



Ministry
of Justice

Government Response to the Justice Committee's Sixth Report of Session 2012-13:

Interpreting and translation services and the Applied Language Solutions contract

April 2013



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the Applied Language Solutions contract

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

April 2013

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**Government Response to the Justice Committee's Sixth Report of Session 2012-13:
Interpreting and translation services and the Applied Language Solutions contract**

Foreword

The Justice Committee's report of 6 February 2013 into the Ministry of Justice (MoJ) contract for interpreting and translation services, signed with Capita (formerly Applied Language Solutions) in 2011, had a broad remit. It looked at specific issues surrounding contract performance, quality and the data available to support these areas. It also considers the contract in the wider context of the language services Framework Agreement which covers the whole justice sector.

The MoJ developed the Framework Agreement and contract specifically to address the inadequacies of the previous system, as evidenced in an internal audit report and the information received from justice sector partners and users across the service. It also formed part of a wider objective to ensure that the MoJ delivered services that were providing better value for money for taxpayers.

We know that performance in the MoJ under the contract has not been of a satisfactory level. Many of the points raised in the Justice Committee's report have already been acknowledged and acted on, and others are being actively taken forward. We have gone back to the Framework Agreement itself to see whether changes can be made which will impact beneficially on performance, alongside ongoing work in the Department to improve our own processes. We are not complacent and are continuing to challenge and resolve issues which affect performance.

Response to the Justice Committee's Recommendations

In this response, the Ministry of Justice replies to the recommendations made by the Justice Committee. Where recommendations have a common theme, the Department has collected and responded to these together.

Proving the capability of the Framework Agreement

We recommend that the MoJ audit the true amounts that are being expended on interpreter pay and travel by Capita TI to establish whether the contractor is providing a level of remuneration that is unsustainable and may already be having a deleterious effect on the quality of interpreters that will be available to the justice sector in future. In order to ensure that the best qualified interpreters are available to courts and tribunals it may be necessary for Capita to further increase the rate of pay for the highest qualified at tier 1. (Paragraph 124)

The Ministry and Capita TI must prove that the Framework Agreement is capable of attracting, retaining and deploying an adequate number of qualified and competent interpreters to meet the requirements of the courts and other agencies. This will also require the professional interpreter community to work flexibly with the Department in seeking to find an acceptable way to restore their services to the justice sector. It is essential that this is achieved before fully extending the reach of the contract to other justice agencies. (Paragraph 192)

The Framework Agreement has made significant savings in the first year of operation and we are actively working to improve the performance of Capita TI (hereafter referred to as Capita). Based on the experience of the contract over the last year and feedback from Parliamentary Committees, Capita and interpreters we are introducing changes to the terms and conditions to underpin the Framework Agreement.

The changes to the terms, as a package, are aimed to better reflect the expenses that interpreters might incur through their work and provide an overall remuneration package that will attract and retain interpreters. The analysis carried out indicates that the package equates to an average 22% increase in remuneration for interpreters compared to the current Framework Agreement rates.

The changes address a number of different issues and include:

- mileage payments extended to cover the first 10 miles of travel so that interpreters will be paid for travel from door-to-door for each of their journeys to booking locations;
- the introduction of cancellation fees where the court or tribunal cancels the interpreter at short notice, to reflect the fact that interpreters may have turned down other work to take a job at a point where the interpreter is unlikely to be able to take other work;
- paying interpreting time in 15 minute blocks rather than by the minute to bring interpreters in line with many other professional service providers;
- payment according to qualified tier, so that a Tier 1 interpreter agreeing to fulfil a Tier 2 booking will be paid at Tier 1. This is aimed at ensuring that the interpreter is rewarded for being more qualified, both to encourage more highly qualified interpreters to take more jobs and for lower tier interpreters to aspire to gain more qualifications; and
- introduction of a daily fee to help cover the incidental costs that an interpreter may incur.

This package of proposals is due to be implemented in May 2013 and we will monitor the changes following implementation to ensure that they are bringing about the required improvements in the service.

The Department has held meetings with a selection of interpreters who are on the panel administered by the HM Courts and Tribunals Service team in Loughborough and with interpreters working under the Capita contract to discuss proposed changes to the Framework. The Department will continue to discuss developments with interpreters and Capita as necessary.

Since late 2012, the Department has met with the Professional Interpreters for Justice Group. The Department accepts that it will not always be possible to agree with the Professional Interpreters for Justice Group but seeks to maintain ongoing dialogue.

Quality of interpreters

We support the National Audit Office's proposal that the tiered system should be independently evaluated. (Paragraph 104)

We support the National Audit Office's recommendation that these standards should be independently reviewed and look forward to seeing the results of that assessment. (Paragraph 191)

The MoJ has begun work on identifying a suitable independent person to undertake an assessment of quality arrangements under the Framework Agreement. An internal scoping exercise is underway and we should be in a position to report to the Committee on our plans to take this assessment forward shortly.

The independent assessment will be asked to consider, *inter alia*, the current system of tiering interpreters depending on their qualifications and experience.

The use of tier 3 interpreters in courts and tribunals should be reserved for those cases in which it is absolutely unavoidable, such as in rare languages for which there is no relevant professional qualification, or to meet the specific needs of a deafblind person who requires a particular mix of skills in an interpreter. Alongside fulfilment rates, the MoJ should monitor the level of use of particular tiers of interpreters by HMCTS and ensure that any instances of inappropriate use of tier 3 interpreters can be properly investigated and managed. (Paragraph 105)

Currently courts and tribunals expect a minimum of Tier 2 interpreters for hearings. The court or tribunal, with the judge dealing with the case, will consider whether they will accept a Tier 3 interpreter in the event that Capita are unable to provide a Tier 1 or 2 interpreter. In coming to a decision the court or tribunal will consider the nature of the case and the capability of the individual interpreter being offered.

We expect that the changes to interpreters' terms will increase the number and availability of Tier 1 and 2 interpreters and therefore reduce the need to use Tier 3 interpreters. In conjunction with the contractual changes we will also make some sensible exceptions to the qualification standards to ensure that the skilled and experienced interpreters who have been successfully working for the courts and (particularly) tribunals are classified as Tier 2 interpreters.

We believe that ultimately there should be a regulation system that is independently organised to select and classify interpreters for the appropriate level of court and tribunal work, assuming that some form of tiering remains in place following the review, and ensure that they are held accountable for delivering to the standard required. In the meantime it is important that the functions of Capita TI in delivering quality assurance are clarified, and if necessary, further strengthened. In addition we consider that there is a strong case for a further review of rates of remuneration and modelling of the potential impact of increasing these rates, particularly for highly qualified interpreters, on registration rates. (Paragraph 193)

The Department considers that the findings of the assessment of quality standards will be relevant to any consideration of a regulatory system and therefore we will consider any changes to regulation in light of that review. The Department and Capita are clear that Capita's role is to ensure that interpreters working on the Framework comply with the required standards both in terms of their qualifications and their conduct.

Performance data

Performance figures clearly do not reflect the company's fulfilment against 100% of the requirements of HMCTS and they should be altered, retrospectively and in the future, to indicate this. (Paragraph 141)

Statistics were published on 28 March and were collated according to the existing model of fulfilled and unfulfilled bookings with the associated measure of performance. We are satisfied that these statistics were produced in accordance with the guidance issued by the UK Statistics Authority, particularly the *Code of Practice for Official Statistics*.

Different jurisdictions record the need for and pay for interpreters booked off contract differently; an estimate on these bookings was made in order to calculate costs. A method has now been developed to collect off contract booking information, and a way of incorporating this information and the previous estimates in future statistical publications is currently being explored. It is not cost effective to obtain retrospective and robust statistics on off contract bookings, but collecting this data from now will reinforce the quality of statistics and ensure that there is transparency about the relative levels of usage.

We recommend that Capita TI reissues guidance to staff regarding the logging of customer cancellations. We also recommend that the MoJ undertakes an audit of fulfilment data with a focus on the reasons for customer cancellations, and uses their findings to seek to reduce the level of these by its agencies' stakeholders. (Paragraph 142)

We are working with Capita to ensure all staff are aware of the right procedures. We have established a programme of auditing Capita's data to ensure that it is recording information correctly, including categorising customer cancellations.

We want to ensure that late notice customer cancellations are minimised (those bookings cancelled by the Department for a variety of reasons) as, often through their nature of being related to an aborted hearing, they impact on the overall efficiency of the justice system and on court and tribunal service users. Other initiatives across the criminal, family, civil and administrative justice systems are focussing on driving up the proportion of hearings that go ahead as planned.

We accept that it will not be possible to completely remove all customer cancellations and that is why, as part of the changes to the terms, we have introduced a late cancellation fee so that interpreters are compensated for the inconvenience of late notice cancellations.

We call on the Ministry of Justice to keep us apprised of fulfilment rates, and their estimation of the volume of work demanded by HMCTS that Capita TI are being asked to fulfil, on a monthly basis until we can be satisfied with the extent of improvement. (Paragraph 152)

We are committed to publishing data regularly as an official statistic. This ensures that data has been checked according to the relevant codes of practice. Monthly data on fulfilment rates and volumes of work are not checked to the same level as the official statistics and therefore the Department proposes that it continues to provide the Committee with the less frequent but more robust official statistics.

Cost savings

The MoJ must get a better grasp of the costs of underperformance. It is unacceptable that existing cost figures do not account for cases that have been (repeatedly) adjourned because of interpreting problems and those in which a defendant has been unable to apply for bail and has consequently been remanded in custody. In its response to this report and at regular intervals thereafter we call on the Ministry to inform us of its updated assessment of its cost savings. (Paragraph 161)

Reasons for a hearing adjournment are not routinely recorded, so it is difficult to identify adjournments for interpreting problems. However, we would expect any difficulties with interpreting to be raised through the complaints system by staff.

We believe the changes to terms and conditions agreed by Ministers should have a positive effect on performance under the contract, encouraging interpreters to register with Capita and to undertake more work once registered.

In order to inform the assessment of potential changes to terms and conditions, the MoJ has reviewed the amount of savings made under the contract. This information will be provided separately to the Committee.

The Ministry of Justice has shown ALS, and subsequently Capita TI, considerable leeway in not rescinding the contract despite ongoing breaches of their obligations under the Framework Agreement, and has presumably had to devote more resources than expected to close monitoring of the contract. We ask the Ministry of Justice in its response to this report to provide us with an estimate of the administrative costs of providing such a considerable level of oversight of the contract. (Paragraph 172)

The Department has contract management in place to liaise with Capita on management information and overseeing performance. A project was set up and led by HM Courts and Tribunals Service in early 2012. Whilst it held its own budget for dedicated project staff, it was also supported by staffing resource provided from different business groups within the Department. Ad hoc resource from specialists in other teams (such as finance experts or analysts) and project board participation is difficult to quantify. However, the staffing cost of the core project is estimated at £315,000 for the period between January 2012 and March 2013.

Priorities for the future

We hope that lessons have been learned from this experience, and, given the amount of outsourcing the Department is to be engaged in, we seek further assurances of the Department's capacity in this area and repeat our call for an independent review before any further major projects commence. (Paragraph 46)

The Public Accounts Committee also made recommendations in a number of areas relating to procurement and project management. The Department has agreed a number of these in its response to the Committee, published on 25 February. This included instigating an internal lessons learned process to review the activities of the original project which was responsible for informing the procurement process. This found that some processes have been improved since this contract was procured which add to the safeguards available and address some of the weaknesses which were identified.

For example, we know that we will now have access to better management information when the current Framework Agreement and contract expire (in 2015 and 2016, respectively). This will be a significant improvement on the level of information available when procuring the original Framework Agreement, advancing our understanding of our own requirements. This may also reduce the future contract cost by reducing the risk premium elements of pricing by bidders.

We have reviewed our procurement procedures in a number of areas, specifically strengthening working links between central procurement and corporate finance to better ensure that potential financial risks are identified and mitigation taken prior to the award of any large contract. We have also reviewed contractual delegations to ensure that more senior and experienced staff are required to authorise the award of contracts of this nature. MoJ Procurement policies and procedures are currently accredited by the Chartered Institute of Purchasing and Supply (CIPS). They are due to be reaccredited by the Institute in June 2013, which should provide further assurance that our procurement policies and procedures are fit for purpose.

Before the MoJ seeks to rollout the operation of the agreement fully to the Crown Prosecution Service it must ensure that Capita TI has determined a defined minimum necessary to deliver that work. We also consider it necessary for the MoJ to undertake or commission some work to establish more clearly the requirements of the CPS than was done in respect of HMCTS. (Paragraph 164)

While the MoJ is responsible for the overall operation of the Framework Agreement, it is for the individual justice sector partners to clarify their own requirements in signing contracts with Capita under the Agreement, including those Police Forces and Crown Prosecution Service (CPS) areas which have signed contracts to date.

Although we have led on the negotiation of changes to terms and conditions under the contract, it is likely that these will be substantially reflected across other justice sector partners' contracts to provide a level playing field for interpreters working for Capita with different justice sector partners.

The CPS attends a justice sector forum convened by the MoJ in relation to the Framework Agreement where issues and experiences are shared. The Department stands ready to assist where possible, should the CPS wish to test their assumptions and requirements with us.

We recommend that the MoJ considers negotiating with Capita TI to replace the distance indicator with an indicator of quality, for example, a user satisfaction measure. (Paragraph 177)

At present we do not propose changing the key performance indicators under the contract and Framework Agreement, the current suite of information allows the Department to manage the performance of the contract. Capita provides information of the number of complaints, which the Department monitors and publishes as part of the regular official statistics.

We will discuss with Capita and other justice sector partners whether a user satisfaction measure in addition to the rate of complaints can be added to other management information that is collected. A key performance indicator on quality will also be a consideration of the independent assessment due to take place.

We recommend that the MoJ establish a dedicated phone number for registering complaints about interpreter services for those stakeholders who do not have access to the portal, and publicise the existence of this complaint route. Data on the number of complaints received by this route, and the proportion of such complaints that are fed through to the portal, should be published alongside statistics on complaints made directly through the portal itself. (Paragraph 181)

As part of contract management the Department takes responsibility for monitoring the service. Complaints about the service received by MoJ customers should be taken up directly with front line staff. If the complaint relates to any outsourced provider, it remains the Department's responsibility to handle the complaint. It would not be efficient or effective to have separate complaint approaches for individual service contracts. However, anyone may make a complaint about an interpreter through the administrative staff. Capita is then able to provide a tailored response to the issues raised.

We do not think that a telephone complaint line will provide the best way for people to make complaints as it loses this connection with the specific booking and would require significant administrative input to reconnect it appropriately. However, we are currently in the process of updating internal guidance to staff which also reiterates that they can and should include all feedback from parties other than themselves and the judge when making a complaint to the service provider.

Online forums

We expect the Ministry of Justice and its agencies to have proper regard to the rights of Parliament and those who give evidence to Committees of the House, and, as our predecessor Committee demonstrated in 2004, we will not hesitate to refer alleged infringements to the House when necessary. (Paragraph 12)

The Department believes it co-operated fully with the Justice Committee in its inquiry into language services. We provided written evidence in the form of a memorandum and supplementary written evidence when requested, which provided the collective view of the operational impact of performance issues. In addition, we provided statistical data as evidence which had been verified.

We took the view that it would not be appropriate to invite court staff to submit further evidence to the online forum set up by the Committee. The Civil Service Management Code and the Osmotherly Rules say that officials 'should not take part in research projects or surveys designed to establish their personal views on Government policies'.



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