

**The Bell Foundation submission to Her Majesty's
Inspectorate of Constabulary, Fire & Rescue Services
(HMICFRS) consultation on Expectations for Police
Custody**

31 January 2022

About The Bell Foundation

The Bell Foundation is a charity which aims to overcome exclusion through language education by working with partners on innovation, research, training and practical interventions.

The Bell Foundation's Criminal Justice Programme works with a range of partners to remove the systemic language barriers to justice and rehabilitation for anyone in contact with the criminal justice system (CJS) who speaks English as a second or additional language (ESL), and to further develop the capacity of the criminal justice sector to meet the needs of these groups. We are submitting evidence to this consultation to highlight relevant research from 'Language Barriers in the Criminal Justice System', the Foundation's recently funded research project from the Institute for Crime & Justice Policy Research at Birkbeck University, Victim Support, and the Centre for Justice Innovation, which will be published in March 2022. The evidence included in this submission is drawn from in-depth interviews with police officers, and individuals who speak ESL and have contact with the police, although only as victims and witnesses; none of the interviewees were detainees. Interim findings focused on language barriers in courts and for victims and witnesses were published in October 2020 and are available [on our website](#). We will share the full findings with HMICFRS at the point of publication.

Introduction

Research commissioned by The Bell Foundation has found that individuals in contact with the CJS who speak ESL – victims of crime, witnesses, arrestees/detainees, defendants and those in prison or being supervised by the probation service – often do not have their legal rights and entitlements upheld due to systemic issues around access or quality of professional language support including interpreters, the monolingualism of staff and services, and a lack of training and guidance for staff to support individuals who speak ESL. This disadvantages and disempowers these individuals by presenting them with additional barriers to justice.

The provision of language support

The Bell Foundation supports the expectation that detainees have their individual and diverse needs met (Expectation 3.2), including the provision of information in a language they can understand and the ready availability of translation and interpretation services.

However, the provision of language support is not sufficient if that support is of poor quality. While we recognise that these Expectations have been updated in part for clarity, and there may have been some words removed for simplicity, we are concerned about the removal of the word 'accredited' from the previous version of the Expectations,¹ which signifies a lower expectation for the quality of support provided. Our recent research demonstrates that the quality of these language support services is inconsistent across the CJS, and we know that the level of qualifications and experience required of interpreters varies widely across different providers, and that in some situations staff use tools such as Google Translate to 'get by'. This can have

¹ Expectation 3.4 from *Expectations for Police Custody: Criteria for assessing the treatment of and conditions for detainees in police custody Version 3*, updated May 2018

significant implications both for the rights of speakers of ESL and for the quality of statements and evidence for legal proceedings.

For potentially highly consequential interactions such as those between detainees and police officers, interpreters should have a level 6 qualification in Public Service Interpreting and at least 400 hours of experience. For language support to be effective, it is also important that staff are well trained and provided with guidance in how to use it (see 'empowering staff', below).

Recommendation: Expectation 3.2 requires language support services to meet a minimum standard, such as interpreters with at least a Level 6 Public Service Interpreting qualification and 400 hours of experience.

Another issue which is not adequately addressed in the Expectations is around *how* the language support is made available. The Expectations currently state, regarding language support and access to information, "There is provision for detainees to access information...in a language and format they can easily understand" (Expectation 3.2) and "Detainees whose first language isn't English have access to professional language interpretation" (Expectation 4.7). Our research demonstrates that detainees should be actively offered language support not only at the beginning of their time in custody but also at the beginning of any new interaction or at regular intervals, for two reasons.

First, the added vulnerability of speaking ESL combined with the perception of an extra burden of organising language support can dissuade individuals from requesting it. According to the Police and Criminal Evidence Act 1984 (PACE) Code C, the detainee must be told clearly about their right to interpretation and translation, and this right must be upheld "without delay". This should never be done in such a way that implies the support is an inconvenience or additional burden.

Second, individuals' language support needs are dynamic, influenced by situational factors such as stress, and an individual who turns down language support for an initial conversation may then require it for more complex interactions where clarity is vital. The case study below, albeit focused on a victim's interaction with the police as opposed to someone held in custody, demonstrates this.

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.

Recommendation: Expectations 3.2, 3.4, and 4.7 state that language support must be offered at the start of every new interaction, or at regular intervals if a detainee is interviewed for a long period of time.

Empowering staff

Our research demonstrates that while many staff are aware of the rights and entitlements of individuals in the CJS, they are often not adequately supported or trained to uphold them. Many reported hesitancy over offering language support for fear of offending, and that they use their ‘professional judgement’ when making assessments about whether someone could ‘manage’ in English.

Language proficiency and support needs are complex, and proper tools to identify and support detainees who speak ESL are vital to upholding their rights and taking accurate statements. Interviewees who speak ESL and have had contact with the CJS recommended that language support should be offered more routinely to anyone suspected of speaking ESL, no matter their proficiency, to overcome this issue of offence or using ‘professional judgement’.

Expectation 1.3 includes the indicator “Staff have been trained to recognise and meet the needs of people who have diverse needs”. It is important that the criteria for this includes people who speak ESL to ensure that staff are empowered to meet the needs of speakers of ESL, as language is a strong indicator of ethnic group² as a protected characteristic.

It is also notable that the indicator that staff are provided with training and awareness of human trafficking (under Expectation 1.2 in the previous Expectations)³ has been removed. While victims of human trafficking would count as ‘vulnerable adults’ as mentioned in multiple indicators, it is vital that staff are properly trained in how to identify potential victims and how to support their specific needs.

Training and guidance on offer should include: how to identify language support needs and offer support in an appropriate way; situational factors that impact language proficiency; how to communicate clearly with a detainee facing a language barrier; how to effectively work with an interpreter; how to identify and support potential victims of human trafficking.

Recommendation: The inspection framework recognises the need for adequate training for staff to recognise and meet the needs of detainees who speak ESL, as outlined in Expectation 1.3.

² Inequalities data audit: focus on ethnicity, Office for National Statistics ([Inequalities data audit: focus on ethnicity - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk))

³ Expectation 1.2 from *Expectations for Police Custody: Criteria for assessing the treatment of and conditions for detainees in police custody Version 3*, updated May 2018

For more information

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