look after their client and try to get the process going again for that day. They do not write an email or talk to anybody to register a complaint. Do you not worry about that? They are the very people who might have the best first-hand knowledge and experience of where it has not worked.

I am also not sure whether you would expect, or there is a requirement on judges, that in all cases where their case has been disrupted because of the lack of a translator or something to do with an interpreter/translator, it gets reported. Is all that stuff going on, and people have experienced it? I do not know where they are meant to report it to and whether you are confident that it gets reported.

**Mark Stewart:** I would not impose upon the Bar, whether defence or prosecution, having to complain in those situations. If the absence of a language professional has compromised a hearing or a trial, it would certainly be something that HMCTS would pick up in the fulfilment feedback we give through the contracted services team.

**The Chair:** Just pause there, because it will help me try to sort it out. I am assuming that there is a court officer in the court. Could it not be their job? It must be obvious that the case has been delayed because of the lack of interpreter. Should it not be their job to make sure that you get that statistic so that you get every statistic?

**Mark Stewart:** It absolutely is, and they do. That is how we get the ineffective trial data, for example. They are the ones who say, "This trial has not proceeded because of the absence of an interpreter". They are the ones who are feeding in the statistics in that regard.

Equally, we or they can feed directly into Kris's team that we have had a really acute problem—we had a six-week trial that is compromised because of the absence of a language service professional—or, frankly, ongoing systemic problems getting this particular language or just general fulfilment in a particular location.

I spoke to Canterbury Crown Court in preparation for this committee. You might imagine that the geography of Canterbury Crown Court means that it has quite a high prevalence of a foreign language need. It has had fulfilment problems in some major European languages fairly recently, and the court manager I spoke to who deals with it all reassured me that they feed directly in. Short of a complaint being made, so it will not be an official complaint, it will be picked up in official stats or in the fulfilment information we feed back to Kris and Julie so that they can hold the supplier to account.

Q26 **Lord Carter of Coles:** Before I come to my question, which is about supply, I think you said, Kris, that there are 17,000 bookings or requests for bookings a month. If we polled all the people in a month, how many of them would be satisfied with the service? What is the satisfaction rate of people who use the service at the highest level? We can always find things going wrong. It is a big, complicated system. We are all aware of that; we live with it every day. I am talking about the aggregate level of satisfaction that you are providing in this. What do you think it is?

**Kris Hamson:** I do not know the answer to that, but I can make an assumption.

**Lord Carter of Coles:** Would you mind?

**Kris Hamson:** I think that broadly the service does its job. We have been talking a lot about the impact on the courts and trials that are high-profile and high-cost events, but it is important to realise that there is a vast number of telephone interpreting. When a probation officer talks to an ex-prisoner who is now on probation, you can call up via thebigword system, and within five minutes—the KPI is that you have to be on the line within five minutes—have somebody speaking the language you need on the phone to be able to do the interpretation and facilitate that conversation.

There is a vast amount of telephone interpreting. There is a lot of hybrid video conferencing. It is a pan-MoJ service. I am still amazed that you just call up and get within a couple of minutes somebody who speaks almost any language that you are looking for and have somebody who will help you interpret that conversation. It is a really big service. The problems we have, when they are experienced by people, are distressing. The court situation is often not a good experience for anyone, but statistically it will be quite a small amount—

**Lord Carter of Coles:** You are satisfied the level of service is okay.

**Kris Hamson:** I want it to be better. The fulfilment is not high enough. The new procurement is looking to solve a number of problems that we have found, and these are old contracts now.

Q27 **Lord Carter of Coles:** To my question then. In the fulfilment of the function of the availability of interpreters and translators—in other words, the supply—how do you make sure that we have enough of them? I do not want to get into pricing particularly, but what are the main factors that influence two things: the total quantity, and the specific languages that we need to keep that balance right?

**Kris Hamson:** At the moment, we have over 2,000 interpreters on our Ministry of Justice register, and we know that, as of Monday this week, there were 1,687 interpreters who are active. Overall, the fulfilment rate on Monday was 96%. That is on a day; I am not able to give you the year-to-date stats.

Every month, we have performance boards with thebigword, our supplier. We look at the procurement and at where we are getting challenges in sourcing different languages in different locations. We push them to try to recruit. I have talked about Albanian as an example of where we did something specific, and we are trying to do that with some other languages. In the new contract, we are looking to improve what we do by opening up and making that pipeline of trainee and qualified interpreters easier and less expensive for the interpreters. But it is a daily battle to try to make sure that we fulfil the bookings required.

Q28 **Lord Carter of Coles:** Would you say that terms and conditions are a major deterrent to people coming into that pool? You have almost 1,700 active interpreters. What would there have been two years ago? Is there a concentration now?

**Kris Hamson:** The pool has been shrinking a little. I mentioned inflation in the general remuneration. The move to hybrid working has also had an impact. We are a difficult customer. Legal settings are challenging. They require a high level of competency and qualification. They are slightly strange environments, and some distressing evidence can be given. We are competing with other private sector users of interpreters and with public sector users of interpreters. If a government department decides that it will do all hybrid consultations, that is generally better for an interpreter because they can sit in one place and fulfil multiple bookings every day. Following the return from the pandemic where we have been trying to get people in courts, because that is what we want to deliver justice, there are alternatives for those interpreters, so it is harder for us to fulfil them.

**Lord Carter of Coles:** It is a struggle, then.

**Kris Hamson:** It is a struggle.

**Lord Carter of Coles:** Would pay and conditions solve it? Is it a pay and conditions issue?

**Kris Hamson:** From 1 October, we have increased our minimum booking. The minimum booking was an hour, so an interpreter was guaranteed to receive an hour's pay for face to face. We have pushed that to two hours. Our analysis suggested that would make a difference, and we think it is starting to make a difference, but the new contract will address some of this.

**Lord Carter of Coles:** It is a tough position.

**Kris Hamson:** It is.

Q29 **Lord Willis of Knaresborough:** I do not want you to interpret my questions as being unhappy with what you are doing, because we understand it is an incredibly difficult task. I tried to find out how many languages are used and the percentages of them in individual cases. I could not find that. It is probably my lack of ability. It would be great if the committee could have those statistics; they are fundamental.

How many of those languages could in fact, because of their extensive use, be supported by technologies, particularly AI? What requirements are being included in the new contracts that you are currently negotiating which insist that new technologies and AI become a fundamental part of that delivery?

**Julie Howkins:** For the new procurements there are a number of things we are doing to increase the available technology. Hopefully, that will figure as part of it, but it is not a core tenet of it at the moment.

**Lord Willis of Knaresborough:** Do you have the statistics for how many different languages and the percentage of them that are being used?

**Mark Stewart:** We will provide that to the committee.

**Julie Howkins:** Apologies, I was moving straight on to the other part of the question without answering that.

**Mark Stewart:** Please take it as read that we will do our best to provide you with any additional data you need. That is certainly one we can provide.

**Julie Howkins:** As an organisation, we are investigating how we can best use AI. At the moment, from the assessments that we have done, machine learning, for example, is not at the level required in a court setting. We recognise that that moves on very quickly. In this next set of contracts, the ability will be built to adopt and reflect the use of AI as it becomes technically capable of being used in the setting that we have.

We feel that it is not there yet at the moment. Organisationally across the Ministry of Justice and in HMCTS we have set up a framework to understand how best we can adopt it, and that goes to the ethical framework as well as the operational side of things. It is something we are looking to develop when it is appropriate to bring it on board, because if it can increase fulfilment it will be a helpful tool to use.

The new procurement is looking at other areas where we can increase fulfilment and the pool of available interpreters, as I started saying, which includes some of the measures with our future suppliers to help them deliver a greater pool of interpreters, such as trainee schemes, looking at hard to fulfil languages, and understanding where we can offer grants and offer more money. At the moment, it has been in the contracts under a fixed price arrangement, which limits the number who could participate in it. If we change that to a pass-through type of arrangement, it is dependent on our budget. Here I might get a kick under the table from Mark, but it will be budget-dependent on how many people we can put through that, and we will be focusing on more hard to fill areas and what we can do there.

**Lord Willis of Knaresborough:** You could significantly decrease cost by using technologies.

**Mark Stewart:** It is a good point. I will come to AI in a moment, but we are already using remote interpretation. You might think, "Gosh, this is hardly cutting edge", but remote interpretation came to the fore during Covid. We have continued it in appropriate settings where we can have interpreters away from the actual court or hearing-room setting—we like to do business face to face a lot of the time, which can present challenges for interpreters—and one-to-many relationships. So rather than having three interpreters serving the chair and two colleagues, we will have one covering three, as it were, where there is an appropriate use of that.

On the use of AI, I get fixated about court and tribunal settings, so I am quite cautious about use of artificial intelligence in those settings. The contract covers quite a wide range of alternative uses. As Kris mentioned, there is a lot of Prison and Probation Service use, which is just to facilitate conversation. That might be where we start to see a greater

prevalence in the use of AI, rather than what you might regard as a conventional court or tribunal hearing room. The contracts will allow for that, but it will not necessarily be a one-size-fits-all approach.

**Julie Howkins:** There is a pilot exercise under way in a foreign national prison to look at exactly the types of instances where we can use machine translation to do conversational translation rather than having interpreters there.

**Lord Willis of Knaresborough:** Kris, do you agree with all that?

**Kris Hamson:** Yes. It is my team that is trying to execute this pilot in the prison. It is about proving and training the technology in an environment where the consequences are not so great that you are worried about the error rate. We are also looking at it potentially with transcription, but we are not talking about transcription in this setting.

**Lord Willis of Knaresborough:** My worry is that there is the belief that unless you can get an AI system that is as good as the very best of what we have with an individual interpreter, you cannot use it. Of course, that has applied to all new technologies since the agricultural revolution; we have had those questions since the beginning. I am concerned, as you do your new contracts, that they are sufficiently adaptable that you can really make sure that unless these people use these new technologies, we will not be using them, rather than the other way around.

**Kris Hamson:** I completely agree. We are aware of that.

**Lord Willis of Knaresborough:** That has been noted.

**Julie Howkins:** There are suppliers in the market who deal with interpretation services. We are asking them to build in that flexibility, so the contract will require that flexibility to adopt machine learning and AI as it becomes capable. They need that availability.

**Lord Willis of Knaresborough:** I am a happy man now.

Q30 **Lord Carter of Coles:** Could you send us a list of the technology companies that are providing these AI backed-up services?

**Julie Howkins:** No, this is about the new procurement, apologies.

**Lord Carter of Coles:** Presumably, you could find for us who is relevant in this area to get started on our understanding of where the market stands.

**Julie Howkins:** The market we are looking to for these services is the translation companies. They have their own capabilities, and it might be within their supply chain that they operate. They might have a supply chain that includes a technology company.

**The Chair:** We are always keen to identify good practice, so if you felt there was a market leader, it would be great to know who they were.

**Julie Howkins:** While we are in live competition that is not something I am happy to share, but we might be able to follow up on it later.

Q31 **Lord Mott:** I think it was Mark who mentioned off-contract bookings. It would be good to understand what that means and how they work.

Also, I think it was Kris who referred to changing the minimum contract from an hour to two hours where we have that shortage of interpreters. From what you have said, I get the sense that you have that flexibility where, if you need an interpreter to travel for two hours, that interpreter is paid for that two hours of travel before they arrive at court and carry out that work, if there is that shortage. Certainly from the evidence we have seen so far, an hour's work is not very much for people. If they are guaranteed four or five hours, perhaps they are more likely to take the contract, turn up on time and turn up regularly.

**Mark Stewart:** We direct all our initial bookings to the current provider, thebigword, and court and tribunal staff know that thebigword needs to be given as much notice as possible but that it may struggle with fulfilment. Where it is struggling to fulfil, my staff have the ability to source alternatively in the interests of maintaining that particular trial or hearing. That is where the expression "off contract" goes. Effectively, they have the mandate. As long as they have lodged an appropriate booking in a timely fashion and given thebigword time enough to fulfil within the contract terms, if that is proving problematic they have the ability to go elsewhere.

It carries risk, because there is less financial control in that situation. We do not have as much certainty over quality in those situations. We tend to use alternative companies that have their own quality threshold, which is why we are trying to address that in our re-procurement so that we have control over what I call primary and secondary providers. It is all about doing what we need to do in a way that does not compromise the trial or hearing and the individual's right to effective interpretation.

**Lord Mott:** Do you have the breakdown of data of how often that happens? Is that predominantly a language issue or back to the geographic problem?

**Mark Stewart:** It can be both: it can be language driven or geographically driven, or a combination of the two. As I said, Canterbury struggles with French, Spanish and another major European language, which you might think is fairly easy to source, but the geography, combined with demand in the setting from police and other organisations to meet those languages, can make it problematic.

**Kris Hamson:** It can be a bit of a blend. There is potentially also demand from commercial users for interpreters of those languages.

**Mark Stewart:** The second point was about incentivisation. I do not know whether Julie or Kris wanted to touch on the flexibility we have to incentivise where we are facing fulfilment problems.

**Kris Hamson:** I believe we do have flexibility to do that. It often comes down to the arrangements for that specific venue and what they are willing to do, but we try to work with the big word. A lot of the fulfilment issues can be quite venue-specific to the type of jurisdiction, hearing, location and language. With certain venues we will try to do more block booking so that they know they will have a certain level for, let us say, Urdu interpreters needed per day, and they will do creative things like block book to make sure that there is more than an hour's work for an interpreter. We find that is very venue-specific, because all our venues do quite different things on a specific day, so it has to be kept quite flexible, but there is flexibility to allow us to do that.

**Julie Howkins:** The data that we get through those off-contract bookings is also of lower quality. We aim to collect information from courts, but we do not have it in such a centralised way as we do through our main contractors. Through our re-procurement we are looking to have a secondary supplier in place, and that will provide us with more rich data so that we can know what to do next.

Q32 **Lord Bach:** This is a very general question that may not be fair to you as civil servants, I understand that, so tell me, absolutely, if that is the case.

We have talked a lot about the procurement, and I do not want to say anything more about it—it will take place, and that is fine—but is there an argument, and have Ministers considered it in the recent past, for bringing this back in-house rather than having commercial relationships that are either very good or not so good, it does not matter? Is there an argument—on financial grounds and on the grounds of how crucially important this whole area is in justice and the rule of law—to bring it back into the MoJ? If you cannot answer that or do not want to, I understand why not, but has that been thought about in the department?

**Julie Howkins:** On whether it has been considered, as part of the re-procurement exercise we started the process by looking at whether some or all of it should be in-house or outsourced. An assessment was completed, and it came to the conclusion that we should outsource this, partly because we do not have that capability or capacity in the organisation to deliver it and it would be expensive to do so. From a Civil Service perspective, a lot of it is about the value for money assessment that we take. Obviously, we cannot answer on behalf of the Minister.

**Mark Stewart:** We did not do it terribly well in the past. We never had it in-house in function or capability. This is about individuals picking up the phone to a pool of interpreters they had regular contact or acquaintance with and making the booking, so there was not an in-house machine that operated in the past.

Even if we were to think about it, it is not just about booking but about maintaining a pipeline of interpreters and assuring the quality of the interpreter pool. It is not just a booking agency; there is much more around it. And that is where we struggle in a value for money argument.

But again, as Julie says, that will be a matter for the Minister to address in full when she appears in December.

**Q33 Lord Blencathra:** As an aside on AI, I recall that when we introduced DNA in the 1990s there were a number of lawyers who said, "This is a dodgy new technology. It can't be trusted". I suspect that, as we bring AI into the Courts Service, we will have the same or similar lawyers saying, "New dodgy technology. Can't be trusted. We need to double bank it at enormous cost".

I have a number of questions for the panel and will take them one at a time so that it is not too confusing, to me at least. The first we possibly touched on before, but there is no harm in repeating it, and I would like to hear your answer. How do the quality assurance and complaints processes in ITS work? Does this allow for the full range of people who have had experience of ITS services in the courts to raise concerns?

**Kris Hamson:** Our quality assurance is provided by our lot 4 provider, the Language Shop. It monitors, manages and assures the quality of the lot 1 and the lot 3 providers—so spoken word, and vision and tactile. It checks its onboarding processes and the qualifications of the interpreters going on to the register and being used. It also conducts a rolling programme of spot checks, so for 1% of bookings annually when there is an interpreter, let us say in a courtroom, there may be a Language Shop interpreter in the courtroom unbeknown to them, listening and making sure that they are being assessed and are performing their job correctly. They are checking the quality of interpretation and the behaviour of the interpreter. That is a rolling programme that is completely randomised.

We then have the mystery shopper service, which also works as directed, so if a complaint or an issue has been raised about an interpreter, we will deploy a mystery shopper to assess whether that complaint could be valid. When it does a mystery shop on an interpreter, it is also rechecking their qualifications, security clearance and all that sort of thing. We monitor very regularly the number of failures. There are a series of key performance indicators for the Language Shop about its assessments and the quality of the assessments and whether there is a successful appeal against an assessment, which is measuring whether it has done its job correctly on the quality assurance.

**Lord Blencathra:** Roughly how many secret shopper spot checks are done, and who does them?

**Kris Hamson:** The Language Shop is our provider for that, and it is 1% of bookings annually. That is quite a lot, given the 190,000 bookings.

**Mark Stewart:** It will employ foreign language speakers on a general or a targeted basis—as Kris says, it will quality assure the interpretation in situ.

**Lord Blencathra:** So it is the Language Shop that is monitoring all the contracted providers of ITS in the courts. What reports does it make if

they have failed to provide a service or were not up to scratch, or there were common errors or whatever? What action do you take then?

**Kris Hamson:** An interpreter who accumulated three complaints within a year—that is, complaints rather than in an assessment—can be removed from the register. If we find that an interpreter is effectively not at the quality they purport to be, they will be removed from the register.

**Lord Blencathra:** Would the supervisors conclude that the interpreter had used the wrong words or interpreted wrongly? That might affect the justice of the trial, might it not?

**Kris Hamson:** I am not an interpreter, so I cannot comment on that. I can write back to you with more detail on how that works in practice.

**Mark Stewart:** I can respond from previous experiences. In instances in the past where concerns were raised by the Language Shop, it would produce a report that assessed the severity, if I can put it in those terms, of inaccuracy or inappropriateness. In a number of situations we have gone back to the trial judge themselves to discuss the extent to which they feel that the deficiencies that have been identified as part of that quality assurance might have compromised proceedings. That is all. We have the ability to link the quality assurance process with the impact on the outcome of the hearing.

Q34 **Lord Blencathra:** On the occasions when you go back to the judge, it could be weeks or months after the trial concluded. Are you aware of any cases where the judges have said, “We’ve got to set that judgment aside”, or, “Let’s retrial”?

**Kris Hamson:** We do get judges raising concerns about a specific interpreter, which then trigger an in-person assessment. The Language Shop shows up to assess them. If the interpreter effectively fails that assessment, they have an interview where roleplay is conducted to test their capability. If they fail that, they are off the register.

**Lord Blencathra:** But you are not aware of any cases where later the judge has had to set aside the judgment because he was concerned.

**Kris Hamson:** I think we have 0% on that. We are not aware of any miscarriages of justice or anything like that.

Q35 **Lord Blencathra:** Finally—your secret shopper thing has dealt with some of my other questions—what languages are complaints processes available in, and how are people needing interpreting supported to make those claims?

**Kris Hamson:** That is a good question and I do not know the answer, I am afraid. I will need to write back to you and provide information.

**Lord Blencathra:** Thank you.

Q36 **The Chair:** How do you manage in the family courts? That has been raised with us. In the family courts it is closed, so the spot checker would

not be able to sit in a family court.

**Kris Hamson:** They identify that that is a venue and a hearing that they want to do a spot check in. They get permission from the judge, I believe, to attend. If permission is denied, it does not happen. I do not know what we do if there is one interpreter in one particular language who is always in a family court and therefore cannot be examined. I suspect there is a way to assess that, but I do not know. I can follow up.

Q37 **The Chair:** This is a silly question, but I am assuming that all these assessors are good linguists. Do they have to have a qualification? How do you make sure they are good enough to be the inspectors?

**Kris Hamson:** They will be qualified. They go through a rigorous training programme with the Language Shop, so they have to have reached a certain qualification level in the language.

**The Chair:** Is that at level 6, the most senior qualification?

**Kris Hamson:** I suspect so, but I will write back to you to confirm that. They go through further training to be an assessor and understand what is being looked for and how to approach that role.

**Lord Willis of Knaresborough:** I asked for the statistics on the languages required. Could you give me the percentage as well as the language? We want to know which are the major languages and which are the tiny ones, the 200 parts of the middle of Africa.

**Mark Stewart:** It is a challenge, absolutely, for the reason that we do go to dialect granularity in our booking ability. It will not just be broad categories of language; we have quite a lot of dialect selections as well. That can in turn cause problems, but we will get it to the level that is most appropriate.

**Lord Willis of Knaresborough:** I ask, because I am interested—and I am following this elsewhere—in why we are not going to foreign countries to get interpreters there and train them and bring them over. It could be an incredibly exciting opportunity for people in all parts of the world to be able to come for a period of time here. We do not seem to do any of that, but perhaps I am wrong.

Q38 **The Chair:** That is a very interesting point. We should think about that.

I am not sure that we have covered this question, and it is one that has been raised with us a lot. I hear what you say about making two hours the minimum booking; I have that now. But the complaint is that if you are travelling—as you say, people have to travel—that could be two hours' pay in a day because of the travelling. Are you making any changes to that in the new contract so it does not happen that you work for a day and get paid for one or two hours?

**Julie Howkins:** No, we are not making changes to travel. It is about the two-hour minimum booking, but that was done after consultation with a number of stakeholders about what would meet the need for them.

**The Chair:** I cannot believe they said, “We don’t want travel pay”.

**Mark Stewart:** Would it help the committee if we wrote back on that point? I think we are floundering a bit today, being perfectly frank. I would rather us give you something that is a bit more accurate.

**The Chair:** I am happy with that. Am I right in thinking the two hours is guaranteed even if the case is cancelled?

**Mark Stewart:** Within a certain amount of time but, broadly speaking, yes.

**Julie Howkins:** We can confirm that.

**The Chair:** Please confirm that, if you could, because that is all to do with pay and conditions, which helps supply.

**Mark Stewart:** There is a short-notice booking fee. If it is a short notice cancellation, it is covered. We will pay it.

**The Chair:** So it is the timing. That would be great.

Q39 **Lord Carter of Coles:** You said that 62 Crown Court cases were cancelled because interpreters were not there. What is the remedy for that in the contract? If a very expensive trial has collapsed or is delayed, is that reimbursed by whoever is meant to be doing it? Is there a penalty?

**Mark Stewart:** It links to the fulfilment rate.

**Julie Howkins:** Yes, it links to fulfilment, which is a measure in the contract. There are particular key performance indicators where money is associated with them. It does not mean that we would cover exactly that cost, but there are surplus credits.

**Lord Carter of Coles:** In the Crown Court it is £10,000 a session. I do not want to get into the contract details, but would you be giving that money back to the public purse, or is it just the cost of doing business?

**Julie Howkins:** It is a proportion of it.

**The Chair:** Perhaps that could be in your note back to us as well.

**Mark Stewart:** There is an ability to penalise—I will use that word—the supplier for non-fulfilment.

Q40 **Lord Carter of Coles:** Finally, you have a recurring problem with Canterbury all the time, but it seems to come as a surprise every time. Did I misunderstand that? Is there a taxi rank system that you have developed? Can you pay more money in that local market to compete with everybody else in Kent who has the translation challenges?

**Kris Hamson:** Thebigword will operate its dynamic pricing to try to incentivise, but some languages that are in demand for commercial use will be quite hard to incentivise to the right level.

**Lord Carter of Coles:** There is a ceiling through which thebigword cannot get. Thank you.

**The Chair:** We are very grateful for your time, particularly seeing as you have given more of it than we asked for. That has been helpful. Your written comments would be great. There may be more points that come to our minds during the course of the inquiry. I hope it is all right if we approach you and ask you to send us written replies. Thank you for giving us evidence today.