

Case Study 2

Helena contacted police after experiencing a racially aggravated assault at work. The responding police officer offered Helena language support via an interpreter, but she declined as she felt able to provide the ‘basic information’ the police required at that stage.

During that initial encounter, the police officer gave Helena some paperwork, but due to the stress and trauma she was experiencing following the assault, she struggled to read this – ‘I didn’t even know what they were showing me’. She also received written correspondence in English from the Crown Prosecution Service which she found extremely difficult to understand, especially the legal terminology – ‘I understood only that the case was happening’. This meant she did not know how her case was progressing or if it would go to court.

Helena reflected that being a victim of hate crime had heightened her feelings of vulnerability. She lacked the confidence to ask for language support – after her initial refusal of an interpreter – and the offer was never repeated. Helena believed more could have been done to reassure her and that language support should be offered throughout the criminal justice process.

3. The draft Victims’ Bill

The Bell Foundation and its network of partners welcome the positive changes being brought about by the Victims’ Code of Practice and the increased focus on the needs of victims, particularly those experiencing additional vulnerabilities including language and cultural barriers. The input of stakeholders has clearly been taken into account, and this is a positive step towards strengthening the rights of victims. The prominence of the “Right to understand and to be understood” is welcome, and has the potential to significantly improve the experiences of victims who speak English as a second or additional language.

For these rights to be upheld and to make meaningful change, however, they must be enforceable. Therefore, whilst it is understood that it would not be suitable to transpose the Code in its entirety into legislation, it is vital that the basic rights are enshrined in more detail in primary legislation.

In particular, the entitlements underpinning the Right to understand and be understood must be enshrined more directly in the Victims’ Bill than in the current draft, using the following amendments:

- Clause 2(2)(a)(i), at end insert “in a language or format they can understand.”
This ensures that the Right to understand, and to receive help to understand, as outlined in Right 1 of the Victims’ Code, is enforceable.

- Clause 2(2)(a)(ii), replace “be able to access services” with “be provided with services”
This places the responsibility on agencies and service providers to offer services, including language support, as opposed to placing the burden on victims, who are often vulnerable, to be aware of and be able to request services.
- Clause 2(2)(a)(iii), at end insert “and should be provided with appropriate support to communicate these views.”
This ensures that the Right to be understood, and to receive help to be understood, as outlined in Right 1 of the Victims’ Code, is enforceable.

4. Statutory duties to ensure equitable access to justice for speakers of English as a second or additional language (ESL)

Race is a protected characteristic under Equality Act 2010 (s4). Race is defined as including colour, nationality and ethnic or national origins (s9). In addition to prohibiting direct racial discrimination (s13), harassment (s26) and victimisation (s27), the Equality Act also creates statutory duties to ensure that the way service providers provide services (s29) and their general policies and practices (s19) do not disproportionately disadvantage people for reasons related to their race. For public authorities the Act creates a further duty (s149) to consider the need to remove or minimise disadvantages and advance opportunity of people who face obstacles because of their race.

These statutory duties mean that the Ministry of Justice and all agencies with responsibilities under the Victims’ Code and Victims’ Bill once law, must pro-actively consider how language barriers are addressed so that people from non-English speaking nationalities or national origins can access their services and are not unlawfully discriminated against for reasons relating to their race.

The suggestions made in this submission of evidence outline how the Victims’ Bill can ensure that this statutory duty is upheld in the provision of services to victims of crime who speak ESL.

5. The Government’s proposal to put the overarching principles of the Victims’ Code in primary legislation and set out key entitlements in secondary legislation, consulting on changes to the Code once the Bill is in force.

The Bell Foundation supports the proposal to put the overarching principles of the Victim’s Code in primary legislation, and the key entitlements in secondary legislation. However, as outlined in paragraph 3, ‘The draft Victims’ Bill’, above, the primary legislation must more directly reference the key entitlements that reinforce the Rights, including the Right to understand and be understood.

6. The key changes the Government should consider making to the Victims' Code, including consideration of those already proposed by the Government in its response to the consultation.

As outlined in the Government's response to the consultation on improving the Victim's Code, it is correct and a positive change that the Right to understand and be understood is central to victims' rights. It is particularly welcome that this right is in place regardless of resident status.

Of vital importance is that these Rights are enforceable to ensure that they are upheld. As outlined in paragraph 3, 'The draft Victims' Bill', this requires a strengthening of these Rights in the primary legislation.

There are four changes to the Victims' Code that would strengthen the Rights of victims who speak ESL:

- Right 1.1, remove "to be helped" and at end insert "including through the provision of necessary support" or similar wording that enshrines this right more clearly.
As this clause is currently written ('You have the Right to be helped to understand what is happening and to be understood') it is not an absolute right to understand and be understood; instead, it is a right to receive help, which may or may not achieve full understanding. Removing the qualification of 'helped to understand' clarifies and reinforces this Right.
- Right 1.3, replace "an interpreter" with "a qualified interpreter".
This will ensure that agencies are required to provide a sufficient standard of interpretation services for victims of crime who speak ESL to ensure that they are not disproportionately disadvantaged.
- Right 1.3, after "the Right to use an interpreter" insert "which must be offered to you by the agency or service provider free of charge."
This places the responsibility on agencies and service providers to offer language support, as opposed to placing the burden on victims, who are often vulnerable, to be aware of and be able to request this service.ⁱⁱ
- Right 1.3, after "being interviewed" insert "or otherwise communicating with"
This strengthens the rights of victims who speak ESL by broadening the eligibility criteria for the use of an interpreter to ensure that victims who speak ESL are not disproportionately disadvantaged.

As proposed in the Government's response to the consultation on improving the Victim's Code, this must also be accompanied by practitioner guidance. This should include guidance on:

- The impact of facing a language barrier and associated vulnerabilities, and the factors that can impact language proficiency.
- How to identify someone facing language barriers, and how and when to offer language support, including making repeated offers at each new contact and when situational factors affecting proficiency may have changed.

- Communicating clearly without the use of an interpreter.
- Working with an interpreter.
- Cultural considerations and cultural mediation techniques.

Victim Support recently published guidance, funded by The Bell Foundation, for practitioners working with victims and witnesses of crime who speak ESL. This is free to use and available here: <https://www.bell-foundation.org.uk/resources/detail/guidance-for-practitioners-working-with-victims-and-witnesses-who-speak-english-as-a-second-or-additional-language/>

7. The Government proposals to place a duty on the relevant criminal justice agencies (the police, the Crown Prosecution Service, HM Courts & Tribunals Service, Youth Offending Teams and HM Prison and Probation Service) to collect data and keep under review their delivery of the Code.

The Bell Foundation supports this proposal. To ensure that the relevant agencies are upholding victims' right to understand and be understood, this must include language data, and data on language support needs. The following fields should be mandatory and structured (retrievable) to enable analysis and ongoing review of the delivery of this Right under the Code as required in clause 5(3)(b):

- Speaks ESL (y/n);
- Preferred language(s) - this could be differentiated for spoken and written preference, and should be completed according to the victim's preference rather than staff judgement;
- Previous language support – this could be an unstructured field allowing staff to communicate notes around historical language support provided, to enable more consistency of support and better collaboration between agencies.

8. The Government's proposals on the role of the inspectorates, including an improved focus on victims, and a new power for the Government to direct aspects of their work.

The Bell Foundation supports this proposal and believes that inspection frameworks should be grounded in the Rights and Entitlements laid out in the primary and secondary legislation, including the Right to understand and be understood.

9. Whether the legislative steps proposed by the Government will lead to an improvement in the commissioning of support services?

Enshrining the Victim's Code in primary legislation could lead to an improvement in the commissioning of support services if the Right to understand and be understood is strengthened with the four amendments outlined above, resulting in three strengthened entitlements:

- Replace 'the Right to be helped to understand what is happening and to be understood' with 'You have the Right to understand what is happening and to be understood, including through the provision of necessary support' (Right 1.1)
- Replacing 'the Right to use an interpreter' with 'the Right to use a qualified interpreter which must be offered to you by the agency or service provider free of charge' (Right 1.3).
- Broadening the eligibility for the use of an interpreter (Right 1.3) to include any further interactions with criminal justice agencies, including for example when a Family Liaison Officer is appointed.

10. Whether the steps outlined by the Government will lead to increased awareness and effectiveness of the ISVAs and IDVAs?

Guidance issued by the Secretary of State could raise awareness of the role of ISVAs and IDVAs. Due to the high correlation between women who are victims of violent crime and victims who speak ESLⁱⁱⁱ, there are likely to be high numbers of women victims who would benefit from the support of an IVSA/IDVA who may face a language barrier. It is therefore vital that this guidance includes information about the impact of language and cultural barriers, and that IVSAs/IVDAs receive the training and guidance needed to effectively support victims who speak ESL.

To effectively increase awareness and effectiveness of ISVAs/IDVAs among the most marginalized communities, this guidance must be shared proactively with local and community groups, with outreach specifically targeted at communities with a high proportion of speakers of ESL

11. Are there any relevant international examples the Committee should consider?

Cultural mediation is a form of interpretation which involves facilitating mutual understanding by providing cultural context and advice, rather than passively translating information from one language to another.^{iv}

Cultural mediation is a powerful tool to ensure that victims who speak ESL can still be heard, and can be effectively supported to engage in the justice process. Cultural mediation is commonly used in many European countries in various sectors, and evidence suggests that it can be more effective than simple interpretation to support victims who speak ESL. See Hibiscus Initiatives' report 'Cultural mediation: An inclusive solution to help reduce the cultural and language barriers experienced by survivors of trafficking' for more information.^v

12. Whether the provisions of the Bill could have any implications for due process?

Without the changes suggested in this submission of evidence, victims who speak ESL may be disproportionately disadvantaged in their interactions with criminal justice agencies and service providers. This could lead to inequitable access to justice, which has significant implications for due process.

June 2022

ⁱ The Institute for Crime and Policy Research, Victim Support, and the Centre for Justice Innovation, 2022. Language barriers in the criminal justice system. Available at: <https://www.bell-foundation.org.uk/criminal-justice-programme/research/language-barriers-in-the-criminal-justice-system/>

ⁱⁱ [UK govt suffers court loss for not providing sign language interpreters during Covid-19 briefings | News24](#)

ⁱⁱⁱ Victim Support, 2022. Language barriers in the criminal justice system: The experience of victims and witnesses who speak English as a second or additional language. Available at: <https://www.bell-foundation.org.uk/criminal-justice-programme/research/language-barriers-in-the-criminal-justice-system/>

^{iv} Hibiscus Initiatives, 2021. Cultural Mediation. Available at: <https://hibiscusinitiatives.org.uk/cultural-mediation-a-new-report-by-hibiscus/>

^v Available at: <https://hibiscusinitiatives.org.uk/cultural-mediation-a-new-report-by-hibiscus/>