

# Translations and Interpreters Guidance for Members

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## Document History

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## **Introduction**

- 1.1 This guidance sets out information and advice relating to parole cases where the prisoner's first language is not English, and translation of documents, or an interpreter, may be needed.
- 1.2 Prisoners who have little or no command of the English language can often experience isolation in prison due to language and cultural difficulties, and often a lack of family visits and support. Providing important documents and information relating to their detention in an accessible format can go some way to supporting these prisoners and helping to reduce the anxiety and distress they may be experiencing.
- 1.3 The guidance is for Parole Board members at the stages of Member Case Assessment, Panel Chair Directions (PCDs) for oral hearings, and when cases are dealt with by the duty member. It sets out:
  - that there is no automatic right for documents to be translated into another language (unless that language is Welsh) or for an interpreter to be directed, but that fairness will be the guiding principle on when it may be appropriate;
  - the approach to take when considering if documents need to be translated or an interpreter is required;
  - that the Board is responsible for arranging and funding translation of documents it produces and any document it directs following the disclosure of the dossier (unless otherwise agreed);
  - that HMPPS is responsible for funding and translating all documents contained within the initial referral dossier;
  - that it is the responsibility of the prison to source and fund an interpreter.

## **Legislation**

- 2.1 The Welsh Language Act 1993 contains the legal requirement that English and Welsh be treated on an equal basis when conducting public business, and in the administration of justice, in Wales.
- 2.2 For all other languages, the relevant legislation is within the Equalities Act 2010. The Act prohibits direct (section 13) and indirect (section 19) discrimination on the basis of a protected characteristic, such as race or religion. The public sector equality duty (section 129) requires the Board to eliminate discrimination, advance equality of opportunity, and foster good relations between those persons with a protected characteristic and those without.
- 2.3 As such, provision of translated documents or an interpreter eliminates direct or indirect discrimination (on the basis of a protected characteristic that is in play, such as a person from a particular racial background having limited or no command of English), advances equality of opportunity, and fosters good relations. However, it should not be read as a legal requirement to arrange translations of documents or provide an interpreter for other languages, except where that language is Welsh.

- 2.4 The most relevant public statement on how government approaches translation into other languages appears to have been given by Eric Pickles, then Secretary of State for the Department for Communities and Local Government, in 2013:

*"Of course, local authorities must comply with the duties set out in the Equalities Act 2010, including the duty not to discriminate and the public sector equality duty. But this is not a legal duty to translate documents into foreign languages. Even if publishing only in English could put some people at a particular disadvantage, such a policy may be justified if local authorities can demonstrate that the integration and cost concerns pursue a legitimate aim and outweigh any disadvantage. The equality duty does not require a particular outcome, merely that public authorities consider all the relevant factors. Obviously, there are broader challenges with communication with groups who may have poor levels of literacy or learning difficulties. But this can be addressed by use of plain English, easy read versions of documents and using pictures instead of translation."*

### **Interpretation and Policy Position**

- 3.1 Welsh is the only language enshrined in law and so the Board only has a legal duty to provide services in Welsh, where requested and appropriate, but not other languages. More information about this can be found in the Member Guidance on *Welsh Speaking Prisoners and Duties regarding the Welsh Language*.
- 3.2 For all other languages, an assessment will need to be made on:
- whether the prisoner will be unduly disadvantaged by not having communications in a language/format that is accessible to them;
  - whether the cost to benefit ratio of the provision of translation or interpreter services is proportionate.
- 3.3 If the cost is disproportionate to the benefit, then the Board can defensibly decline to provide such services. However, if the costs are minimal compared to the benefit, then the Public Sector Equality Duty would indicate that the Board should provide such services. This will need to be assessed on a case by case basis.
- 3.4 It should be noted that this is not the sole responsibility of the Parole Board. **Language needs should have already been identified and assessed by HMPPS ahead of any case being referred to the Board.** However, members will want to satisfy themselves that such needs have been appropriately assessed: the Board should make its own determination of the circumstances to ensure a fair parole hearing can take place.

## **Practical Application**

- 4.1 Prisoners will generally express their views and needs better in their first language. Where a prisoner's first language is not English, and they express a need or preference to have documents or conduct the hearing in a different language, the Board must enable them to use their preferred language, where reasonably practicable.
- 4.2 HMPPS does provide written translations and interpreters in a variety of languages or formats. It is important that prisoners are provided with their dossier as soon as it is disclosed so that any necessary arrangements or actions can be put in place as early as possible to avoid delays later in the process.
- 4.3 However, it is not often that such a need has been identified ahead of the commencement of a parole review. This can have implications regarding the viability for an effective and fair review.
- 4.4 Currently, there is no over-arching HMPPS policy or guidance on this. However, responsibilities regarding parole reviews are set out in HMPPS parole guidance, as noted in section 6 of this guidance.
- 4.5 In most cases, the provision of translated documents or an interpreter should be considered as part of appropriate arrangements to support the prisoner.
- 4.6 Members should check the dossier to see if the prisoner's preferred language has been indicated as follows:
- For GPP cases:
- It can be found in the OASys report under the "preferred language" field in the "Case ID – Offender Information" Section;
  - It can be found in the PAROM report in the box entitled "oral hearing considerations".
- For recall cases:
- It can be found in the "preferred language" field in the Part A form.
- 4.7 Whilst the references in the dossier may be helpful, there will be some prisoners who, for whatever reason, may not have given their preference, or their preference has not been recorded. As such, the need may come to light much later in the process than expected, and only after seeking clarification.
- 4.8 If it is clear from the dossier that an interpreter will be needed, one should be supplied by the prison. This is set out as a requirement in the *HMPPS Parole Board Oral Hearing Administration & Attendance Policy Framework* (Section 3.4.2) issued 4 November 2019.

## Parole Board documents

- 4.9 In most cases, it is likely that providing a parole decision (MCA or oral hearing) in an alternative language will be considered as a sufficient appropriate arrangement.

**An alternative option may be to include a plain English summary at the beginning of a decision letter as this may suffice and avoid delay and expense.**

- 4.10 Other documents, such as directions, adjournment or deferral letters, are less likely to require translation, but consideration can be given to these, depending on the circumstances of the case.
- 4.11 The Parole Board is only responsible for translating its own documents and Parole Board directed documents from third-party agencies (where they were not part of the initial referral dossier), where considered necessary and appropriate. It will be for HMPPS to consider any requests for a translated version of the initial referral dossier, or any subsequent documents they produce, and so the Board needs to be careful not to promise that this can be done.
- 4.12 Prisoners may write representations in their first language, particularly if they are unrepresented and these should be accepted by the Board. These are likely to be forwarded to the Board in their original form and so the Board will need to arrange for them to be translated.

## Oral Hearings

- 4.13 For prisoners whose first language is not English, and where they notify of a need or preference to conduct the hearing in a different language, the Board must enable them to use their preferred language, where reasonably practicable.
- 4.14 Where an interpreter is required for an oral hearing, a direction should be issued instructing HMPPS to ensure one is commissioned. It is the prison, on behalf of the Secretary of State, that is responsible for appointing appropriate interpreters. The prison is also responsible for covering the costs of an interpreter.
- 4.15 There have, however, been instances where the prison has not secured an interpreter and it may be necessary to adjourn if a fair hearing cannot take place without an interpreter present.
- 4.16 There may be some cases where there are additional hidden speech, language and communication needs, for example, intellectual disabilities, that are masked when English is not the first language. This could involve other language-based communication styles including British Sign Language (BSL), which may include visual frame signing, hands-on signing, Sign Supported English (SSE); Makaton; Braille; Deafblind Manual Alphabet etc.

- 4.17 There are a range of communication specialists, including Speech and Language Therapists, Intermediaries, Specialist Deaf Intermediaries etc, that may be helpful to overcome other communication barriers. Finding and using the right combination of communication methods, for example non-verbal, or symbol systems, can offer improved engagement in the parole process.
- 4.18 Securing a communication specialist with the appropriate skills should be approached in the same way as for a spoken language interpreter and is the responsibility of the prison.
- However, you may wish to seek advice from the Practice Adviser if you believe such support is needed.
- 4.19 Any difficulty with securing an interpreter or other communication specialist should be escalated to the Secretariat Team Manager, who will contact the prison, and, where necessary escalate the issue via PPCS.
- 4.20 Helpful information can be found in the Advocates Gateway Toolkits, which provide good practice guidance when preparing for cases involving someone with communication needs:

<https://www.theadvocatesgateway.org/toolkits>

#### Extension requests

- 4.21 Consideration should be given to requests for more time or to extend deadlines (as provided for in the 2019 Parole Board Rules, rule 9 on Time Limits) where a prisoner has language barriers that may impact on their understanding of parole documents.

Such requests should be considered sympathetically and include:

- submitting representations within 28 days of dossier disclosure (GPP cases);
  - requesting an oral hearing within 28 days following a provisional negative paper decision;
  - submitting requests for witnesses or observers within 12 weeks of an oral hearing;
  - appealing a non-disclosure application within seven days
  - applying for a parole decision to be reconsidered within 21 days (where eligible).
- 4.22 Awaiting a translation or for someone to explain a document can lead to delays in all of the above.
- 4.23 However, a request for an extension MUST be received within the original timeframe in order for it to be properly considered. Requests outside of these timeframes will be refused.

## Telephone calls

- 4.24 Whilst not directly relevant for parole hearings, it is useful to know that the approach to conducting telephone conversations in languages other than English is addressed in HMPPS framework documents, and may vary depending on the categorisation of the prisoner.
- 4.25 It may be helpful to ascertain that the prisoner has been able to appropriately converse with those providing support or representation with their parole review to ensure they have not been disadvantaged in preparing for their hearing.

## **Commissioning Translations of Parole Board documents**

- 5.1 The Board has access to the Ministry of Justice commissioned translation service The Big Word, a third-party organisation. All requests must go through this account.
- 5.2 Requests for translations can be turned around within 48 hours, but more usually in three to four days, depending on the required language and length/content of the document. Charges are made per page and so the longer the document the costlier the translation will be. If there are concerns about cost, a quote can be requested before confirming a translation.
- 5.3 Linguists are cleared to baseline Personnel Security Standard (BPSS) and this is sufficient for the work the Board requires.
- 5.4 The Big Word does have access to linguists cleared at higher levels (with additional costs) but the majority of cases will not require it. Examples of where a higher security clearance might be required could be terrorism cases, or cases with anonymity orders.
- 5.5 For confidential projects, the linguist does not have a copy of the document. The Big Word HSTE system (Highly Secure Translation Editor) does not allow the linguist to download or copy the text from the system.
- 5.6 The relevant case manager within the Secretariat should be contacted where a translation of a document is required.
- 5.7 **The Parole Board is responsible for arranging and funding the translation of documents produced directly by the Parole Board OR directed from a third-party (unless the originating third-party agrees to provide the translation).**
- 5.8 **However, if the document is one originating from HMPPS or a third-party and disclosed within the initial referral dossier, or subsequently produced by HMPPS, then it will be the responsibility of HMPPS to provide the translation and cover the cost.**

- 5.9 This arrangement is supported by the *Protocol on Third Party Directions* agreed between the Parole Board and PPCS.
- 5.10 Irrespective of who is responsible, the provision of an important document to a prisoner in a format they can understand is fundamental to fairness and equality.

### **HMPPS responsibility**

- 6.1 Where the prison identifies that a prisoner requires translation of parole documents due to a disability or language barrier, it is the responsibility of the prison to notify PPCS as soon as possible.
- 6.2 This requirement was introduced on 27 January 2020 by the *Generic Parole Process Policy Framework* at paragraph 3.6.7 and the *Recall Review and Re-Release of Recalled Prisoners Framework* at paragraph 4.9.6:

*"Where the prison identifies that the prisoner will require documents to be translated for example due to a disability or language barrier, the prison must ensure that PPCS is notified as soon as possible. PPCS will notify the Parole Board at the point of referral so that where required the necessary arrangements, where possible, can be made. It is the responsibility of the prison to arrange for the translation for HMPPS documents."*

- 6.3 At the point of the formal referral, PPCS must notify the Board of this requirement so that, where possible, appropriate arrangements can be made. The PPCS Case Manager must submit an SHRF to the Board Case Manager (responsible for the case) informing them of the request from the prison for translation of documents, along with reasons.
- 6.4 Within the published HMPPS "*Parole Board oral hearing administration and attendance policy framework*" the following is set out in Section 3.4.2:

*Where Parole Board directions confirm an interpreter is needed for a particular case, prison staff must ensure a qualified interpreter is provided on a face to face basis for the duration of the hearing, and that the arrangements comply with regulations and/or best practice. An interpreter will also be required for any interviews as part of preparing reports.*

*Prisons are required to comply with the HMPPS Welsh Language scheme ensuring native Welsh language speakers have access to Welsh translations where required.*

- 6.5 The Framework additionally sets out:

Section 4.2 - It is not acceptable to rely on a telephone-based interpreter service for an oral hearing.

Section 4.3 - If prison staff are unable to engage the services of an interpreter on the hearing date this should be raised with the PPCS case manager.

- 6.6 Whilst there is a requirement for a face to face interpreter within the Framework, there may be occasions where, with the agreement of the parties, interpreter services could be delivered remotely over the telephone or video-link. The MCA member or Panel Chair may have to take a decision on this following full appraisal of the evidence and submissions.