

Language barriers in the criminal justice system

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Summary

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

The research aimed to:

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

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

Context

Rights and entitlements to language support

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

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

Assessing scale

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

Key findings

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

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

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

Lived experience

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

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

Recommendations

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

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

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

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

Rights and Entitlements

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

Improving services and widening access

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

Empowering practitioners to support service users

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

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

Deploying innovative solutions

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

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

Acknowledgements

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

1. Introduction

1.1 The research

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

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

The project was conducted by the Institute for Crime & Justice Policy Research (ICPR), Birkbeck in partnership with Victim Support (VS) and the Centre for Justice Innovation (CJI). It is part of a wider programme of work funded by The Bell Foundation to identify the effects of language barriers and to use this learning to better inform policies and processes to support those who speak ESL in the criminal justice system.

1.1.1 Methods

This was a small-scale, exploratory project, taking a multi-method approach which combined a review of policy and research literature and national-level data with more focused empirical examination of how requirements for language support for those who speak ESL are being met. The empirical work was largely conducted in two geographic areas with ethnically diverse local populations in two regions of England. Although we cannot claim that our empirical findings represent practices or views of all practitioners and those with lived experience more widely, many of the issues we identified accord with wider discussions and research in this area, pointing to their broader relevance beyond this investigation.

Research activities are summarised in the box below. Some planned activities were constrained by Covid-19 restrictions and conditions of lockdown imposed from March 2020, requiring some adaptations to our methods.¹

1. Research access to prison and probation services, permitted through the National Research Committee, was postponed and when this resumed, only telephone access to conduct staff interviews was permitted. We gained feedback about lived experience through correspondence and interviews with those recently released from custody.

Research activities

- Review of legal rights and entitlements to language support for those who speak ESL;
- Review of data on numbers of individuals who speak ESL in contact with CJS agencies;
- In-depth interviews with key stakeholders working in policy, practice and academia in relation to language barriers in the CJS;
- In-depth interviews with practitioners working in the statutory and voluntary sectors in two geographic areas and with interpreters who work across the CJS;
- National survey of Victim Support frontline staff and volunteers about their experiences of supporting victims who speak ESL;
- In-depth interviews and written correspondence with those with lived experience of the CJS who speak ESL; and
- Workshops with practitioners to 'test' findings and develop good practice guidance to enhance support for people in the CJS who speak ESL.

1.1.2 Terminology

We use the term English as a secondary or additional language (ESL) in this report. Individuals who speak ESL are those who have had exposure to a language or languages other than English from birth, and have developed or are developing ability in English later in life. ESL thus encompasses wide variations in proficiency in English. The terminology we use here reflects our view that speaking ESL is not a deficit, and that people who speak ESL should not be seen as a 'burden' on the system. We also refer to ESOL courses, which stands for English for Speakers of Other Languages.

1.2 Rights and entitlements to language support

To better understand the status quo regarding provision of interpretation and translation services, we reviewed existing rights and entitlements to language support across the criminal justice process – including obligations outlined in law, policy and procedure, and practice guidance for statutory criminal justice agencies. We examined how these relate to different groups – victims of crime, witnesses, arrestees/detainees, defendants and those in prison or being supervised by the probation service. We noted guidance for judicial management of requirements for language support in criminal trials and the 'expectations' of Her Majesty's Inspectorates regarding access to language support in police custody and in prison. Detailed findings of this review are presented [here](#).

How the rights and entitlements are applied in practice was explored through our empirical work, the results of which are set out over the course of this report.

1.2.1 The legislative and policy framework

Provision of language support should align with legal principles, statutory codes and agreed good practice for enabling the delivery of justice, as well as UK obligations under various international treaties. It also has a more instrumental purpose in the process of delivering justice: that is, to ensure witnesses and defendants can provide their 'best evidence'. The most relevant components of the legislative and policy framework are as follows:

Code of Practice for Victims of Crime (2020) which came into force in April 2021, gives the right of crime victims who do not understand or speak English well, to receive information in a way that is easy to understand and to be helped to be understood, when reporting a crime or being interviewed by police, including support from interpretation and translation services. If a case proceeds to court, they have the right to receive a translation of any documents informing them of the date, time and place of trial and, in due course, the outcome of proceedings and (where available) the reasons for the court's decision.

The Witness Charter (2013) underlines the rights of a witness to be interviewed in the language of their choice, even if they are proficient in English. The Charter acknowledges the necessity of using a first language to express intimate or more complex concepts and determines that access to an interpreter should also be provided to assist a witness during pre-trial hearings and the court familiarisation visit.

The Police and Criminal Evidence Act (1984) sets out the rights of a detainee in police custody, of which they must be informed. If a detainee speaks ESL, they should be given a written notice in a language they understand detailing the offence of arrest, their right to free, independent legal advice and access to interpretation and translation. If a translation of this notice is not available, the information should be relayed through an interpreter and a written translation provided without delay.

In order to exercise their **right to a fair trial enshrined in Article 6 of the European Convention on Human Rights**, a defendant must be able to understand the charges made against them and be able to participate effectively in court proceedings. In support of the general legal principle that people should be able to participate effectively in court proceedings that directly concern them, the **Criminal Procedure Rules (2015)** require the courts to 'facilitate participation of any person, including the defendant'.

The Equal Treatment Bench Book guides judges to take a 'proactive role' in clarifying and resolving any language difficulty faced by a witness or defendant to ensure a fair hearing. It underlines the right of a witness to be interviewed in the language of their choice and warns against making assumptions about a witness's level of fluency, especially given the complex language used in court. It advises how to facilitate communication – allowing more time, speaking more slowly, using plain language and frequently checking that the witness understands – and it cautions against allowing witnesses or defendants to 'manage' in English.

Under the **Prison Rules (1999)**, and in accordance with the state's obligations under the **United Nations Standard Minimum Rules for the Treatment of Prisoners** ('the Nelson Mandela Rules', 2015) and the **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders** ('the Bangkok Rules', 2010), prisoners have the right to be informed

(in a language they understand) about prison regulations, regime, the range of health and education services available, and any disciplinary action against them. This includes right of access to the services of a 'competent interpreter'.

Across this legislative and policy framework, responsibilities are assigned to criminal justice practitioners (police, prosecutors, defence lawyers, prison staff) to organise 'competent' or 'accredited' interpreters and the expectations of the inspectorates² reinforce these requirements for language support.

1.3 Assessing the scale of the issue

Whilst not everyone within the CJS who speaks ESL will require language support, understanding scale and prevalence is essential to any review of how requirements for language support are identified and met. According to Census data (2011), 4.2 million people (estimated at 8% of UK residents) who were 'usually resident' in the UK in 2011, spoke English as an additional language (ONS, 2013). Of those, the majority (3.3 million) reported speaking English 'well' or 'very well'. However, this figure tells us little about the numbers of people in the CJS who speak ESL.

Our data search revealed a dearth of information about first language spoken by those in contact with the CJS. For example, this detail is not included in demographic data used to monitor differential treatment and disproportionality³ in the CJS⁴ nor mentioned in assessments of a range of equality objectives for people who offend.⁵ There are routine sources of data that allow for some broad brush estimates of people in the CJS who may speak ESL: for example, the numbers of 'foreign nationals' in prison, although this category will include those who speak English as a main language, or with a high degree of proficiency. Other data include requests made for interpretation and translation services by different criminal justice agencies. Key findings of our review of publicly available data and freedom of information (FOI) requests are presented below.

1.3.1 Data held about language support needs

The Home Office does not hold any central record of numbers of interpretation and translation service requests made by police forces for dealings with suspects, arrestees, witnesses or victims of crime. We submitted FOI requests to seven police forces, of which four returned information about use of language services.⁶ The quality of data varied, in terms of the level of information provided and its format.⁷ It can be inferred from this that the police have no standard process for collecting language data (and also that the police have limited resources for responding to FOI requests). When asked for further clarity, we limited our request to suspects in police custody, however, no police force has been able to provide additional information on who the language service request was made for (i.e., victim, witness, or suspect).

2. HM Inspectorate of Prisons (HMIP) and HM Inspectorate of Constabulary and Fire and Rescue Services (HMCFRS).

3. Disproportionality in the CJS refers to the over-representation of a particular group relative to the general population.

4. E.g., Ministry of Justice (MoJ) reports on *Race and the Criminal Justice System and annual HMPPS Offender Equalities Report*, the Racial Disparity Unit and MoJ: *Tackling Racial Disparity in the Criminal Justice System* (2020); The independent Lammy Review (2017).

5. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938345/hmpps-offender-equalities-2019-2020.pdf [Accessed: 21/05/2021]

6. Cambridgeshire Police, the Metropolitan Police and Greater Manchester Police were unable to fulfil the FOI request as the information is not centrally held and would require manually extracting the data we required.

7. For the 12 months to March 2020 requests for interpretation and translation: **West Midlands Police** recorded 7,337 of which 6,038 were 'successful'. The most commonly requested languages were Romanian, Urdu, Punjabi Eastern, Polish and Bengali; **West Yorkshire Police** recorded 5,688 fulfilled requests for 78 different languages (no details given); **South Yorkshire Police** recorded 5,489 requests, most commonly for Romanian, Polish, Slovak and Albanian; **Merseyside Police** recorded 3,120 requests, most commonly for Polish, Romanian, Arabic, Farsi and Kurdish Sorani.

The Crown Prosecution Service has no centralised record of its use of interpretation and translation services, and there is no single source of data on the first language spoken by those attending the criminal courts in England and Wales whether as defendants or prosecution or defence witnesses.

1.3.2 Requests for language services in the CJS

Table 1 presents data provided in response to an FOI request to the Ministry of Justice (MoJ) (received May 2021). This shows that there were **167,667** service requests for interpretation and translation for **163** languages in the 12 months to March 2020.

Table 1: Language service requests under Ministry of Justice contract arrangements in England and Walesⁱ, 12 months to March 2020

Commissioning body	Number of completed service requests	Percentage of total completed service requests (%)
HM Courts and Tribunals Service	149,884	89
The Salvation Army	7,674	5
HM Prison and Probation Service	7,069	4
HM Inspectorate of Prisons	6	<1
Other ⁱ	3,034	2
Total	167,667	

Source: Ministry of Justice: FOI 2000710007

i: This was mainly for Children and Family Court Advisory Service (2931; 2%), Office of Public Guardian (<1%) and Official Solicitor and Public Trustee (<1%).

These data shed some light on the numbers of people requiring language support, the agencies making these requests and the range of languages spoken by those in contact with the CJS. However, this will be an under-estimate of the numbers speaking ESL in the CJS as it does not account for people who are not offered language support or who choose to proceed without formal language support, issues we address in the following chapters.

Her Majesty's Court and Tribunal Service (HMCTS) made the largest proportion of requests for language support (89%); additional evidence suggests it is the criminal courts that make the majority of these.⁸ Other agencies enlisting language services under the MoJ-commissioned contract include HM Prison and Probation Service (HMPPS) and the Salvation Army, which is commissioned by the Home Office to provide support to adult survivors of modern slavery in England and Wales. The charity made 5% of all interpreter requests in the 12 months to March 2020, exceeding HMPPS at 4% and highlighting the importance of the voluntary sector in developing knowledge and understanding about language support requirements in the CJS.

8. E.g., Quarterly data for Court and Tribunals – for January to March 2020 shows that the criminal courts (compared to Civil and Family courts or Tribunals) make the greatest number of requests for “face-to-face spoken and non-spoken language interpreter services” (42% of 44,184 in the first quarter of 2020).

Tables 2 and 3 show the five most common languages for which an interpreter was requested for, respectively, those attending the courts and tribunals, and those under supervision of HMPPS. In total, these two bodies made **156,953 (94%)** of service requests.

Polish is the language for which the highest number of interpretation service requests were made, both by HMCTS and HMPPS. This reflects general population data (2011 Census) indicating that Polish is the main 'other' language spoken in England and Wales. The Salvation Army, with its role in supporting victims of trafficking, made requests for language support for 63 languages. The five most common were Albanian (2,546), Mandarin (1,210), Vietnamese (1,028) Polish (438) and Romanian (422).

Table 2: Service requests for HMCTS in 12 months to March 2020

Language	Service requests	Percentage of total completed service requests (%)
Polish	20,552	14
Romanian	17,436	12
Urdu	9,951	7
Kurdish	7,754	5
Albanian (all dialects)	6,766	5
Other languages ⁹	87,425	58
Total requests made by HMCTS	149,884	

Source: Ministry of Justice: FOI 2000710007

Table 3: Service requests from HMPPS in the 12 months to March 2020

Language	Service requests	Percentage of total completed service requests (%)
Polish	1,152	16
Romanian	930	13
Punjabi (all dialects)	439	6
Lithuanian	382	5
Arabic (Modern Standard) Middle Eastern	341	5
Other languages ¹⁰	3,825	54
Total requests made by HMPPS	7,069	

Source: Ministry of Justice: FOI 2000710007

9. Following the five languages cited in Table 2, Punjabi (all variants), Lithuanian, Bengali/Bangla (Sylheti), Arabic (Modern Standard) Middle Eastern and Turkish were the most common languages requested by HMCTS.

10. Following the five languages cited in Table 3, Kurdish, Urdu, Turkish, Albanian (all variants) and Tamil were the most common languages requested by HMPPS.

To get a sense of the overall scale of language support needs in the criminal courts, the number of language service requests should be considered against the number of cases dealt with by the criminal courts. Between January and March 2020, 366,399 cases were completed (disposals) in the Magistrates and Crown Courts¹¹ in England and Wales. In that same period, 11,141 language interpreter requests were made by the criminal courts. At a very broad level, this suggests that language support was requested in about 3% of Magistrate and Crown Court cases. However, this figure is likely to be an over-estimate for various reasons. First, some of the requests attributed to 'criminal courts' relate to other parts of the criminal jurisdiction, such as criminal appeals; secondly, there are instances where more than one interpreter is needed for the same case, and counting rules mean these will be treated as separate interpreter requests. It should also be borne in mind that the proportion of cases in which language support was requested does not necessarily equate to levels of need for language support, since some defendants or witnesses may not alert the courts to language difficulties, or these difficulties may not be recognised by the courts.

1.3.3 Speakers of ESL in prison

In the absence of centralised data on first languages spoken by those under probation supervision or in prison, information on foreign national offenders (FNOs) can shed some light on the language diversity of the offender population. The UK Government defines an FNO as anyone remanded or convicted on criminal charges, including breaches of immigration laws, who does not have an absolute legal right to remain in this country.¹² The FNO population includes those who may have been resident in the UK for many years but do not have full British citizenship, asylum seekers and trafficked people.

Foreign nationals represent **12%** of the total prison population in England and Wales.¹³ Figures as of December 2020 show that 9,524 foreign nationals were held in prisons in England and Wales and in the HMPPS-operated Immigration Removal Centre (IRC) at Morton Hall. This total includes 2,616 remand, 6,033 sentenced and 875 non-criminal detainees.¹⁴ Overall, the total prison population decreased by 6% between December 2019 and December 2020 but the number of FNOs in the prison (and HMPPS IRC) population increased by 3%. Over 160 different nationalities are represented among FNOs.¹⁵ Approximately three-fifths (59%) of whom are European nationals (Table 4). The most common nationalities are Albanians (at 13% of the FNO prison population), Polish (9%), Romanian (9%), Irish (7%), Lithuanian (4%) and Jamaican (4%).¹⁶ These data suggest that a significant proportion of the FNO population are speakers of ESL.

11. HMCTS_Management_Information_for_Dec19_to_Dec20_Final_
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895063/ccsq_bulletin_jan_mar_2020.pdf

12. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953285/Foreign_National_Prisoner_Guidance_-_November_2020.pdf, page 4. [Accessed: 10/05/2021]

13. Offender management statistics quarterly: July to September 2020 – GOV.UK (www.gov.uk)

14. Non-criminal – Those held for civil offences or under the Immigration Act. A civil non-criminal prisoner is someone who is in prison because of a non-criminal matter, for example, non-payment of council tax or contempt of court. The non-criminal population also includes immigration detainees who have finished serving their sentence and are being kept in prison by immigration authorities or those detained in HMPPS operated Immigration Removal Centres (IRCs). (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/955963/Guide_to_Offender_Management_Statistics.pdf, p.10)

15. Prison population by nationality status and sex, 31 December 2020 (Table 1.7)

16. Offender management statistics quarterly: July to September 2020 – GOV.UK (www.gov.uk)

Table 4: Foreign National Offender Population at December 2020

Nationalities		Percentage (%)
European	5,581	59
African	1,618	17
Asian	1,081	11
West Indian	516	5
Middle Eastern	475	5
Central and South American	156	2
North American	64	1
Oceanian	33	1
	9,524	

1.3.4 Data on victims of crime who speak ESL

Analysis conducted by Victim Support of the service's national case management data, for the 12 months to March 2020, identified 750 service users as speaking ESL. This represented a very small proportion of the national annual caseload: approximately 1%. This may also indicate a reticence to seek help where there is a language barrier. Of the 750 service users identified as speaking ESL, the majority were women who had been victims of violent crime. Forty-six languages were recorded. Polish was the most commonly reported language, followed by Arabic, Turkish, Urdu and Farsi.

1.4 Implications of language barriers in the criminal justice system

Existing research and policy literature points to various ways in which language diversity is accommodated in the CJS, and how speaking ESL might affect the extent and nature of contact with criminal justice agencies, and we summarise some key themes below.

1.4.1 The intersection of language needs with insecure legal status

Requiring language support in the CJS is often a marker of vulnerabilities linked to immigration status and social and economic isolation. English language proficiency relates to national identity and ethnicity. It is also considered to be an indicator and enabler of social inclusion.¹⁷ Exclusion as it relates to language, ethnicity and immigration status is addressed in research investigating the blurring between immigration and criminal justice processes,¹⁸ through the increasing use of criminal justice sanctions, including imprisonment, as part of immigration enforcement; a phenomenon referred to as 'cimmigration'.¹⁹ This research emphasises how public anxieties – and political narratives that seek to link crime and immigration – can manifest in processes of racial and ethnic 'othering'. Accordingly, the need for an interpreter is a 'tangible indicator' of 'outsider status'.²⁰

17. See the Casey Review (2016)

18. E.g., Bosworth and Guild (2008); Canton and Hammond (2012); Barker et al (2012); Bhatia (2015; 2019); Kirkwood and McNeil (2015)

19. Bosworth (2017)

20. Aliverti and Seoighe (2017, p.150)

Language as it links to ‘crimmigration’ has been identified as an issue for women who are victims of trafficking and have been coerced into offending. This research²¹ suggests that criminal justice authorities have paid little attention to language difficulties – difficulties that can significantly impact the capacity of trafficking victims to understand and challenge the outcomes of criminal and immigration proceedings.

1.4.2 Access to services and support

Research conducted by Victim Support and others into the experiences of victims and survivors of domestic abuse has raised concerns about women’s confidence to report abuse to police or to access support services where language or immigration status is an issue.²² Inspections of police forces’ handling of domestic abuse cases have noted delays in organising professional language support for victims of domestic abuse.²³ The centrality of the voluntary sector in providing support to vulnerable women who speak ESL is also noted.²⁴

Deficiencies in how language diversity is accommodated in prison is another key area addressed in the research literature. The literature focuses on the difficulties faced by those who speak ESL in accessing language support and other services to which they have rights, and the limits and barriers to the provision of language education (ESOL) despite its importance for successful rehabilitation and resettlement.²⁵

Experience of the voluntary sector working in this area suggests that prison officers often have limited understanding of the language and cultural barriers and the vulnerabilities of foreign national women held in prison. HM Inspectorate of Prisons (HMIP) has previously noted the lack of information for those arriving in prison in languages other than English and poor knowledge among staff about arrangements for booking telephone interpreters.²⁶

1.4.3 Funding and organisation of interpretation and translation

Provision of professional language services in the CJS is often framed as an additional cost on an over-burdened system.²⁷ Cost-cutting by the Ministry of Justice in 2012 as part of the wider austerity programme included outsourcing and centralisation of interpretation and translation services. This raised concerns about declining standards and provoked serious resistance from the interpreter community about the terms and conditions under which they were expected to work. Later iterations of the outsourcing arrangements addressed some of these problems.²⁸ Further, previous standards – including requirements to hold a Diploma in Public Service Interpreting, register with the National Register of Public Sector Interpreters (NRPSI)²⁹ and adhere to NRPSI’s code of professional conduct – no longer apply, and non-registered interpreters can act as court interpreters.

21. Hale and Gelsthorpe (2012); Cox and Sacks-Jones (2016); Prison Reform Trust (2017); Prison Reform Trust and Hibiscus (2018)

22. Tipton (2018); Mayes, Moroz and Thorsgaard Frolunde (2017)

23. HMIC (2014) *Improving Police Response to Domestic Abuse*

24. E.g., Tipton (2018); Robinson and Hudson (2011)

25. Hales, L (2015); Carroll, Hurry and Wilson (2015)

26. HM Inspectorate Annual Report (2018); Reported by Prison Reform Trust and Hibiscus (2018)

27. Aiverti and Seoighe (2017)

28. E.g., see House of Commons, Justice Committee (2013), *Interpreting and translation services and the Applied Language Solutions contract*, Sixth Report of Session 2012–13, Volume I & 2; Prison Reform Trust response to Justice Committee Inquiry on Interpretation and Translation services and the Applied Language Solutions contract; Maniar, A. (2015).

29. NRPSI is an independent voluntary regulator of professional interpreters specialising in public service.

1.4.4 The presence of the interpreter

Research has explored how the presence of an interpreter can affect courtroom dynamics and create negative perceptions of defendants and witnesses on the part of court professionals and practitioners.³⁰ This includes suspicions about defendants or witnesses ‘playing the system’ or hiding something. Arranging an interpreter can be viewed as an irritation and cause of delays, disrupting the flow of ‘business’ in the CJS. Research has also looked at the ways in which interpreters affect the nature of communication and are more than the neutral channel that is commonly implied. They might, for example, diminish or strengthen the ‘voice’ of the recipient by controlling the flow of speech, transforming hesitant into more confident responses and summarising rather than translating verbatim. They may also offer support by providing additional detail to the recipient about what is being said, outside the more formal communications. Misunderstandings among criminal justice practitioners about the role of the interpreter and limited efforts to accommodate the interpreter in criminal justice processes are also noted in the research literature.³¹

1.5 Report structure

While other resources in this series target particular sectors and parts of the CJS, the aim of this report is to draw out the commonalities in how language barriers are experienced, how and whether services accommodate language diversity, and what could be done to better understand and mitigate the effects of language barriers across the CJS. The research project reported upon here has adopted a cross-sector approach, which reflects the fact that the same individuals can be in contact with different parts of the CJS at different times – as a crime victim, a witness, a suspect, a defendant and a convicted offender in prison or under probation supervision.

In Chapter 2 we explore the service and practice environment to better understand how effectively speakers of ESL are currently accommodated within the CJS. We examine how rights and entitlements to professional language support are applied, and we report practitioners’ perspectives on staff and service capacities to support language diversity in the CJS. In Chapter 3 we demonstrate the limits of current provision through reference to the lived experience of the CJS and we highlight the ways in which language barriers can impact access to justice for those who speak ESL. In Chapter 4 we offer recommendations, based on project findings, for change to current practice and processes to improve how those who speak ESL are supported through the CJS. These encompass both ambitious and smaller-scale reform proposals.

30. Aiverti and Seoighe (2017); Rycroft (2011)

31. Aiverti and Seoighe (2017); Rycroft (2011)

2. Capacity to support language diversity in the criminal justice system

“The criminal justice system is already a bit of a minefield for people, and it is particularly so for people who maybe don’t have social capital or any ways of accessing services and [have difficulty] making themselves understood and in comprehending what is going on. So, at every stage of the system somebody who has an additional difficulty ...in this case insufficient English, they will struggle.”

Voluntary sector

Here we detail core findings from interviews with 63 practitioners from the statutory and voluntary sectors, most of whom were based in two geographic areas in different regions of England. These offer insight into the extent and nature of current provision for those who speak ESL, its limits and the various associated challenges. The timing of the project enabled us to ask practitioners about providing language support during conditions of lockdown and social distancing, as well as in more usual circumstances. The interviews presented an opportunity for practitioners to reflect on their own practice and the ways in which language barriers might impact access to and experiences of service provision.

Practitioner interviews	
Probation and prison staff	11
Police	10
Witness Care Unit	2
Crown Prosecution Service	1
Voluntary sector	27
Interpreters	12
Total	63

2.1 Access to professional language support

We have mapped, by criminal justice agency, an individual’s rights to a professional interpreter to facilitate their engagement with the CJS – also discussed in Chapter 1. This is more accessible when the individual is in contact with statutory agencies where provision is funded by the state. Professional interpretation is a less common feature of provision in the voluntary sector (see below for discussion of ‘informal’ strategies for language support).

Legal considerations were mentioned as a stimulus for enlisting a professional interpreter to support the taking of statements and preparing evidence for court. This relates to concerns about the quality of evidence required for criminal proceedings and protecting against judicial and legal challenge further down the line. However, upholding rights to language support and applying these amidst the messy realities of everyday practice in the CJS can be complex.

We identified five aspects to practitioner decision-making in relation to providing access to language support. These reflect awareness, knowledge, practicalities, information-sharing, and assessment of language proficiency.

2.1.1 Awareness and knowledge of language support

In general, there was good knowledge among practitioners we interviewed about rights and entitlements and the interpretation support that is available. Overall, there was clarity about how to engage an interpreter. Practitioners had access to various internal guides covering matters such as how to use online booking systems, how to access telephone interpreting support, including, for example, Language Line³² and sometimes internal procedures for getting important letters translated.

2.1.2 The practicalities

Interviews reveal that operational practicalities shape access to language support. The examples below demonstrate how these everyday practice realities influence decisions about whether to engage the services of an interpreter, even where these are available. The first two extracts are from interviews with frontline police officers:

“As a first responder, that is not going to be at the top of my priority list... because in order to submit that request, I am going to have to come back to a police station to then submit the request. To then get in contact with that victim and say, ‘Can you please attend at this police station at this time on this day?’ Do you see what I mean?”

Police

“As a frontline officer you have got other calls to attend. The interpreter might be able to come out in four hours’ time, but your shift might have finished.”

Police

A probation officer interviewee told us that restrictions to face-to-face contact introduced in response to Covid-19, and the complexities and dynamics of interpretation by telephone, prompted the use of less formal methods of language support:

“[Use of interpreters] has been a bit few and far between. We have been doing a lot of appointments over the phone rather than face-to-face, so it has proved quite difficult to book interpreters for that. It can be done on the phone if you have got one of them in front of you, but obviously three people trying to have a conversation on three different phones, in three different places is a minefield. So, I think people have just been getting on the best they can, and I think probably Google Translate has been used quite a lot during the last 12 months.”

Probation

32. Language Line is in reference to Language Line Solutions, a private company that provides interpretation and translation service by phone to criminal justice agencies.

Our interviews with prison staff detailed the different pressures involved in organising language support during Covid-19 restrictions and in more usual operating conditions, where officers are focused on managing daily prison activity and have limited time to organise language support:

“We can’t spend a lot of time with the individual [limiting contact to no more than 10 minutes as Covid-19 prevention strategy]... So we have an issue where sometimes we can’t deliver language support because of those [time] constraints. ...When perhaps [now] moving to a bit of normality, the regimes in the establishment, what we are finding is with the officers being so busy because it is a living, breathing wing.”

Prison

2.1.3 Sharing of information

Agencies must share information about language needs as an individual moves through the CJS to ensure that the necessary support is available at every stage. The police – as an agency of first response – are crucial in that. As the interview extracts illustrate, information on language needs is not always collated in a routine or direct way and can depend on the quality of notes provided or might have to be inferred from other information:

“There is no button on the crime report that says, ‘non-English speaker,’... It has got tabs that you go across, but it has got officers’ notes down the bottom. In there the majority of them will put, ‘English is not this victim’s first language. He speaks such-and-such, [name of friend or contact] will be his interpreter’. ...We do rely on who’s putting the report on.”

Voluntary sector

“We have a system on the computer you can look at, so if somebody is in custody, you can click on the barriers or languages, and that would hopefully let you know if somebody doesn’t speak English. Of course, that is only as good as the people that have updated the information.”

Police

“Generally, we have the records of the police interviews, and you’ll see whether or not an interpreter is present for that. If they have an interpreter at the police interview, then they’ll tend to have one all the way through. Occasionally, people will turn up at court [and] it’s apparent that they can’t speak English well enough, and the case will be adjourned for an interpreter.”

Probation

2.1.4 Assessing language proficiency

Practitioners commonly reported using their 'professional judgement' when making assessments about whether someone required an interpreter or could 'manage' in English, and there was no standard approach or guidance about the level of proficiency that might be needed. Worry about causing offence was also a consideration:

"If that person is quite happy to have a conversation in English and is holding the conversation well enough in English to be able for the both of us to be able to understand each other, then there is no reason for us to go down the lines of an interpreter... If I was in a different country myself and I was speaking in their language and I can hold a conversation and they said, 'Actually no, I want to go via an interpreter with you. Just because that's your native language,' I would probably be slightly offended by that."

Police

"It's your assessment of the person. When you are asking the questions, if you have to repeat yourself three or four times and they are still struggling to understand you, then it might be an option to call Language Line, and then do it that way."

Police

"We don't, as a probation service, have a standardised way to test the proficiency of someone's English. Generally speaking, it would be more of an informal way, so I would say, 'Are you comfortable having your supervision in English?'"

Probation

The uncertainties and high risk of inconsistency associated with this approach were acknowledged by interviewees and are addressed in other resources within this series. It is evident that the level of English proficiency can impact the detail and complexity of accounts and the depth of understanding of any information provided. Explaining why an interpreter might be needed for more formal interactions in the CJS, and appreciating how language support needs are likely to evolve over time, depending on context, are good practice:

"How well [have they] been able to express [themselves] and the level of detail: whether you have actually been able to get everything across, or whether it is a very simplified version that has been understood."

Voluntary sector

"I think it's always better to ask, and to explain that, you know, 'Are you sure, because you're talking to me fine and you've got great English, however please be aware that on the day you will be [on the] stand, you will be asked quite a number of questions, do you think, under that stress and in that environment, do you think you would feel better having an interpreter?' And often people will then say, 'Yes, okay!'"

Police

2.2 Working with interpreters

Some shortcomings in the interpretation service were noted by criminal justice practitioners. It was reported that there was a lack of capacity to cater for rarer languages or dialects. The mechanics of the booking systems were said to make it difficult to request the same interpreter to cover contacts over time, for example as part of probation supervision or for counselling, thereby undermining consistency that was considered crucial for building trust and rapport:

“So, you won’t have a consistent interpreter all the way through, and that can cause its own problems, in that you want continuity. It’s just like when we’re managing someone, we are very conscious about continuity, how important it is for building that relationship, breaking those barriers down and getting to know someone, all that type of stuff.”

Probation

Other issues mentioned by criminal justice practitioners include sometimes long waiting times to get an interpreter and technical glitches that impact the quality of the language service provided by phone. Concerns were also raised about confidentiality of information when an interpreter who lived locally was used to cover a rarer language, increasing the likelihood that they might know or be known to the recipient. Interviewees reported instances of working with interpreters who lacked understanding of the CJS and its specialist vocabulary.

2.2.1 Accommodating the interpreter and understanding good practice

Interview accounts highlighted a potential gap in understanding among some criminal justice practitioners about how interpreters work, including in relation to what ‘good interpreting practice’ looks like. There was a lack of guidance for probation, and for those working in the voluntary sector, about how best to accommodate interpreters in criminal justice processes. A probation interviewee suggested that – ‘We are not always confident using an interpreter. We don’t know what the dos and don’ts are’

An expression by an interpreter interviewee – ‘interpreter friendly’ – typified interpreters’ expectations that criminal justice practitioners should be prepared to facilitate their work: expectations that were not always met. For example, being ‘interpreter friendly’ might entail offering a **short briefing** to prepare the interpreter about the likely content of discussion:

“...because for some particular reason people think that an interpreter can just waltz in without any preparation and interpret.”

Interpreter

“You are not a machine. You just are a person. Knowing what is going to happen, you get familiar with the situation or with the matter. It’s easier for you to interpret.”

Interpreter

Interpreters also said that criminal justice practitioners should understand the protocol for communicating through an interpreter, including the need to address the ‘the non-English speaker directly in first person’ and to consider the speed and pacing of speech to allow time for interpretation. It was also considered important to make sure the recipient knows what will be interpreted. One

interpreter told us that she provides that information if the criminal justice practitioner has not: 'I explain that everything they say will be interpreted to the other person even if it's about the weather'.

Criminal justice practitioners sometimes worried about interpreters paraphrasing or summarising conversations, evidenced by short renditions in English of much longer responses by the person who speaks ESL, and the implications for assessing a service user's needs or risks:

"There have been a few times where I actually was conducting risk assessments where I have had to say to the interpreter, 'I need to record all of the information that he or she is providing. Do not feel the need... Do not summarise!'"

Voluntary sector

2.2.2 Wider expectations of the interpreter to aid communication

Some interviews pointed to valuable aspects of the interpreter role that extend beyond the mirroring of conversation. One practitioner, for example, described how an interpreter had helped communication by drawing his attention to words that did not translate well:

"The interpreter explained to me – I kept talking about your offence. She was saying, 'the word for that in Albanian means like a very serious crime like a murder, so he doesn't understand why you're saying that.' So, she was translating quite literally, and I was like, 'Well this is serious but yes it's not [murder]!... So, things like that, those logistics..."

Probation

Another raised questions about what help could be expected from an interpreter to identify wider communication needs such as learning needs that are likely to be more difficult to spot or to gauge when English is not a first language:

"If you were talking to someone in your own language, in English, you know what you're looking for, in terms of an additional barrier, like a learning difficulty, a communication issue. But where you're doing it via translation... [Can the interpreter help?]"

Probation

The potential role of the interpreter in offering relevant cultural information that might have some bearing on the quality and detail of communication was also discussed. While this might conflict with a strict reading of an interpreter's professional code of practice, they – in the words of one interpreter we interviewed – are 'more likely to have a better grasp of the cultural background than a non-native speaker. Any sort of politics, with a small and a large P'. Practitioners felt this additional cultural detail could add depth to communication:

"They would not just interpret the language but also in terms of culture and certain behaviours and religion and things like that. So, it was a true interpreting service in that you were getting the full picture when you were having a conversation."

Probation

“I don’t know everything, and sometimes people can give me not just cultural stuff but stuff that might also be applicable in terms of age and generations and things like that.”

Probation

However, it was also noted that there could be a fine line between providing information about cultural norms to enhance understanding and making ‘judgements’:

“With a few [interpreters], when you have conversations, a bit of a debrief afterwards, sometimes they have their own judgements, cultural judgements. And I’ve felt some interpreters have maybe taken it personally, as like a bit of an insult on their country.”

Probation

2.3 Strategies for ‘getting by’

Even within statutory agencies, practical and financial factors limit availability of professional interpretation and translation. Practitioners reported using a variety of less formal methods for responding to language diversity. Google Translate, for example, was a commonly used go-to resource for immediate communication needs. Other informal strategies include drawing on the language skills of staff, volunteers, friends and family and peer support (see Chapter 3).

2.3.1 Language diversity of staff

Greater ethnic and linguistic diversity of staff in the CJS helped strengthen service capacities for accommodating language needs. We were told about targeted recruitment drives in policing, for example, that sought to attract people into the service who were fluent speakers of other languages. One interviewee – who was Romanian – had been accepted into the police in part because of that language skill. Another, in response to a question about language capacity in a neighbourhood policing team, counted colleagues who could cover multiple languages:

“I think Russian, Romanian and Spanish would be in contention. Because with Russian, most of the countries, like Latvia, Estonia, Lithuania, they all understand Russian, because their school is bilingual, so they understand – like Serbia – all these countries, they understand a bit of Russian. I think that is probably the most common. ...[Also,] Somali, Bangladeshi... Because we have a lot of officers from those backgrounds as well.”

Police

Staffing that reflects the diversity of the community that an agency is seeking to serve was noted as an advantage for better understanding and addressing cultural barriers to engagement with the CJS. However, as the second interview extract suggests, this can also raise concerns about confidentiality of information:

“There’s quite a diverse workforce. People from the same community. They understood the cultural differences, and it’s worked really well, breaking down those barriers and stuff as well. It’s about the service users’ needs and things and understanding those.”

Voluntary sector

“One thing I think we are really mindful of is not using interpreters that would be in the community. You know, just ensuring that actually even people that work for some local services, it is not somebody that would be known to the victim. Because this person ...could be somebody that is fully trustworthy, but it is whether the victim would then feel comfortable in being able to sort of speak to them, because they might think, ‘Well, actually, I know that person is part of the community’.

Voluntary sector

Requesting language support from colleagues was a commonly used strategy when immediate language support was needed. Although the account below might be atypical, it shows there is a regular need for translation and interpretation:

“Yesterday there was an email that went out. They needed a Bulgarian-speaking officer. Then within 10 minutes, ‘Thanks very much. We have now obtained the services of somebody.’ Yes, and I know that there are quite a few officers who work over [City] way, you know, they spend most of their day job translating.”

Police

“We have got a couple of Polish speakers in our team, and then we have also got a Slovak speaker and Romanian within our outreach team, and Polish, actually, within the outreach team. So they can obviously help build that trust and rapport and help people to feel confident to give their accounts of what has happened to them.”

Voluntary sector

Language capacity within services was discussed as a potentially under-used and under-realised resource that might be better engaged in support of speakers of ESL. This could include assigning a service user to someone who speaks their language. However, it would also necessitate clear guidance to practitioners about circumstances where this less formal language support might be inadvisable or inappropriate such as when taking statements and collating evidence:

“I mean in the office I worked, I think – And it is amazing. I remember when an interpreter didn’t turn up, and I literally just went up and I said, ‘Does anybody speak this language?’ Somebody was like, ‘Yes’. There are quite a few [people in the organisation who speak languages other than English], and perhaps we should be making use of that a bit more.”

Probation

“In my office I’m probably one of the only people who just speaks English, but no one ever thinks, ‘Your mum’s from Bangladesh, you speak this at home, why don’t you manage this person?’ That would really help.”

Probation

“We’ve got a broad range of IDVAs [Independent Domestic Violence Advisor] from different walks of life. Maybe there can be a more conscious effort to allocate a client who has X as a language to an IDVA or a complex needs worker with the same language, because then that rapport can be built better, you know? At the same time, again, most clients like to practice their English with somebody... So, you need to give them that opportunity as well.”

Voluntary sector

2.3.2 Volunteers

Volunteers attached to services have a key role in bolstering the work of the voluntary sector (see discussion of the value of peer support in Chapter 3). Practitioners gave numerous examples of how volunteers were deployed to provide language support for those who spoke ESL and they are an especially important source of interpretation for voluntary services working with refugees and asylum-seekers. Enhancing language capacity amongst volunteers was not always a deliberate strategy and sometimes more of a lucky bonus for services:

“We try and get a diverse range of volunteers, but I am not trying to recruit somebody that speaks Polish just to support Polish people. That is just an added bonus. But I do generally find that a Polish victim is going to engage better with a Polish-speaking volunteer, for example, because it is just more person-centred, that you haven’t got a third person in the room.”

Voluntary sector

“We have a small team of volunteer interpreters. We would rather use our own volunteers that we have trained. Among our volunteers currently, we have Arabic and French Speakers. We have an Eritrean volunteer, we have a Pashtu and Hindi speaker. The languages we are looking for, we have a need for Albanian speakers, Vietnamese, Chinese, Romanian and Kurdish Sorani.”

Voluntary sector

2.3.3. Friends and family

It is recognised that friends and family will always be an important source of language support for those who speak ESL in contact with the CJS. This may replicate the ways in which family members, including children, routinely help navigate language difficulties arising in contacts with other agencies and services. For practitioners, there are concerns about maintaining confidentiality of information and the appropriateness of using family or friends (and particularly children) when discussing sensitive or distressing events. This is particularly relevant when supporting victims of domestic abuse, where

a perpetrator could be controlling communication. This is perhaps about recognising that a 'very fine line' exists between appropriate and inappropriate (or potentially dangerous) engagement with family and friends for language support:

"So probably before I had domestic abuse training, if somebody wanted to use friends or family, I would have probably happily used friends or family. Then from my domestic abuse training, it highlighted that obviously the person with the family that was interpreting could be an abuser."

Police

"Quite often if there are children at the address, and the family have lived there for a couple of years, or for however long, then quite often the children will speak very good English. Quite often they are attending English schools. It is a very fine line. You can use family members up to a certain point. You can never use a family member to take a statement. It is policy and it should never be done of using somebody who isn't an approved interpreter to obtain a statement from somebody."

Police

"Often people will bring maybe a friend or family member who does have better English with them for their first session if they know they don't speak English. They'll say, 'Can my friend come and translate for me?' I'll often say, 'No don't worry, we've got a translator.' Just because obviously it's quite personal stuff and I don't want their information being shared... I normally just give them an extra appointment and make sure the friend understands when they need to come in."

Probation

'Getting by' was not always a matter of accessing informal help with interpreting. Some practitioners reported adapting their own use of the English language in communicating with those who spoke ESL. This has relevance beyond the ESL context, since the terminology and complex technical vocabulary used in criminal justice settings is widely recognised as a barrier to effective participation, even for those who are native speakers:

"I think acronyms, I think that really is an issue. I think we get so used to, like using the technical terms but then shortening it for convenience, whether we put it in a report or whether we are talking to the service user. Sometimes acronyms can be a real barrier, and not all service users are confident to say, 'Well, what do you mean?', or if they have asked for a copy of their OASys [Offender Assessment System], saying, 'Well, what does PSR [pre-sentence report] mean?' So, I have always tried to use plain English because that is what you are taught to do anyway, but it is so easy to just forget."

Probation

2.4 Monolingualism of services

Despite increasing language diversity in the UK over the past decades, criminal justice services are largely monolingual – aside from provision in the Welsh language, which is protected in law. We discuss in Chapter 3 how language barriers affect access to rehabilitative interventions and other support.

Resource constraints limit the availability of written material in different languages, whether in paper or web-based formats. This includes information about services, and advice and guidance about the CJS more generally. A lack of understanding of our laws and legal systems and the detail of what support can be expected from different criminal justice agencies was identified as an issue for those who speak ESL.

There is more funding for translation in statutory criminal justice services than in the voluntary sector.³³ Decisions by statutory agencies about how such funding is targeted should be based on routine monitoring of the languages spoken by service users; however, as noted in the Introduction to this report, data on language needs across the CJS are generally lacking.

The extract below, from an interview with a prison officer, gives a sense of some of the practical challenges – and costs – of providing information about prison rules and policies in the 35 languages that are spoken in that prison:

“The general information that we are putting out is changeable. So, every time that a policy changes, we have to go and change these documents again... This is eight pages and it has got to be correct. So, we have to get it done via the translation service: Big Word do it. But the last, I think, I heard of it, [it was] about £10 a page... If you are thinking 35 languages, eight pages and that is just one document. Maybe 10, 15 documents to translate: you are into thousands.”

Prison

While some practitioners spoke of being able to get ‘important’ letters translated concerning appointments or information about legal matters (such as attendance at court), this was by no means always the case. For example, an interviewee explained that letters are less frequently translated now than previously – likely linked to wider funding cuts in the CJS:

“We’re sending out letters in English. We don’t have the facility to send it out in their particular language, so we’ve got letters going out in English. They’re looking at it. If they don’t have anyone to help them, they’re looking at it, thinking, ‘What the hell does this mean?’”

Witness Service

33. E.g., Figures published in July 2019, in response to a written question to Parliament, reported that just over £11 million was spent in the financial year 2018–19 by Her Majesty’s Courts and Tribunals Service (HMCTS) on interpretation and translation services for court users (including printed materials available in HMCTS buildings).

“Feel like [agency] has gone backwards in resources. So, do you know how we have got all the different leaflets of different crimes? We had the leaflets in different languages that we can download off [website]. Then we got the new leaflets, and then the only thing that we could get in different languages was the general [agency] posters of, ‘If you need support, contact’ or blah, blah, blah... Literally, that was it. It wasn’t going into as much depth as what the old leaflets used to... It just seemed a bit like stepping backwards in time.”

Voluntary sector

There are ‘easy read’ versions of some key documents, including the Victims Code of Practice. These aim to address a wide range of language and communication needs by using straight-forward vocabulary and stripping away jargon to increase the clarity of information.

HMCTS has an initiative called *The Human Voice of Justice*.³⁴ This is seeking to improve how its staff communicate verbally and in writing with those who are going through the courts system, stressing the need to use clear language and reduce technical vocabulary.

2.5 Guidance and training on supporting service users who speak ESL

Many of the practitioners we interviewed – from statutory and voluntary sectors alike – had never received focused training about supporting those who speak ESL. They were also unaware of any specific professional guidance on language support, beyond being alerted to procedures for booking an interpreter or for ‘dealing with foreign national offenders’:

“The only bit I can remember is they mentioned what the procedure is, if you come across someone who doesn’t speak English as their first language. But that only involved obviously you call Language Line and then sort it out that way, basically. That is the only bit we got from training.”

Police

“We get training on how to deal with foreign national offenders, but it is more about procedures and policies. Like what kinds of things we can look out for in terms of safeguarding. Because when you get foreign national offenders, you get a higher likelihood of finding people who have been either trafficked or are victims of certain types of crime like FGM [female genital mutilation] or forced marriage.”

Probation

Our findings suggest that there is general awareness, on the part of practitioners, of the potential impact of language barriers on the nature and quality of contact with the CJS, and of the ways in which cultural and language barriers can intersect to undermine communication. There is also expertise within the voluntary sector in relation to support for those who speak ESL, which could be shared more widely across the CJS.

34. hmcts-design-system.herokuapp.com/content/human-voice-of-justice [accessed Dec 2021]

While practitioners were open to opportunities for training and guidance, some added caveats; noting, for example, that information should be succinct and 'straightforward' and 'not a long document or a long video to watch because we've got enough thrown at us'. It was suggested that training on language needs could be incorporated into diversity training – 'it's one of those things, [similar] to race and equality, where you just need to top up every year' and should become a standard part of induction for practitioners working in the CJS.

3. Language barriers and access to justice and rehabilitation

“It is hard to put yourself in their position, but the best way to look at it is: What would it be like if you were in a foreign country, and you can’t speak the language? You can’t understand the officers. It becomes a barrier because there is massive risk of falling into an abyss, where they go into the background and they kind of disappear and you don’t see them, and they might get forgotten about.”

Prison Officer

In the previous chapters we discussed how language diversity is accommodated in the CJS, the nature and limits of that language support and the various factors that can influence who gets access to assistance.

Here we draw on 26 interviews³⁵ with those who have had recent contact with the CJS to illustrate how language barriers are experienced during interactions with criminal justice agencies. With reference to these accounts of lived experience, practitioner interviews and the wider research literature, we also consider different ways in which language barriers can impede access to justice and rehabilitation for those who speak ESL.

3.1 Vulnerability amongst those who speak ESL

The intersection of language needs and other vulnerabilities, discussed in Chapter 1, was underlined in our interviews. For example, probation practitioners and those working in services supporting asylum seekers, including victims of trafficking, often discussed individuals’ legally insecure and ‘unsettled’ status. This was described by one interviewee as ‘a state of limbo that can last for years’. It is indicative of having few resources – immigration status also limits what intervention and support can be offered by probation and in prison – and little knowledge or understanding of how to navigate the dual systems of criminal justice and immigration:

“The delays it creates. The Home Office often won’t make an [immigration] decision until the criminal stuff has been dealt with and like they [the service user] just don’t know, they don’t understand it. So yeah, that’s definitely an issue... Not really knowing their rights.”

Voluntary sector

“When I’m working with my clients, I can notice that their anxiety regarding the immigration issues is very, very high because they don’t understand very well the letters they get, for example, or they don’t understand very well the procedures. They need someone to translate and to explain to them. I think this causes an increase in anxiety.”

Voluntary sector

35. 19 of those interviews were conducted with victims and witnesses. Research access permission to interview those who spoke ESL in prison or under probation supervision was cancelled due to Covid-19. We interviewed people on release from prison and had some on-going written correspondence with several serving prisoners.

3.2 Lived experience of language barriers in the CJS

We illustrate below how some of the limitations in identifying and addressing requirements for language support – discussed in Chapter 2 – are **experienced by those in contact with the CJS**. These issues are also covered in *Language barriers in the criminal justice system: The experience of victims and witnesses with English as a second and additional language*, a briefing in this series focused on the specific experiences of victims and witnesses.

3.2.1 Experience of criminal justice processes

The first two **case studies**³⁶ illustrate several key points: the need for formal language support (both interpretation and translation of written information) in order to fully articulate the experiences of crime in reports to police, and the need to be supported to understand CJS processes and how a case is progressing. Zane and Helena's accounts feature poor practice, including the police failing to uphold their rights to language support as victims of crime and, in the case of Zane, making assumptions about his proficiency in English and refusing to accept Zane's own assessment that he would require an interpreter.

Case Study 1: Assessing language proficiency

Zane describes his proficiency in reading and writing English as *'very bad'*. Under 'normal circumstances, he can speak and understand English well but when he is stressed or overwhelmed, he feels he has *'no words'*.

Zane was violently assaulted at work. He reported this incident to police and requested an interpreter to support him with making his statement by phone. **Despite this request, an interpreter was not provided** because the police officer believed that Zane could communicate adequately without one.

Zane was not informed about his right to access an interpreter under the Victim's Code and gave his statement in stressful circumstances, in acute pain as a result of the attack, and in a conversation with the police officer that lasted for one hour. He told us that he *'100% needed an interpreter to explain properly what happened'*. Thereafter, his contact with the police was by email and **he had to enlist the help of a friend to translate the correspondence for him**.

Reflecting on his experience, Zane felt he was unable to accurately articulate what had happened to him and he wishes he had been informed about his rights to language support and the complex workings of the CJS – *'I never know what I have to do, who I have to call, where I have to go but why do I have to ask?'*

Helena was offered language support, which she initially refused, but she was not cautioned about the level of proficiency that might be required later. She lacked confidence to admit that she was struggling with language and the offer of language support was never repeated.

36. The case studies have been anonymised and some demographic and other detail changed to prevent jigsaw identification.

Case Study 2: Evolving language support needs

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.

This underscores the need for practice guidance, as we have developed as part of this work.³⁷ The guidance aims to build awareness among practitioners about how language needs are dynamic and can evolve over the course of contact with the CJS, depending on context and circumstances; and that it is important for the practitioner to make this point clearly to the person who speaks ESL when offering language support – and check throughout whether requirements have changed. The guidance also emphasises the need to be alert to potential differences between proficiency in spoken English and literacy skills.

The importance of good quality witness evidence for legal proceedings, including criminal trials, is an impetus to offer professional language support. The extract below, from an interview with a victim of human trafficking, provides a cogent example of the shortcomings of ‘get-by’ tools, such as Google Translate, in situations where detail and accuracy are paramount. This and the following extract from a lawyer working in a voluntary organisation, make clear the close relationship between good quality language support and access to justice:

“In the first police interview I did not have an interpreter or translator with me; it was the computer programme, Google translation. But as of the next interview, so second interview, after that I always had an interpreter with me... I was very nervous, and I was very stressed... But the second time when I was interviewed, in the presence of an interpreter, all my statements, my previous statements, were corrected... The atmosphere was a lot better [on the second time] as the interpreter was Polish as well, and so I felt a little bit more relaxed.”

Victim, Human Trafficking

37. See also *Guidelines for practitioners working with victims and witnesses of crime who speak English as a second or additional language*.

“If you don’t have access to interpreters. You know, it can depend. If your English isn’t great, to some extent you can get by, for some things you can use Google Translate and you can manage. But you can’t use Google Translate if somebody is trying to defend themselves against allegations or where the situation is nuanced and complicated and you need a high degree of linguistic development to explain your case to somebody.”

Voluntary sector

Angela’s account of her contact with the CJS is distressing and gives a good indication of the ways in which language barriers make people feel afraid and powerless to defend themselves. We can see the difference it made to Angela when she received language support, compared to when access to support was ignored or denied.

Case Study 3: Contrasting good and bad practice

Angela is a survivor of domestic abuse. When she arrived in the UK, she did not speak any English but for the past three years has been attending English language classes. Although she understands some English, she struggles with certain topics and where more complex, colloquial or specialised language is used. She often does not understand what is said to her in English when she is under stress.

Angela was in an abusive and controlling relationship. She contacted the police but her then partner – who was fluent in English – convinced them that he was the victim. *‘They peeled me away from the stairs. They cuffed me, put me in the police car, so I said why? What? How? I was being treated like a criminal, so I was in great shock.’* **The police did not ask Angela if she understood what was happening. They did not ask if she needed an interpreter. Even when she started speaking in Romanian.**

‘They were just saying ‘speak English! Speak English!’ They didn’t understand me in English so I switched to Romanian, and I said, ‘feel how I feel when I can’t understand what you’re saying to me’. I was devastated, they [police] were speaking English to me, ‘stand up’, they lifted me forcefully, bent my arms, searched me. And what am I supposed to do? How am I supposed to tell what I’m telling?’

Angela was arrested and held in police custody – *‘There were questions about my medications, medical history, a nurse came. But all of it was in English. I only got the translator after eight in the evening, even though I asked for them around two or three in the afternoon.’* **After explaining through an interpreter what had happened to her, Angela was released and allowed to go home.** Her partner was later charged, and the case proceeded to court.

At court Angela was offered an interpreter when giving evidence. She could read the court paperwork as this had been translated for her. *‘I had gotten a translator because the prosecutor was there, my previous interrogations were [translated for court] in Romanian and English. I was able to read everything. That lady [interpreter] was describing what I had lived through. [interpreters] were certified, really qualified. They were there to translate my feelings’*

A copy of the court ruling was sent to her in English, and she paid for this to be translated. *‘Court informed me that he’s guilty and has a restraining order and that he’ll be arrested. I wanted a confirmation of the ruling, that he’s been sentenced or something, I had problems with where I can obtain it. The social worker from [place] helped me to get it because I didn’t know where. First, because of the language barrier and second, I was clueless as to where to look for it. They sent me to the court, the court said no. Later someone called and they’ve sent me the ruling in English’*

3.2.2 Denial of language needs

A theme addressed in the wider research literature is how a need for language support can signify outsider status and be perceived as a drain on public resources. This also suggests that such attitudes might negatively impact treatment in the CJS. The interview extracts below relate to the criminal courts – the first interviewee is a lawyer who worked for a charity, and the second is an interpreter. These extracts demonstrate both subtle and much more explicit ways in which such attitudes can play out:

“There is a kind of disdain for people who haven’t learnt English... You’ve got a client who is in front of a judge and that client has been here 15 years, and their English is very poor. I think that there’s a disdain. I don’t know if I want to say it’s about racism... I think that plays into what happens in courts for people with language issues. I think that disadvantage is there. In the last ten years, if not longer in British society, there has been a very strong anti-migrant sort of sentiment emerged. It feeds into that.”

Voluntary sector

“I cannot express how humiliating it is to be in the Crown Court in front of senior judges where instead of dealing with the case, they take 15 minutes to say what a waste of public money it is for the interpreter to be there, and I need to stand there and interpret to someone. [Interviewer: is this unusual?] It is happening constantly. They will say that someone has been living in this country long enough, so they should know the language.”

Interpreter

3.2.3 Language as a barrier to accessing support

We discussed the monolingualism of criminal justice services in Chapter 2. This can limit the range and type of support or intervention that is available to a speaker of ESL. Based on our interviews, the kinds of provision that might be affected in this way include: general assistance and information to guide one through criminal justice processes (as described in Chapter 2 and the case studies above); access to legal advice, especially in relation to immigration issues; rehabilitative interventions as part of community supervision under the probation service; and various services, interventions, and activities provided in prison.

A specific issue that was identified was that the probation service has limited programmes suited to speakers of ESL and is not able to offer English language education (ESOL) that could facilitate access to a wider range of interventions. This is significant because such programmes are linked to community sentencing and are intended to play an important role in reducing reoffending and supporting rehabilitation:

“I think there are a lot of challenges. I also think what’s a real shame is we don’t have any programmes we can offer to help someone improve their English in the community. A lot of people say, ‘I’d really like to get my English better.’ Obviously for me to offer them any other intervention, if their English improves then I can say, ‘Let’s get you working with the employment person.’ We don’t have that first step so sometimes they get stuck, I’d say you don’t receive as good a service overall ...if you really don’t have a lot of English at all, I think the service you receive is poorer.”

Probation

“When it actually comes to interventions with those with limited English, I think there is still a deficit, I think we would accept that and accredited programmes, domestic abuse programmes, skills programmes aren’t available for foreign national offenders.”

Probation

“It has been talked about, if we could do programmes in another language, but then it is just making sure you have got the full amount to go on it, which never really happens. So, yes, you wouldn’t be able to do group work, but you could do the programme on a one-to-one basis with an interpreter.”

Probation

Even where services are accessible, the interview extract below suggests that there might be less persistence or a reticence to check in or follow up on offers of support where there is a language barrier. Potentially, some practitioners may feel they do not have the skills or lack confidence to support those who speak ESL:

“I can imagine [where] English isn’t the first language you have still got that same lack of understanding... Things are going to be lost in translation, lost in communication, and, because there is not that persistency to push things, if they see a victim has not responded, they are not engaging, they are not really bothered about the court outcome or pursuing this incident, they will just drop the case.”

Voluntary sector

On the other hand, there is expertise in the voluntary sector for supporting people in the CJS who speak ESL, for example, within specialist services that work with victims of human trafficking. Charities are also often a trusted source to help navigate contact with statutory criminal justice agencies:

“We create a channel of communication between us, the client and the institutions. Just ensure the client understands everything they’re doing. My experience has been, especially with solicitors sometimes – of course they’re always so busy – to ensure the client fully understands. But that is their duty, and they need to make sure clients fully understand.”

Voluntary sector

“What we find is that charities can often be the first port of call for people because they refer on word of mouth so if they have received a letter about going to court, a friend might say ‘oh I know this man that works in this place so go and see him’. So voluntary organisations because they are in their community and of their community, they are trusted at the grass roots and yet they don’t know necessarily what to do and where to refer people and I know they [voluntary organisations] wouldn’t be able to get interpreters and translation services.”

Voluntary sector

3.3 Prison and peer-based approaches to language support

Fellow prisoners appear to be a major source of language support in navigating life in prison – helping to plug the large gaps in formal language provision for speakers of ESL. Assistance from fellow prisoners is provided in some cases through organised programmes of peer support such as the Shannon Trust’s Prisoner Literacy Project. But this also takes the form of day-to-day informal help in all areas of prison life.

Both formal and informal channels of peer support were inevitably impacted by the measures introduced by prisons to prevent the spread of Covid-19, which restricted activities and mixing among prisoners. This compounded the isolation of those who speak ESL:

“It’s really difficult at the moment because of COVID. If you have got friends that do speak the same language as you but also can write and speak in English, how are you meant to even get together with them? Because you are segregated.”

Shelly

“[ESL speakers] find it very difficult to approach staff all the time, to verbalise their issues, let alone venting their frustrations – so they approach [other] foreigners like me. Now this has been very difficult during lockdown.”

Arun

The case studies below detail the different ways peers provide language support and make a significant contribution to the management of language barriers in prison. These also illustrate the extent to which staff (including senior management and wing officers) can affect how much and in what kinds of circumstances this important resource can be used, and the implications of security and confidentiality concerns.

Case Study 4: Peer support among women prisoners

Shelly (speaks ESL) contacted [research team] after her release from prison. She had served her sentence in different institutions and provided peer language support in each. She says language is a *'huge barrier'*. **She worked in the prison education department and asked the prison governor if she could interpret** *'for women of the same background or culture as me. That took four months just to get approved'*.

Gaining the trust of prison officers was a problem. *'Once I was allowed to be an interpreter for women from Pakistan, India, Bangladesh, then I had to try and work out the best way of communicating with the officer being there, me being the interpreter, then the fellow prisoner that needed the help. It was just a vicious circle because obviously the officers have to trust me enough to be able to give them the information that this prisoner is giving or wanting to know.'*

'I was helping a lady that was from Pakistan who could not speak one word of English at all. Like literally just 'yes' and 'no' and that is it. She had no idea what the officers are asking her; nothing'. (With regard to another woman she supports): 'They only link her up with an interpreter [for court video-link] but what about requesting for help in prison? There is no service available for her at all. Not just for her, for any nationality, so if you are not understanding English or you are not British, then your life in prison is going to be absolute mayhem.'

Shelly described the language barrier to requesting language support *'To have an interpreter, you have to write an application, which is basically an A4 piece of paper. You put your details in at the top and then there is a square, that you can put in whatever it is that you would like to ask for. So, you can imagine that these women firstly don't understand English and don't know what an application is, and being told repeatedly by officers and governors and whoever else [you need to fill out an application]. So the issue here is that obviously, if you can't speak English and you don't understand it, how on earth are you then meant to put an application in?'*

On availability of prison information in languages other than English, Shelly said: Some information about prison rules and complaints procedures is available in the library on request but *'before you can have that, you have to put an application in, so it goes back to the application process'*.

There were no services in key areas such as mental health, for those who speak ESL: *'A lot of [women] suffer severe depression. Yes, the prisons supply and serve prisoners with mental health groups and practitioners, but the practitioners all speak English. So, when you have got a foreign national woman that can't speak English and desperately needs help with their mental health, what are they meant to do?'*

Peer language support is sometimes provided by prisoners who are not themselves speakers of other languages but are motivated to help when they see people struggling with language barriers. Matt's account shows the myriad of ways in which speakers of ESL are excluded from participating in everyday prison activities and highlights the difficulties they can experience in understanding important information concerning personal health or legal matters.

Case Study 5: Peer support from a speaker of English only

Matt contacted us in response to an article about the research in the Prisoner Policy Network Newsletter.ⁱ He says he's motivated to give whatever help he can because: *[Speakers of ESL] will have additional problems when trying to negotiate and survive the prison system. It is hard enough for a native speaker with family in this country'*. He is currently helping a Polish and a Greek friend, and he sent us this list of challenges they have:

- Can't set up telephone contact with family;
- Requested place on English language course and is still waiting 17 months on;
- Turned down for work in prison gardens because of poor English;
- Unable to read the label on medication prescribed by doctor; and
- Does not understand his sentence plan or letters from his solicitor.

Matt noted that it is difficult for speakers of ESL *'To make sense of all the notices, how to get support and healthcare and offender management is almost impossible. A few things use pictographs but there is little help when a written application is needed'*. **He also highlighted a general lack of rehabilitative interventions, noting that the one behaviour programme he had completed was available only in English** *'Since one of the main purposes of prison is rehabilitation, I only have experience of one behaviour programme, a victim awareness pack – delivered on paper in English'*.

i. **The Prisoner Policy Network** was launched in July 2018 by charity the Prison Reform Trust, under their strategic objective to give prisoners a stronger influence in how policy on prisons is made.

Matt's and Arun's account (detailed below) evidence the lack of access to ESOL, including the long wait times to get onto an ESOL course, when this is requested. This is despite the fact that English language education should be available as standard to speakers of ESL in prison. Arun's account also shows how integral peer language assistance was during the period of lock-down to slow the spread of Covid-19.

Case Study 6: Peer support from an experienced mentor

Arun (speaks ESL) also contacted us in response to the newsletter piece. He says he regularly supports foreign national and British prisoners with reading and writing emails, letters and other documentation. He told us that he is trusted because he is a mentor and a classroom assistant. He says foreign national prisoners lack the confidence to approach staff and to *'verbalise their issues in English'* and that **prisoners complain to him about their difficulties in getting access to the ESOL course**. *'I know someone who has waited nearly three years'*.

He says that during lockdown the staff on his wing 'were good' at 'unlocking' him to help with language support needs. *'I have been called nearly 40 times so far during lockdown for help with paperwork, talking through the [cell] door window as they can't be unlocked'*.

Senior prison management support and engagement with peer-based activities can bolster and improve provision for those who speak ESL. This also offers a strengths-based approach to addressing language support in prison. Daniel's account – below – illustrates the 'fruits' of peer-based efforts.

Case Study 7: Prison management facilitation of peer support

Daniel is an English-speaking foreign national. We interviewed him after his release. He was held in a prison that largely comprised foreign national offenders: *'We had never less than 80 different nationalities, sometimes up to 100. There were thirty main language groups. It was a big part of our lives, trying to get things done and dealing with the language difficulties.'*

Daniel was on the Prison Council – *'A group of prisoners who met every other month with the Governor and the Senior Management Team. We would put forward things that we felt could be improved. We managed to do quite a number of things.'*

Examples of this included *ensuring the prison organised access to a 'whole section devoted to Eastern European products [available through the National Canteenⁱ] which for some reason we weren't given access to. Things like that we improved.'*

He also described how 'peer workers used our own skills to interpret things and to produce documentation. To be fair, we got a lot of support. There was a virtual campus, which had 20 or so computers, and we were allowed to use them to do this, with a degree of supervision but a reasonable degree of trust, but that was self-help.'

They also used this time to search out information and resources available in different languages – *'I did discover nobody even knew that there was a guide to prison life and so on, in a number of languages, which had been produced out of [name of prison], but it had been done in 2008... It was out of date.'*

i. The term used within prison for the weekly delivery of items you can buy for yourself.

4. Upholding rights and enhancing support – Our recommendations for change

Our research has identified five key areas in which policy and practice reforms are urgently needed if language barriers are to be addressed and support is to be enhanced for those in the CJS who speak ESL. We have shown in the previous chapters how speakers of ESL can be disadvantaged in the CJS, both in that they may be denied fair justice outcomes, and in terms of constraints on access to services and support, including rehabilitative initiatives. We have also highlighted the ways in which language needs intersect with other vulnerabilities and, that taken together, these can further reduce access to services and support in the CJS.

The resulting recommendations span contexts in which professional interpretation and translation are more readily available as well as those in which access to language services is more limited.

Recommendations are directed at all agencies operating in the CJS – HMCTS and CPS, HM Prison and Probation Service, police forces, and any other agency working with people in contact with the CJS. We also refer to ‘contracted delivery partners’, recommending that all agencies should ensure that when commissioning or procuring services, due consideration is given to ESL need and that delivery partners are properly funded to uphold service users’ rights and entitlements.

We recognise that much of the voluntary sector already faces enormous pressures and that implementing all recommendations may be unfeasible. However, we encourage voluntary sector organisations to review service offers in light of recommendations, and ask what the service can do to become more accessible to speakers of ESL.

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

1. Gathering information to understand the scale and range of languages spoken by those in contact with the CJS and, in turn, examining the effects of language barriers on treatment and outcomes, by collecting data on language needs

One of the key challenges in working to improve language services and support is the lack of robust data on the scale of language needs within the CJS and the range of different languages spoken by those in the CJS. This study has had to rely on proxy measures (discussed in Chapter 1) in assessing the extent of language needs.

The lack of data currently limits our understanding of the impact of language barriers, and their implications for fairness and equality within the CJS. The research reported here makes it clear that language barriers impede access to justice in a range of significant ways. The intersection of language needs with other vulnerabilities, including social isolation and insecure immigration status, has the cumulative effect of reducing access to services and support not only within but also beyond the CJS. The recording of information about spoken language in a standardised data field, as part of routine demographic monitoring of those who are in contact with criminal justice agencies, is a crucial first step to better identifying and then addressing language support needs. This should ideally also record the individual’s proficiency in English as well as their first language. These data will help future assessment of outcomes for those in the CJS who speak ESL.

Recommendation 1a: All statutory agencies and contracted delivery partners should record first and other languages of individuals at every point of contact with criminal justice agencies. This could be done when protected characteristics are recorded, to comply with the Equality Act (2010).

Recommendation 1b: All statutory agencies and contracted delivery partners should ensure these data are easily retrievable to routinely review outcomes for those speak ESL.

Rights and entitlements

2. Upholding legal and procedural rights and entitlements

There are various legal rights and entitlements to interpretation and translation in the CJS which, if consistently upheld, would help ensure that speakers of ESL (whether victims, defendants or individuals in prison or under probation supervision) are able to understand and participate in judicial and other processes in the CJS and, ultimately, have access to justice. As we have shown, however, these rights are not consistently upheld; moreover, it is unclear to what extent senior managers and central services are held accountable for this through the criminal justice inspectorates.

Recommendation 2a: Right to understand and be understood must be enshrined in the upcoming Victims' Law, actively promoted and its implementation monitored by agencies working with victims, whether statutory or voluntary.

Recommendation 2b: Accountability for upholding legal and procedural rights and entitlements to language support must sit with a senior body in each area – policing, courts, prisons, probation, and victim support services – as is the case for upholding rights related to protected characteristics.

Recommendation 2c: Inspectorates must be strict in their evaluation of whether expectations are being met, ensuring language support is not a 'nice to have'.

3. Empowering practitioners to better serve speakers of ESL by ensuring that all criminal justice practitioners are fully aware of rights and entitlements to language support and when they should be applied

Most fundamentally, practitioners – all frontline police, prison and probation officers and voluntary organisations supporting people through the CJS – need to have thorough knowledge of the legal and procedural rights and entitlements to language support that currently exist. These rights and entitlements must then be upheld through the timely provision of professional interpretation and translation services. Throughout this report, we have found that language support is essential for access to justice; and we know from our interviews with people who have lived experience, and with practitioners, that the current systems can fall short.

Recommendation 3: All statutory criminal justice agencies and contracted delivery partners should provide practitioners with training and guidance on procedural rights and entitlements to language support and where they must be applied.

4. Expanding rights for speakers of ESL in need of rehabilitative services

One of the areas of the CJS where there appear to be particular gaps in provision of language support is the probation service, reflecting an absence of clear statements of language rights and entitlements within probation policy.

For prisoners, there are minimum standards, for example, that they should be informed about the prison regime in a language that they can understand, but there is not a broader right of participation. The consequence is that access to rehabilitation services is not ensured for speakers of ESL who are under probation supervision or in prison. Improving access to rehabilitation support for speakers of ESL fits with inclusion goals outlined in HMPPS Race Action Plan.³⁸

Recommendation 4: A right to equitable access to rehabilitation services should be introduced for speakers of ESL in prison and under probation supervision.

Improving services and widening access

5. Addressing the monolingualism of service provision through regular reviews of service users' and potential users' language requirements, to ensure that written materials are translated and appropriately targeted, and that specific services in languages other than English are provided where adaptations are not possible or appropriate

The lack of written materials and web-based content providing service information and advice in languages other than English was mentioned by interview respondents as a challenge and a barrier to engagement with the CJS. (An exception is provision in the Welsh Language, which is protected in law.) The monolingualism of standard provision can also limit access to interventions that address offending behaviours and support rehabilitation.

This underscores the importance of the data collection noted above, and routine monitoring to better understand the language requirements of those who are in contact with a service, to ensure that written materials are translated and appropriately targeted. This should also include reviewing and using existing web-based functionalities to translate service information in different languages. Contracts for services should include sufficient resource to meet language requirements.

Recommendation 5a: All statutory criminal justice agencies and contracted delivery partners should be aware of and remove barriers to access for speakers of ESL. This should include regularly reviewing service users' language requirements to ensure service information is translated and appropriately targeted.

Recommendation 5b: All statutory criminal justice agencies and contracted delivery partners should offer tailored services for speakers of ESL where adaptations are not possible or appropriate.

38. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/RAP-Report-Online.pdf>

6. Widening access to English for Speakers of Other Languages (ESOL) education by offering ESOL learning in criminal justice services across the statutory and voluntary sectors

Improving access to English language education in the CJS plays an important part in supporting those who speak ESL over the longer-term. This should include making language education a standard element of rehabilitative and resettlement activity in the community and offering it through services supporting asylum seekers and victims of human trafficking.

Provision of ESOL courses should be standard in prisons, although previous research conducted by The Bell Foundation³⁹ and our interviews, highlight the limits to this. As far as we are aware, English language education is not part of current probation-supervised activities.

Recommendation 6a: HM Prison and Probation Service should ensure that service users who speak ESL have access to the appropriate level of ESOL classes as part of their rehabilitation.

Recommendation 6b: Voluntary sector organisations supporting asylum seekers and victims of human trafficking should explore opportunities to provide ESOL with people in contact with the CJS as part of service provision in the community.

7. Ensuring that all written and web-based materials offering information and guidance about the CJS are available in easy read formats, using ‘plain English’

There is increasing awareness, and available practitioner training and guidance – including, for example, toolkits for legal practitioners via [The Advocate’s Gateway](#) – in relation to the diverse speech, language and communication needs that are prevalent among people in the CJS. Speech, language and communication needs include those related to ESL status, but also many others which are independent of ESL status, such as those associated with learning disabilities and developmental disorders. Existing good practice guidance in this area highlights the importance of using plain English in criminal justice settings (for example, when questioning witnesses at a court hearing). This demands avoidance of jargon, legal terminology and overly complex sentence structures. Some ‘easy read’ resources already exist, for example outlining the Victim’s Code. Such approaches and learning may be useful to communicating with those who speak ESL, as to others. In addition, there is scope within many criminal justice services to expand non-verbal and visual methods of communication, including through use of pictures and illustrations to convey information.

Recommendation 7: All statutory criminal justice agencies and contracted delivery partners should provide all written communications in easy read or pictorial formats.

39. Hales, L. (2015) *The Language Barrier to Rehabilitation*, The Bell Foundation, Hibiscus Initiatives.

Empowering practitioners to support service users

8. Training criminal justice staff and offering guidance that draws together current expertise, learning and other resources to raise awareness of the nature and impacts of language barriers, and to promote good practice in overcoming them

Professional interpretation and translation are limited resources, and there is more availability in the statutory than in the voluntary sector. In our interviews we explored the scope for adaptations and enhancements to current provision, taking into account the current challenges associated with providing full access to professional language services across the CJS.

One finding was that practitioners lack guidance and training on available provision for those who speak ESL – beyond instructions on ‘how to book an interpreter’. Guidance is needed that draws together current expertise, learning and other resources to raise awareness of the nature and impacts of language barriers, and to promote good practice in overcoming them. The guidance that we have developed through this research, for those working in the voluntary sector with victims, survivors and witnesses who speak ESL, is designed to help fill this gap.

Recommendation 8a: The Ministry of Justice and Home Office should hold an information and awareness campaign aimed at practitioners on language needs provision and gaps in provision.

Recommendation 8b: All statutory criminal justice agencies and contracted delivery partners should introduce training and guidance for frontline staff on the nature and impacts of language barriers, and best practice in overcoming them.

9. Introducing training and guidance for practitioners on screening for English language needs, and on how to communicate with service users both with and without language support

Screening for proficiency in English is the first stage in deciding whether an interpreter is necessary or would be beneficial. In the research interviews, this was often described as a ‘judgement call’ for a practitioner, based on limited contact and general conversation, sometimes in less than ideal or fast-moving circumstances. There are also practitioner worries about causing offence.

Interviews with service users suggest that there is sometimes, on their part, a reticence or lack of confidence to request language support, or a lack of awareness of the level of proficiency that might be required further down the line. We have described experiences of requests for language support being ignored or denied, and the impact of this on trust in authorities and access to justice.

Screening should be implemented wherever possible across the CJS. Further, practitioners should underline the complexity of language in criminal justice processes and the impact of stress and anxiety on comprehension and English language proficiency when discussing language support with speakers of ESL. Ultimately, if someone has a right to an interpreter and requests one, then access should be given irrespective of the practitioner’s views on whether the interpreter is needed.

In tandem with ensuring access to interpretation, the quality and professionalism of interpretation and translation services available to those who speak ESL must be of a high standard. There is some discord within the interpreter profession about how language services for statutory criminal justice agencies are being managed and quality assured. While this issue is largely outside the scope of this project, it should be noted that some criminal justice practitioners perceive deficiencies in the available language services, and interpreters themselves have mixed experiences of how their role and practices are understood and accommodated within the CJS.

All criminal justice practitioners should be trained in how to work with interpreters. As part of this project, we brought probation staff and interpreters together to reflect upon their experiences and discuss the expectations each profession has of the other in relation to language support. The discussions have been used to define good working practices. This will contribute to wider work in the area⁴⁰ to raise awareness among criminal justice practitioners of what ‘good interpretation’ looks like and to increase understanding of the conditions necessary for interpreters to work effectively in support of those who speak ESL.

Recommendation 9a: all statutory criminal justice agencies and contracted delivery partners should introduce guidance and tools for screening for ESL and training as to how to use these tools. Once a language support need is identified, this support should be provided in a timely manner in line with existing entitlements.

Recommendation 9b: All statutory criminal justice agencies and contracted delivery partners should have access to a high-quality interpretation service, where interpreters are familiar with the workings and vocabulary of the CJS.

Recommendation 9c: All statutory criminal justice agencies and contracted delivery partners should introduce training for frontline staff in how to work with interpreters.

Recommendation 9d: All statutory criminal justice agencies and contracted delivery partners should introduce training and guidance on communicating when there is no immediate access to a professional interpreter, as outlined in recommendations 5 through 8 and recommendation 11.

10. Supporting practitioners to provide culturally sensitive and appropriate information about the CJS to speakers of ESL

Cultural barriers which can operate alongside language barriers were highlighted as posing another challenge for access to justice. These may be manifest in fear or mistrust of criminal justice agencies, or a lack of understanding about rights and protections. Raising awareness more widely among practitioners of these various cultural barriers and their impact on engagement is key.

This also emphasises the need to design and target education and information about the CJS, and rights and entitlements, including to language support, for those who speak ESL. The Bell Foundation is funding work by the charity Hibiscus Initiatives to support women at the intersection of the immigration and criminal justice systems through development of a model of cultural mediation. This draws upon and develops an intervention that is used elsewhere in Europe, (for example in Italy), including in the healthcare and education sectors, to facilitate better understanding between refugees and migrants and institutions, which could be applied here to support engagement with criminal justice agencies.

Recommendation 10: All statutory criminal justice agencies and contracted delivery partners should introduce guidance for frontline staff on potential cultural barriers, how these might impact understanding and communication and good practice in overcoming them.

40. E.g. Training resources through the Inns of Court College of Advocacy – Interpreters – ICCA and work in this area being undertaken by the College of Policing.

Deploying innovative solutions

11. Reviewing and utilising staff and volunteers' language skills to better address the language requirements of those in contact with the service

Asking for help from colleagues who can speak languages other than English with some level of proficiency was mentioned in research interviews as an 'informal strategy' for supporting those who speak ESL, when there is no access to professional interpretation. Reviewing language diversity within an organisation, and exploring how such skills could be engaged more formally, will help to ensure that full use is made of existing resources. Some voluntary sector organisations reported recruiting volunteers who speak the languages most commonly used amongst their client group. This should be seen as part of a wider strategy of enhancing diversity in staffing or in a volunteer workforce so as to ensure that services better reflect the populations they serve.

A frequently used communication strategy involves using family or friends who speak ESL to provide interpretation or translation. However, this practice raises some concerns amongst those with lived experience and with practitioners, in relation to potential breaches of confidentiality and the inappropriateness of relaying personal details via an unknown – at least to the practitioner – third party. For practical reasons, family and friends will doubtless continue to provide informal language support, and therefore it is important to offer acknowledgement and guidance for services about associated limits and safeguards that should be applied.

Recommendation 11a: All statutory criminal justice agencies and contracted delivery partners should review existing staff and volunteer language skills and aim to have a workforce that reflects the linguistic diversity of service users.

Recommendation 11b: All statutory criminal justice agencies and contracted delivery partners should explore how staff and volunteers might enhance language support wherever possible.

12. Recognising the importance of peer support in prisons and optimising peer-based activities as a means of reducing language barriers in day-to-day prison life

The 'lifeline' offered by peer language support in prison for people who speak ESL was described in some detail in our interviews and through the correspondence we received. Peer support is an established method of improving literacy among prisoners – led by organisations such as the [Shannon Trust](#). There is clearly traction in exploring how to further develop peer-led support for interpretation and translation. Any such initiatives would need to clarify the circumstances in which peer language support could be used and take account of practitioners' concerns about confidentiality and security. This should never replace access to professional interpretation for dealing with legal or confidential health matters but should take into account the fact that informal dependence on fellow prisoners for day-to-day language support is already a fact of prison life.

Recommendation 12: HM Prison and Probation Service should explore opportunities to formalise peer language support and offer educational opportunities for those who wish to undertake such peer work.

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

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

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