

# Professional Interpreters for Justice



Six professional interpreters' organisations, representing 2,350 registered public service interpreters in 101 languages, and the profession's regulatory body NRPSI are united in the Professional Interpreters for Justice campaign.

The campaign's three aims are to:

- Reverse the outsourcing to commercial agencies, and the reintroduction of direct employment of freelance interpreters by the courts and police services
- Establish regular dialogue between interpreter organisations and government
- Persuade government to provide statutory regulation of the interpreting profession and protection of the title of Legal Interpreter.

The seven organisations which are partners in the campaign are:

- **APCI – Association of Police and Court Interpreters**
- **ITI – Institute of Translation and Interpreting**
- **NUPIT – National Union of Professional Interpreters and Translators, part of Unite the union**
- **PIA – Professional Interpreters' Alliance**
- **SOMI – Society of Official Metropolitan Interpreters UK**
- **SPSI – Society for Professional Public Service Interpreting**
- **NRPSI – National Register of Public Service Interpreters**

In addition, the Chartered Institute of Linguists, CIOL, is a participant in the steering committee with observer status only. The Scottish Interpreters and Translators Association, SITA, is another associated organisation.

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This document contains the initial submissions by the Professional Interpreters for Justice Steering Committee to the National Audit Office investigation into the Ministry of Justice Framework Agreement with Applied Language Solutions.

The information submitted (on 18 June 2012) consists of the following:

- 1) The submissions: the present document which makes points and raises queries, following the structure of the investigation's eight individual Terms of Reference;
- 2) The supporting documents: a memory stick containing supporting documents in electronic format, ordered to follow the structure of the investigation's eight individual Terms of Reference and intended to be considered in conjunction with the information in document 1. An Index of supporting documents is in appendix A.
- 3) The abstract: a summary list of unanswered questions and specific areas of inquiry. It can be found in appendix B.

1. The NAO has received correspondence from a number of MPs and members of the public relating to the Ministry of Justice's (MoJ) contract for language services with ALS. [...] In our roles as the MoJ's statutory auditor and as the parliamentary watchdog on effectiveness and efficiency in government spending, we have now decided to look into the issues raised with us. This note sets out our terms of reference.

## **1. General information**

We would like to make the following general observations:

- 1.1 The opposition of professional interpreters to outsourcing in general and ALS Ltd in particular has been emphatically and repeatedly communicated to the Ministry of Justice in an organised manner in various documents and petitions since January 2009.
- 1.2 Professional organisations have repeatedly requested to meet with the MoJ, to no avail.
- 1.3 Where interpreters have sought to obtain information by making Freedom of Information requests, the MoJ has adopted a policy of refusing such requests.
- 1.4 Where MPs have sought to obtain information through Parliamentary Questions, the MoJ has repeatedly stated it does not hold certain information. This in spite of the contractual obligation included on page 99 of the Framework Agreement:  
"The Administrator may request data and reports on an ad hoc basis to assist with Parliamentary Questions (PQs). The Contractor shall within one working day of request by the Authority provide the required data or information."
- 1.5 The performance data published by the MoJ on 24 May 2012 constitutes only one of ten areas of management data that ALS Ltd is contractually obliged to provide to the MoJ (FWA, p.98).
- 1.6 The data that is published by the MoJ provides no detail about the Tier, qualifications and Criminal Records Bureau check or police vetting status of the workers being assigned.
- 1.7 ALS Ltd was previously a corporate member of the Institute of Translation and Interpreting (ITI) but was expressly not invited to renew in 2012.
- 1.8 ALS Ltd is currently being investigated by the Information Commissioner's Office (ICO) following interpreters' allegations of systemic data theft and non-compliance with the Data Protection Act 2000.

## **2. We will investigate the procurement process that the MoJ followed.**

### **GENERAL**

- 2.1 The timeline of the MoJ's procurement process should be seen in the context of points 2.2, 2.3 and 2.4 below, in particular the belated decision to carry out consultation and an EIA.
- 2.2 Neither the EIA nor the consultation was included in the original tendering timetable, which envisaged the Framework Agreement being in place by April 2011.
- 2.3 In 2010-2011, the Professional Interpreters' Alliance (PIA) brought Judicial Review proceedings against the decision by six police forces to contract to ALS Ltd. The defendants admitted they had breached the Race Relations Act by not carrying out an Equality Impact Assessment (EIA) and the ALS Ltd contract was technically quashed.
- 2.4 In February 2011, PIA sent a pre-action letter to the Ministry of Justice, challenging the proposed Framework Agreement.
- 2.5 In August 2011, PIA sent a further pre-action letter to the MoJ, challenging the award of the Framework Agreement.
- 2.6 Between February and August 2011, the MoJ created two or more versions of the EIA (March and August) and invited comments from stakeholders in April 2011.

### **PROCEDURAL ISSUES**

#### **A) No prior study**

- 2.7 The delivery of the interpreting services to the CJS prior to the Framework Agreement was in theory carried out under the National Agreement.

*The National Agreement on Arrangements for the use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System*, was put in place a decade ago as a result of the recommendations of the comprehensive 2 year Review of the Criminal Courts by Lord Justice Auld in 2001.

The policy development resulted from a serious miscarriage of justice caused by the use of unqualified interpreters. The National Agreement addressed concerns raised by Lord Runciman in 1993 about the difficulty of obtaining good quality interpreters (Runciman Report of the Royal Commission on Criminal Justice, July 1993) and by Lord Justice Auld (Review of the Criminal Courts, September 2001).

In 2006 a Home Office Circular (17/2006) reinforced the importance of the *National Agreement* and the quality of interpreting services, and subsequent amendments were made in 2007 to strengthen the *National Agreement*, ensuring only registered and qualified interpreters could practise in the Criminal Justice System.

## 2. We will investigate the procurement process that the MoJ followed.

2.8 Standards and rates for interpreters used in the Criminal Justice System were previously set by the National Agreement (NA) in 1999. The NA required interpreters to have full qualifications and experience before they could be used in the criminal justice arena. It also required interpreters to be vetted by Police Forces to ACPO standards.

2.9 The MoJ intended to scrap the existing arrangements and replace them with the Framework Agreement model without any comprehensive study (stock taking) of the existing situation.

2.10 The MoJ refers to “failures of existing arrangements”, without specifying which specific arrangement they have in mind and what actually constitutes a failure.

Interpreting services were delivered to CJS bodies in one of 3 ways:

- a) CJS bodies adhering to the National Agreement engaging self employed interpreters directly.
- b) CJS bodies contracting with commercial suppliers to deliver interpreting services, ostensibly to the standards specified in the National Agreement but sometimes to different standards.
- c) CJS bodies that do not consider themselves to be bound by the National Agreement and have their own arrangements for engaging interpreters. (Their own quality and qualification standards, their own lists of interpreters and their own procedures).

There are also bodies that have a mixture of the above arrangements. Around 40 Police Forces, 20+ Regional HMCS areas and 40+ Probation trust areas have varying “existing arrangements” which continue to be used (alongside ALS Ltd).

2.11 The failures of some of the “existing arrangements” initially quoted by the MoJ (autumn 2010) are:

- a) *limitations of the current system to deliver the high quality, responsive and effective service they demand*

The MoJ has not specified what level of quality, responsiveness and effectiveness different CJS bodies demand and what is actually currently delivered through a number of different “existing arrangements” in 2.10 above. Also the MoJ is not able to substantiate whether such purported requirements / demands / expectations are actually realistic and achievable.

- b) *limited availability of registered interpreters in some languages in some parts of the country*

The MoJ envisages that any point in the United Kingdom should have interpreters in 95% of all the languages spoken under the sun available within a 25 mile radius.

## 2. We will investigate the procurement process that the MoJ followed.

Any experienced practising interpreter would say that such a requirement or expectation is simply unrealistic because the supply of interpreters is very heavily tied to demand and ethnic diversity across the UK is not homogenous.

The MoJ talks of short supply of interpreters in some languages in some parts of the country, but fails to specify in which languages there is a shortage of interpreters in which areas and what actually constitutes a shortage.

The MoJ is not able to specify how many interpreters they actually require.

The MoJ has not carried out any analysis of supply and demand.

- c) *that complaints made against interpreters are not being investigated as thoroughly as we would like and it is not always clear what, if any, action is taken when complaints are upheld.*

The MoJ has never specified how many complaints were actually made against interpreters, what actions were taken and what the outcome was. Also the MoJ never specified how the complaints and outcomes differed across 3 different “existing arrangements” (see 2.10 above)

The MoJ is not able to specify whether the above failures and shortcomings are prevalent among the CJS bodies that complied with the National Agreement or those who already outsource or those who have their own specific arrangements.

No study and comparison of results were ever undertaken to see if the above shortcomings actually do exist, and if they do, what is the actual extent and gravity of such shortcomings and the particular “existing arrangements” they are prevalent in.

- 2.12 How can a department anticipate savings and efficiencies if it doesn't even know how much is spent?

MoJ talks of the “pressure to reduce costs” and of its anticipated savings but has conducted no study of how much money was actually spent across the CJS; it only has rough estimates.

The estimated spending referred to in correspondence and ministerial statements is calculated by “sampling” a number of courts. There is no indication that it is the actual sum expenditure by all the bodies in the CJS. Also “spending” refers to the money actually paid out to interpreters and translators directly for performing their services.

The MoJ states that the “current arrangements” require interpreters to be booked and paid individually and that it is “a costly, laborious process”. However, they did not calculate how much it actually costs to engage and pay interpreters individually and directly.

On the basis of the public statements by the MoJ it is clear that they expect to achieve savings of either 10% or £18 million from the current estimated

## 2. **We will investigate the procurement process that the MoJ followed.**

annual spend of £60 million across the CJS. A statement published by ALS soon after the award of the contract predicted £60 million savings over 5 years (event though the FWA is for a duration of 4 years).

The MoJ states that the bulk of the savings will come from the streamlining of the administrative booking and payment process. This is a clear contradiction.

The MoJ states that it expects savings from the streamlining of the administrative process, but the MoJ does not know and never tried to find out how much administration actually costs. The MoJ does have some idea of the money spent on paying interpreters and it also knows that the contractor will cut interpreters' pay severely to achieve savings on "spend".

- 2.13 MoJ states that there is a "*key concern that a formal qualification is not necessarily a reliable indicator of proficiency*" as a reason for requiring an across the board reassessment of the skills and competence of existing foreign language interpreters. The MoJ stated that there is "anecdotal evidence for that".

This is a completely unsubstantiated aprioristic claim on which one of the main changes to the existing system, reassessment of interpreters, rests.

If the formal qualifications (Diploma in Public Service Interpreting, foreign language degrees and Masters degrees in interpreting etc.) are not necessarily indicators of proficiency and competence, why does the MoJ nonetheless include all those qualifications as relevant for the proposed allocation of interpreters to Tiers? If the formal qualifications are not suitable indicators of proficiency and competence, the MoJ should justify this assertion with an independent study of existing qualifications and whether they meet the competence and proficiency demands of the CJS (which should also be specified).

### **B) No engagement with interpreters during the procurement exercise**

- 2.14 The MoJ repeatedly talks of "engaging the market" as part of their procurement exercise. The MoJ appears to have carried out extensive discussions with commercial suppliers but excluded the interpreters from the process.

- 2.15 Meetings between the MoJ and representatives of each of the interpreters' organisations were very few. ITI had two meetings with the MoJ: in November 2010 and at the time of submitting its formal response, on 4 May 2011. CIOL met with the MoJ on 11 March 2010, 17 May 2010 and 26 August 2010. The NRPSI met with the MoJ on 29 November 2011. NUPIT met with the MoJ only once, on 13 September 2010. APCI, SOMI and PIA jointly met with the MoJ once, on 15 September 2010.

By contrast, the MoJ met with ALS Ltd on more than fifty occasions between November 2010 and March 2012 (FOI response).

## 2. We will investigate the procurement process that the MoJ followed.

- 2.16 The MoJ fails to appreciate (or omits to acknowledge) that professional interpreters are a fundamental part of the “market”. It is the interpreters who actually deliver the interpreting services to the end users and the commercial suppliers are essentially “middle men”.

Without the effective engagement of interpreters in the procurement process the MoJ could not form a balanced or rounded view of a number of relevant factors:

- practical realities of performing interpreting and translation services in the CJS environment. For example the types of assignments that the MoJ envisages for various proposed Tiers of interpreters either don't exist (e.g. PACE compliant interview where immediate translation of a written statement is required for Tier 1) or if they do exist (like attending community meetings with interpreters for Tier 3), they happen so rarely that it is difficult to see how creating a special Tier of low qualified interpreters for such occasional rare assignments is justified. This is indicative of the poor (if any) understanding of the work of interpreters in the CJS by the MoJ staff undertaking this procurement exercise.

Most recently, the Tiers were defined by Crispin Blunt MP as follows:

“Tier one: the interpreter is able to speak fluently in the language required and is also able to provide a written translation to a pre-determined standard; Tier two: the interpreter can provide fluent spoken services but will not be able to provide a written translation that would suffice for justice sector needs; and Tier three: the interpreter can provide an interpreting service but not to the standard that would be required for court, tribunal or other evidential requirements; this may be used, for example in community-based setting.”

- The dynamics and motivation of self employed interpreters in the sub sector. This is particularly relevant to discussing the issues of increasing the pool of interpreters and the issue of rates of pay for interpreters. The senior civil servants in secure employment in Central Government in London are far removed from the realities of making a living as a self employed professional in other parts of the country in a very specific and niche sub-sector.
- Fragmentation of the workload which would result from the introduction of different Tiers of interpreters based on qualifications. The MoJ proposes that lower qualified interpreters perform work which the MoJ believes does not require a high level of qualification. By contrast, the National Agreement system requires all of the work in CJS to be performed by highly qualified interpreters. The fragmentation of the workload would have an impact on the rate of utilization of interpreters (highly qualified interpreters will have less work, which will be taken by lower qualified interpreters, and lower qualified interpreters never having enough work) which will have a long term impact on retention in the profession and the size of the available pool of interpreters.

We believe that without engaging in effective dialogue with practising self-employed professionals, the MoJ is not able to grasp such an important issue, which is only apparent to insiders in the profession. Instead of appreciating

## **2. We will investigate the procurement process that the MoJ followed.**

that CJS interpreting is a very specialised, unique, niche occupation, which has developed over the last two decades, the MoJ has taken the view (no doubt influenced by the commercial suppliers with vested interests) that language services are a commodity that can be easily sourced on an open market.

2.17 The competitive dialogue adopted as procurement mechanism is, by the MoJ's own admission, a process where the MoJ does not tell the suppliers what the MoJ wants, but allows suppliers to offer what they can deliver (or state they can deliver) to the MoJ. In view of the lack of a prior study of the sector the MoJ is not able to formulate valid requirements and the procurement process becomes "supplier led".

### **C) Not engaging in meaningful and effective consultation**

2.18 English public law and case law (Capenhurst 2004) state that if the public body does decide to consult, the consultation has to be meaningful and effective.

2.19 The public procurement rules in force in the UK dictate that the consultation with stakeholders has to take place when proposals are at their initial formative stages.

2.20 The MoJ announced it was "seeking stakeholder views" in April 2011. By then the "competitive dialogue" process was in the final stages and the strategy and direction were already chosen.

2.21 Despite having a well established comprehensive consultation process, with various consultations published on the MoJ's website all the time, no such consultation was carried out in respect of the Interpretation project. In various pieces of correspondence MoJ officials referred to "seeking stakeholder views", "informal consultation" or simply "consultation". It is therefore confusing and unclear what exactly was the exercise carried out by the MoJ in April of 2011 when they contacted a limited number of stakeholders and asked them to submit their views.

2.22 The MoJ never studied or formulated exactly what are the failings and shortcomings of the "existing arrangements", what is the extent and intensity of such failings and shortcomings and which particular existing arrangements they apply to.

2.23 No such study or findings were ever conducted or published.

2.24 No such findings were ever discussed with the interpreting profession.

2.25 No alternative proposals to wholesale outsourcing under the proposed Framework model were ever sought.

2.26 No such alternative proposals were ever considered, evaluated and compared to each other.

**2. We will investigate the procurement process that the MoJ followed.**

**D) Not carrying out the Equality Impact Assessment in good time and then doing it retrospectively**

- 2.27 The original timetable of procurement exercise under the Interpretation project never envisaged carrying out an Equality Impact Assessment (EIA). In fact MoJ staff mentioned in correspondence to a PIA director that they considered an EIA unnecessary.
- 2.28 However, in March 2011 the MoJ changed their mind radically and decided to carry out an EIA of the proposed Framework model, when the procurement exercise was in its final stages.
- 2.29 In February – March 2011 the JR application brought by the PIA against GMP and other North West police forces resulted in the defendants conceding that they breached Equality legislation by not carrying out an EIA of their procurement decision to sign a contract with a commercial supplier of interpreting services. We strongly believe that the EIA carried out by the MoJ in March 2011 was done as a result of the successful outcome of the Judicial Review brought about by the PIA.
- 2.30 We strongly believe that the EIA carried out by the MoJ was done retrospectively in order to justify the decision it had already taken after many months of procurement dialogue. We strongly believe that the EIA carried out by the MoJ and published on the 30 March 2011, rather than being an objective study, merely sought evidence to substantiate the desired conclusions. It is a token step, not a genuine attempt to evaluate an impact of the proposed Framework model.

This is especially evident from Section 8 of the MoJs EIA which concludes that nearly half of the interpreting workforce are native English speakers and therefore interpreters as a distinct group would not suffer a specific adverse impact. This conclusion was based on the findings of a largely irrelevant CILT study with a very wide scope of study and very general findings based on very limited factual data.

The MoJ omitted to enquire with NRPSI on the ethnic composition of the existing interpreter pool. NRPSI does collect specific statistical data on the country of birth and native language of all the registered interpreters from which the ethnic make up of the specific current CJS interpreters pool (rather than the whole wide languages industry referred to in the CILT study) could easily be worked out. PIA estimates from the survey of its members that nearly 85% of all the interpreters who were working in the CJS come from ethnic minorities.

**E) MoJ staff is not familiar with the day to day realities of providing interpreting to CJS and have little if any understanding of the way the interpreting profession operates.**

- 2.31 From correspondence and various publications it is evident that the MoJ staff has very little understanding of the working of interpreting profession and

## **2. We will investigate the procurement process that the MoJ followed.**

specifically the CJS interpreting profession and is unfamiliar with how the interpreting services are actually delivered in the CJS on a day to day basis.

Consequently, because the MoJ did not effectively engage interpreter representatives in the procurement process, the MoJ cannot possibly make an effective, efficient and robust procurement decision.

### **F) Not taking into account information about the performance of ALS in the North West and about the interpreting profession's conflict with ALS.**

2.32 PIA repeatedly sent to the MoJ the information obtained from NRPSI interpreters in the North West and under the Freedom of Information requests to NW forces about the failures of ALS to deliver under the NW Framework contract.

2.33 It was brought to the MoJ's attention that hundreds of NRPSI registered interpreters signed an unprecedented petition to North West Police forces in 2009 and again in 2010, stating that they will boycott working for ALS.

This information demonstrates that there is a very strained relationship between ALS and the interpreting profession and as a result ALS was not able to deliver their NW contract even to the standard required in the North West Framework. There is no evidence that the MoJ took this information into account when making their decision.

## **SUBSTANTIVE ISSUES**

2.34 The MoJ repeatedly stated that the main goal of the Interpretation project was to maintain quality of interpreting provision across the Criminal Justice Sector. And yet one of the key proposals of the Framework Model is to introduce a number of Tiers of interpreter qualifications, which would bring in a lot of unqualified bilinguals to perform interpreting work in the CJS. This work was performed (or supposed to be performed) by fully qualified registered interpreters.

2.35 In the MoJ Framework model the Contractor (ALS) is to be the sole provider of language services to CJS bodies and will perform the functions of:

- work provider (to interpreters)
- supplier (to the CJS bodies)
- regulator (including disciplinary function)
- assessor of qualifications and competence
- registrar of suitably qualified and competent interpreters

Every one of the above functions is in direct conflict of interest with all the others. No reasonable public authority awarding such a substantial contract would have given all such functions to one Contractor. This is irrational.

## **EU DIRECTIVE ISSUES**

2.36 An EU directive is an instruction or directive to the Member State to implement the provisions of the directive into domestic legislation. Usually EU directives

## **2. We will investigate the procurement process that the MoJ followed.**

are implemented into UK domestic legislation by passing of Regulations (secondary legislation) by authorised state bodies.

- 2.37 The deadline for transposition of the EU directive on the rights to interpreting and translation during the criminal justice process is 27 October 2013.
- 2.38 The MoJ claims that the Framework model is a means of implementing in the UK the EU directive on the rights to interpreting and translation during the criminal justice process.
- 2.39 The provisions of EU directives are mandatory and have direct effect. Yet the MoJ is not proposing to pass any legislation (primary or secondary) and instead proposes to develop a commercial procurement framework model.
- 2.40 The CJS bodies under the MoJ can be made to sign up to the Framework Agreement, but for other CJS bodies (i.e. those under the Home Office) participation is optional.

It follows from this that the MoJ's procurement Framework which is supposed to implement the EU directive is in fact optional.

The MoJ envisages that there will be CJS bodies that will subscribe to this model, that there will be CJS bodies that will retain existing contracts with suppliers (which fall outside of the proposed Framework provisions) and that there will be CJS bodies that will have "their own arrangements".

How is this procurement Framework supposed to implement the EU Directive through the optional signing of supply contracts?

- 2.41 The "non-regression" principle of EU directives requires Member States not to do anything that would be a departure from Directive principles prior to the Directive's implementation. We hold that the MoJ Framework deteriorates and erodes the present position on the provision of qualified competent interpreters to the CJS.

### **PUBLIC PROCUREMENT ISSUES**

- 2.42 Awarding such a contract creates an effective monopoly for the provision of interpreting to the CJS. The MoJ envisages that all the interpreting services by CJS are to be procured from ALS.
- 2.43 There is no mention of the back up plan in case ALS fails but we have seen in practice that HMCTS is continuing to book interpreters directly and through other agencies in an unknown proportion of cases.
- 2.44 The MoJ talks of "introducing market forces" into CJS interpreting, however the market forces are restricted to "competitive sourcing of interpreting services" by the Contractor, without giving any opportunity to CJS bodies to source interpreting services "competitively" through the Framework. In other words, because the Contractor will have a monopoly, interpreters will be forced to compete (on their rates of pay) for work through the Contractor, as they will have no other alternative way of providing their services to the CJS

## **2. We will investigate the procurement process that the MoJ followed.**

bodies. But the CJS bodies will have no option to select alternative (more competitive) supplier other than ALS through the proposed Framework.

- 2.45 There is a principle in public procurement that the value of the contract awarded to the supplier must not exceed around 25-30% of the contractor's turnover. The turnover of ALS in 2011 was under £6.5 million pounds per annum (Their latest accounts are abbreviated indicating a turnover of below £6.5 million).
- 2.46 The MoJ has awarded ALS the contract valued at £300 million over four years or approximately £75 million per annum. (Yet, the MoJ estimated that its existing spend on interpreting was £60 million per annum and they expect the Contractor to provide savings of 10%).
- 2.47 To our knowledge there is no language service provider in the UK, whose turnover exceeds £10 million per annum, so there is no possible contractor with the turnover of £150-200 million, which could safely take on a £60 million Framework contract. This makes the whole decision to select just one provider for the whole country highly irrational.
- 2.48 The study of published accounts by ALS show that the company had substantial debts (c. £1.3 million in 2010) and by self admission in their 2010 accounts "meets its day to day working capital requirements through a mezzanine funding arrangements".
- 2.49 The published company accounts of ALS Ltd dated 31 May 2011 state with absolute confidence that ALS would win the MoJ Framework Agreement:  
"The company's projections, taking into account reasonably possible changes in trading performance, show that the company should be able to operate within the level of its current facilities and there has been further interest expressed in providing for further funding to meet the company's growth aspirations, which will be significant following the award of the Ministry of Justice agreement."
- 2.50 In December 2011, within months of the award of the Framework Agreement worth £300 million, ALS Ltd was bought by Capita Plc for £7.5 million.
- 2.51 The Service Level Agreement contracted between HMCTS and ALS Ltd states that the term of the contract is 5 years. However, the Framework Agreement that underpins the Service Level Agreement has a term of only four years. This seems irrational.

## **EQUALITY ISSUES**

- 2.52 The proposed re-assessment of foreign language interpreters under the Framework places them in a disadvantaged position compared to the BSL interpreters. The formal qualifications of foreign language interpreters are doubted by the MoJ, but those of the BSL interpreters are not.

## **2. We will investigate the procurement process that the MoJ followed.**

2.53 We hold that overwhelming majority of foreign language interpreters (c. 80-90%) who currently provide services to CJS are ethnic minorities, compared to BSL interpreters who are nearly all native British.

2.54 In the Equality Impact assessment the MoJ relied on the CILT study of the whole language services sector, which suggested that half of the language professionals in the language services trade are native English speakers. The MoJ did not deny that there might be a negative impact on current interpreters (see page 13 of the Draft Equality Impact Assessment, March 2011), however the MoJ suggested that it will impact native and foreign born interpreters equally, as according to the MoJ about half of foreign language interpreters are native English speakers anyway. The MoJ admitted in the same paragraph that they have not attempted to study the ethnic composition of the body of BSL interpreters.

2.55 In our view:

- The MoJ Did not take into account the relevant factor, namely detailed statistics on the ethnic composition of the body of NRPSI interpreters. The NRPSI records the native tongue and the county of birth of all the interpreters listed on the NRPSI. We are confident that an analysis of this data would show that 80 to 90% of the interpreters registered on NRPSI (who currently provide services to CJS under “existing arrangements”) are born overseas and do not have English as their mother tongue.

- Instead, the MoJ decided to take into account a very wide and nebulous study of the entire language services industry including large companies, public bodies and local authorities, charities and voluntary sector etc. where the results were based on a very limited set of responses to questionnaires (rather than the specific sub sector of self employed interpreters currently working in the CJS, for which detailed data of ethnic composition was readily available).

- The MoJ by self admission did not take any steps to ascertain the ethnic composition of the body of BSL interpreters.

- The MoJ did not approach NRPSI or BSL interpreters’ bodies with the request to provide statistical information about the ethnic composition of the foreign languages and BSL interpreter bodies.

## **THE PRE-QUALIFICATION QUESTIONNAIRE**

2.56 The purpose of the pre-qualification questionnaire is to identify bidders who are capable of delivering the contract. The PQQ award criteria were as follows:

“7.2 The overall award criterion for this procedure is “the most economically advantageous tender”. All stages of the process will be evaluated against these criteria. The non-price criteria will be applied to determine compliance with the Authority’s requirements and the relative quality of the Bidder’s proposals.

**2. We will investigate the procurement process that the MoJ followed.**

7.3 Each of the non-price criteria and their relative weightings are set out below

Criteria	% Weighting
Service	30
Innovation	10
Quality	25
Assurance of Supply	30
Sustainability	5

7.4 Thereafter, the deciding factor shall be affordability and price. The Authority will accept the lowest priced, affordable and compliant tender, i.e. there will be a minimum threshold for the non-price criteria above which the lowest priced tender will be selected. This threshold has not yet been determined and will be identified at the next stage.” (Outline Requirements Document issued 24 Nov 2010)

- 2.57 As stated in the FOI response dated 3<sup>rd</sup> August 2011, assessment of compliance with most categories in the Pre-Qualification Questionnaire is by the contractor’s self-certification. There is no objective data provided.
- 2.58 No financial information to gauge the contractor’s capacity to deliver such a large contract was included in the PQQ.

**THE BIDDING DOCUMENTS**

- 2.59 We contend that the MoJ took the undertakings given by ALS Ltd during the procurement process at face value and made no effort to verify ALS Ltd’s claims.

In particular:

- 2.60 ALS claimed in its Risk evaluation document (Bidding documents file 2.1) that it had fully mitigated against the opposition by registered interpreters to the contract. This is manifestly untrue.

In the tender submission, ALS claims: “The majority of NRPSI registered interpreters in the North West are currently working for us and are satisfied with the rates paid.” Even if this were true, the rates payable under the NW Police contract were higher than the MoJ FWA rates.

- 2.61 It is not known how many interpreters ALS claimed were registered with it in order to persuade the MoJ it had the capacity to service the Framework Agreement. However, on page 114 of the framework agreement dated 19th August 2011, ALS states "Approximately 2500 of our 4500 registered freelance interpreters are suitably experienced and qualified for Authority

**2. We will investigate the procurement process that the MoJ followed.**

assignments."

At other times since the start of the contract ALS has cited wildly varying numbers of workers. For example, by 6 March 2012 it had "over 1800 interpreters at Tier 1 or 2 actively working on the contract" (ALS Newsletter 6 March 2012).

- 2.62 We have a large volume of evidence that suggests ALS Ltd has systemically harvested the personal data of interpreters and translators and created worker profiles without their consent.

Around 80 of the following types of cases have been referred to the Information Commissioner's Office for investigation:

- profile created without consent, recording wrong gender or fictitious date of birth;
- request to delete details pursuant to DPA 2000 ignored and profile found to still exist;
- profile still in existence with the express note 'Do not contact'.

We believe it is likely that ALS Ltd breached section 55 of the Data Protection Act, a criminal offence. In addition, the ICO is investigating ALS for compliance. (See the complaint to the ICO).

- 2.63 No checks have been carried out by the MoJ to check that the worker records held by ALS and the total numbers cited during the tender process are bona fide registrations, i.e. that each person consents not only to ALS Ltd holding his/her personal data, but has also signed in agreement with the ALS Terms and Conditions.

**3. We will investigate how the pilot worked and what steps the MoJ and ALS took to ensure a realistic transition.**

3.1 There do not appear to be contractual provisions in the Framework Agreement relating to a 'pilot' phase. Contractually, there is no pilot phase nor any related evaluation measures. The contract should operate properly from Day One.

3.2 The redacted bidding documents indicate that bidders were asked the following:

- Bidders should provide a detailed implementation plan based on phased regional roll out shown in Appendix I (bidding documents, file 2.5)
- Bidders should provide an alternative implementation plan based on Appendix I but with Tribunal Services implementing a jurisdiction based roll out country wide. (file 2.6). We have not been provided with the relevant Appendices detailing the implementation plans.

3.3 ALS states in the bidding documents (file 2.5 and 2.6):  
"We have assumed that we will gain access to the linguist database currently held by the Tribunal Service. If this is not available we will need to add dependencies upon the completion of our linguist recruitment phases."

For ALS to be provided with the AIT database without interpreters' consent is a clear breach of the DPA 2000 and consequently it is clear that ALS Ltd's assumption was wrong and it did not receive the AIT database.

3.4 It is unclear what measures, if any, were taken by the MoJ at this or any other stage to verify:

- a) how many workers had registered with ALS Ltd;
- b) how many had been through the 'compulsory' ALS assessment;
- c) what qualifications they hold and whether these were verified;
- d) how many had been allocated to each Tier;
- e) how many had been successfully vetted by Warwickshire Police;
- f) how many carried the appropriate professional indemnity insurance;
- g) how many had actually consented to ALS Ltd's T&Cs;
- h) how many were false profiles;
- i) how many were registered with HMRC as self-employed;

3.5 In spite of the contractual provisions concerning the live management data to be provided (p. 98 of FWA), the MoJ has consistently replied to FOI requests and Parliamentary Questions that it does not hold the above data or figures on the same.

3.6 It is evident that the need for support from the Asylum & Immigration Tribunals (AIT) bookings call-centre in Loughborough was anticipated in order to help ALS Ltd to function. Despite various announcements that the AIT bookings centre would be closed down, it is still functioning and is still handling direct bookings of interpreters (i.e. bypassing ALS) for HMCTS. The volume of bookings handled this way has not been published, which skews the performance figures in ALS Ltd's favour.

- 3. We will investigate how the pilot worked and what steps the MoJ and ALS took to ensure a realistic transition.**
- 3.7 A *de facto* pilot was the earlier Framework Agreement between ALS Ltd and five police forces around Manchester in 2010. This FWA had different quality standards that adhered more closely to the National Agreement.
- 3.8 ALS Ltd's performance under the North West Police FWA was shown to be lacking as the provision of interpreters to North Wales police quickly came to be supported by local not-for-profit provider WITS in addition to the ALS provision.
- 3.9 ALS Ltd's performance under the North West police contracts was never taken into account by the MoJ even though the company clearly failed to meet the KPIs of that contract.
- 3.10 On 3 December 2011, the MoJ was provided with a list of names and registration numbers of 1167 Registered Public Service Interpreters who had individually registered their refusal to work for ALS. Summary statistics can be viewed [here](#).
- 3.11 The MoJ was fully aware that professional interpreters were not engaging with ALS but allowed itself to be persuaded by ALS that this was not a problem. Peter Handcock, CEO of HMCTS, told the Justice Committee (in March 2012): "The contractor overestimated the willingness of interpreters to sign up". Consequently, the MoJ and ALS proceeded in the knowledge that the contract would not be serviced by experienced professional interpreters.
- 3.12 The area chosen for the initial roll-out of the HMCTS contract in late 2011 was the North West, which is ALS Ltd's home turf.
- 3.13 The performance data used to monitor the contract has been collated, presented and interpreted by ALS Ltd. It is not objective.
- 3.14 During a hearing following the collapsed trial at Snaresbrook Crown Court, caused by an ALS worker, counsel representing ALS argued in mitigation that ALS Ltd had advised the MoJ against rolling out the contract nationwide all at once. ALS Ltd evidently could not cope.
- 3.15 HH Judge Radford has said that the ALS contract was introduced without the full HMCTS board approval.

**4. We will look, at a high level, at the stakeholder engagement MoJ and ALS conducted and at what the results of it showed.**

4.1 A number of points regarding the lack of consultation were already included in section 2, headings B and C, points 2.14 - 2.26.

Furthermore,

4.2 The MoJ claims it engaged with interpreters through a series of 'road shows' held by the OCJR in 2009. However, as the contemporary correspondence shows, there was no mention at the time of consultation or outsourcing. In order for consultation to be meaningful, those being consulted must know they are being consulted and the subject they are being consulted on.

4.3 In order for consultation to be meaningful it must take place at a formative stage in the process being consulted about. The MoJ did not consult until April 2011 when there was only one provider still being considered, and when the model for delivery of the contract with the associated Tier structure had already been designed.

4.4 Responses sent by individual interpreters and interpreter organisations to the MoJ's 'consultation' in April 2011 unanimously rejected the proposed 3-tier system and lowering of standards, and warned the MoJ that the Framework Agreement would fail.

4.5 In the responses to the April 2011 'consultation', concerns were raised about lowered quality standards, security, qualifications, testing, disciplinary procedures and code of conduct. Concerns surrounding Equal Access to Justice for non-English speakers and the right to a fair trial were also cited. (A selection of individual responses is included in addition to the submissions by organisations).

4.6 The MoJ did not seek interpreters' views on what they considered to be suitable rates of pay.

4.7 No report showing the outcome of the 'consultation' was ever published, excepting the July 2011 "Letter to stakeholders" in which all the concerns that were raised were dismissed out of hand by the MoJ.

This is borne out by simple comparison of the documents on which comments were invited and the ultimate form of the Framework Agreement; they are largely unchanged.

4.8 It is unclear on what basis individual interpreters were chosen to comment on the proposals; not all registered public service interpreters were invited. It is not known how many individuals were invited to participate.

4.9 Around 25 organisations were invited to comment on the MoJ proposals. In the case of non-interpreter/translator organisations it is unclear if it reached the right person, was recognised as a consultation, and was replied to appropriately.

**4. We will look, at a high level, at the stakeholder engagement MoJ and ALS conducted and at what the results of it showed.**

- 4.10 The MoJ did not consider repeated requests from the profession to work together at reforming the existing structures, i.e. by outsourcing payroll and bookings only and continuing to book NRPSI interpreters.

The APCI provides a national call-centre service for interpreter bookings at no cost to the end user.

- 4.11 The MoJ has disregarded examples of best practice where police forces have created their own models to deliver savings and efficiencies, i.e. Cambridgeshire Constabulary, Metropolitan Police Service, South Wales Police/WITS.
- 4.12 Since April 2011 when the MoJ invited comments on the proposals, interpreter organisations have repeatedly requested meetings of the MoJ and the MoJ has ignored all requests.
- 4.13 We are not aware of ALS Ltd having conducted any stakeholder engagement.
- 4.14 Reference is made in ALS Ltd's tender documents to it having consulted a panel of experts in interpreting on the design of the delivery model, the tiered system and the assessment but it was not published anywhere who the experts are and what credentials and expertise they have.

**5. We will look at whether the new terms and conditions have the potential to deliver value for money**

- 5.1. Value for money is an abstract concept where Justice is put at risk by a cheap, sub-standard solution. The quality safeguards offered by qualified and experienced professional interpreters (as opposed to unqualified bilinguals) cannot be compared like-for-like with the quality of service offered under the FWA.
- 5.2. It is irrational to concentrate on perceived savings without proper understanding of the quality of the actual interpreting provided and how it compares to past provision.
- 5.3. A number of points regarding the MoJ's assumptions about spend and savings, supply and demand, were already included in section 2, point 2.12.
- 5.4. The lack of prior study meant the MoJ did not know how much was being spent on interpreting services and how much of that spend was in direct payments to interpreters and payments to middle-men (agencies).
- 5.5. The MoJ has made no study of the cost of booking interpreters and processing interpreter pay claims, whereas this was cited as a main area where savings would be made.
- 5.6. The MoJ, in choosing the 'competitive dialogue' model, allowed itself to be sold to by bidders without having established concrete parameters and criteria.
- 5.7. Past significant reviews of CJS interpreting by Lord Runciman (1993) and Lord Justice Auld (2001) not only set high professional standards for interpreting but had strongly recommended the keeping of a proper audit trail for interpreters within HMCTS. Despite being recommended since 1993, this was never acted upon.
- 5.8. In fact, the MoJ has argued that a main advantage of the arrangements under the FWA would be the collection of management data by ALS Ltd. The ALS Ltd management data is meaningless with no earlier factual data with which to compare it.
- 5.9. It is unclear how the estimated previous spend and the savings estimated under the FWA relate to the actual value and length of the contracts. The MoJ has repeatedly cited the previous annual spend of £60 million and the anticipated annual savings of £18 million.

These figures are inconsistent with the value of the three contracts awarded under the FWA. There are two 48-month contracts: for the value of £300m and £8m respectively. In addition there is a 60-month contract for the value of £125m.

It is unclear how a Service Level Agreement could lawfully be contracted for the term of 60 months when the underlying Framework Agreement has a term of 48 months.

- 5.10. The Framework Agreement model is only capable of delivering the proposed level of savings if all organisations in CJS, including all police forces, contract

**5. We will look at whether the new terms and conditions have the potential to deliver value for money**

a Service Level Agreement under the Framework.

The Metropolitan Police Service has already expressly stated it will not join the Framework and the Serious Organised Crime Agency has similarly expressed deep reservations. UKBA has its own panel of interpreters. A number of police forces have existing contracts with other commercial agencies such as Cintra and Language Line which will run for some years to come. Others continue to book registered interpreters directly.

- 5.11. The Home Office proposals for “Obtaining better value from police procurement” which were recently consulted on include (on p. 20) the mandatory adoption by all forces of the MoJ Framework Agreement with ALS Ltd. (See the response by interpreter organisations to this consultation). Mandatory adoption of a contractor who is currently failing to deliver even a proportion of the envisaged volume would be irrational.
- 5.12. The Crown Prosecution Service also has a Service Level Agreement worth £8,000,000 over 48 months. So far, the CPS has been making use of the Framework Agreement in just four of its Witness Care Units since 1 February 2012. The CPS is now scheduled to start using the Contract for the remainder of its interpreting services from 1 September 2012, but this date is being kept under review.
- 5.13. As noted elsewhere, HMCTS continues to book interpreters directly and through a variety of local agencies as ALS Ltd is unable to provide the required service level. This continued ‘mixed economy’ undermines the operation of the Framework Agreement, which was intended to create a ‘one stop shop’ for HMCTS and police staff to use. Instead, they are duplicating the work of ALS Ltd. Expense to the taxpayer cannot be less than previously.
- 5.14. Where HMCTS or police forces engage the services of interpreters or other agencies directly, in the absence of published and enforceable rates, the rate is effectively negotiated for each individual assignment.
- 5.15. Where HMCTS or police forces engage the services of interpreters or other agencies directly, what budget do they use?
- 5.16. The ‘mixed economy’ looks set to continue. No timetable has been published for the police forces to sign up to the FWA. No timetable has been published for the withdrawal of the National Agreement.
- 5.17. The rates of pay, travel time and travel expenses offered by ALS Ltd, even though they have been slightly increased a number of times, are insufficient to attract qualified professionals or to make court interpreting a viable profession.
- 5.18. Interpreter organisations have repeatedly made representations to the MoJ that in a contract of this nature, where different Tiers of workers are employed, the contractor can provide an illusion of fulfilling contractual obligations by sending lower qualified or unqualified workers to assignments requiring a higher tier of interpreter.

According to the FWA the ‘collaborating authority’, i.e. the CJS client,

**5. We will look at whether the new terms and conditions have the potential to deliver value for money**

specifies which Tier of interpreter they require. However, it is not documented anywhere in the FWA how different assignments relate to different Tiers. Nor is there any guidance on selection.

The scant data published by the MoJ on 24 May 2012 provides no information on the different Tiers of interpreters assigned to Magistrates' Court and Crown Court assignments. It is not inconceivable that a lower tier of worker is sent than is invoiced for.

- 5.19. We strongly believe that the contractor's bid was so low that delivery of the contract is unviable. Under the NA rates previously in force interpreters were paid a minimum of £85 for the first three hours at court, and £30 per hour thereafter, with travel time paid at £15 per hour and public transport travel expenses in full, or mileage at £0.25. There had been no change in these rates since 2007.

By contrast, ALS Ltd's bid was based on hourly rates of £22 (Tier 1), £20 (Tier 2) and £16 (Tier 3) with a minimum fee of just one hour and no payment of public transport charges, just a paltry mileage rate that does not apply locally. This contradicts Government policy to encourage the use of public transport.

The above gross hourly rates are clearly unsustainable for freelance self-employed professionals. ALS workers double up on bookings, leaving the first assignment before it is finished in order to attend elsewhere (see complaint to ALS).

- 5.20. From the early operation of the contract, it is clear that ALS Ltd is not meeting the unrealistic KPI it set itself, to have 95% of all languages catered for within a 25 mile radius of all sites. From the media reports alone, it is known that ALS Ltd workers have travelled from Newcastle to Ipswich, Stirling to Truro, Liverpool to Boston. Reports received by interpreter organisations show that ALS Ltd workers routinely travel vast distances. In some cases the expense will be borne by ALS Ltd/Capita Plc, and at other times by the ALS worker, depending on what he or she has negotiated.

- 5.21. In an offer made under the framework agreement to a police force that has not yet contracted to use ALS, ALS proposed the following hourly charges to the force: £31 (Tier 1), £29 (Tier 2) and £25 (Tier 3); compared with pay to interpreters at £22 (Tier 1), £20 (Tier 2) and £16 (Tier 3).

With a profit margin of £9 per hour (which is being eaten into by the extra expenses ALS incurs in having to pay some workers travel time and expenses in cases when the agency is desperate) it is clear how invoicing for a Tier 1 interpreter when a Tier 3 worker attended would be lucrative for the contractor.

- 5.22. Thus far the contract is not delivering value for money. ALS Ltd's fulfilment rate is poor. Where assignments are fulfilled, quality is questionable.

**5. We will look at whether the new terms and conditions have the potential to deliver value for money**

- 5.23. ALS Ltd is not yet servicing 100% of the HMCTS contract and is being propped up by the AIT bookings centre and HMCTS staff making direct bookings. This ties up HMCTS resources.
- 5.24. ALS Ltd is currently servicing less than 10% of witness care units under the contract with CPS and it is clear that CPS is not currently convinced ALS has the capacity to deliver to them all.
- 5.25. ALS Ltd currently provides services to just five police forces under the terms of the Framework Agreement.
- 5.26. Given that ALS Ltd is struggling to fulfil the fraction of total bookings currently entrusted to it, it is inconceivable that the contractor would be able to cope servicing all CJS agencies on a national scale. Yet the envisaged savings rely on 100% take-up across the CJS sector.
- 5.27. Involvis published “A Fair Deal for Interpreters” (September 2011) on behalf of SPSI and APCI, which includes projections of how much public money is wasted. This report was shared with the MoJ.

**6. We will investigate what the additional cost to government has been of the initial service problems and what, if any, the long-term consequences are for the savings the contract is intended to deliver.**

6.1 The costs of ALS Ltd's failings are both human and material.

6.2 Trials have collapsed. The Snaresbrook trial alone cost an estimated £25k.

6.3 Retrials and appeals will result from collapsed trials caused by ALS Ltd's failings.

6.4 Given that ALS advises its workers not to bother with Professional Indemnity Insurance, it is unclear from whom costs could be recovered in the event of an ALS worker's professional negligence causing a trial to collapse.

6.5 Countless adjournments have been caused by ALS Ltd's failings.

Adjournments result in wasted costs:

- a) wasted court days and loss of productivity;
- b) cost of prisoner transport and detention;
- c) expenses of parties and witnesses attending court;
- d) cost of emergency interpreting provision from another source
- e) cost of unnecessary remands in custody;
- f) cost of damages arising from unlawful detention claims;

6.6 The costs listed above under points 6.2 to 6.4 a) to f) are quantifiable costs to the taxpayer that one would expect the MoJ to have researched and quantified prior to awarding the contracts. One would also expect the MoJ to monitor the frequency of such incidents.

Yet, in answers to PQs on 15 May 2012, Minister Crispin Blunt stated: "Information on the number of hearings or trials delayed due to problems with the new interpretation and translation contract is not available".

6.7 In addition, there are costs that are less tangible:

- a) loss of safeguards for Equal Access to Justice for non-English speakers;
- b) human cost of unlawful detention and other Human Rights breaches;
- c) failed prosecutions;
- d) failure to recover criminal assets;
- e) miscarriages of justice;
- f) loss of skilled workforce: experienced interpreters are leaving CJS interpreting;
- g) loss of professional best practice: the system is designed by a commercial entity instead of by professional institutes and associations;
- h) embarrassment to British Justice in the national and international arena;
- i) loss of faith in the Justice System;

6.8 Under clause 12 of the Framework Agreement, the MoJ is able to unilaterally deduct from the contract price being paid to ALS the additional costs to the public purse occasioned by ALS's failings. Up to 12 March 2012 the MoJ had not done so.

**7. We will investigate what the control environment is for the operation of the contract and whether this is adequate.**

7.1. Under this Framework Agreement the entire control environment has been outsourced to the contractor ALS Ltd.

7.2. ALS Ltd is responsible for all checks, recruitment, provision of management information and quality control through it complaints handling and disciplinary procedures.

7.3. There is no published formal complaints procedure.

7.4. There is no published disciplinary framework and procedure. This is a breach of the Employment Act 2003 and a breach of Natural Justice, best practice and accepted industry standards.

7.5. The ALS Ltd 'Code of Conduct' is flimsy and falls far short of accepted professional ethics.

7.6. As was already pointed out in point 3.4, It is unclear what measures, if any, were taken by the MoJ at this or any other stage to verify:

- a) how many workers had registered with ALS Ltd;
- b) how many had been through the 'compulsory' ALS assessment;
- c) what qualifications they hold and whether these were verified;
- d) how many had been allocated to each Tier;
- e) how many had been successfully vetted by Warwickshire Police;
- f) how many carried the appropriate professional indemnity insurance;
- g) how many had actually consented to ALS Ltd's T&Cs;
- h) how many were false profiles;
- i) how many are registered with HMRC as self-employed.

7.7. No information has been published about the Tiers of ALS workers sent to different types of CJS jobs. According to Crispin Blunt MP, on 21 May 2012, not only is this information not held by the MoJ, but:

"Under the contract for interpretation [sic] and translation services it is for Applied Language Solutions to provide interpreters for the appropriate tier to meet the requirements of each booking."

Somewhat paradoxically, however, the framework agreement places the choice of Tier firmly with the collaborative partner making the booking.

7.8. In answers to Parliamentary Questions, ministers repeatedly state that certain information is not collected or is not available, for example:

"The Ministry does not hold information on the tiering status of individual interpreters" (21May 2012).

However, the Framework Agreement (page 99) provides as follows:

"J3 The Administrator may request data and reports on an ad hoc basis to assist with Parliamentary Questions (PQs). The Contractor shall within one working day of request by the Authority provide the required data or information."

**7. We will investigate what the control environment is for the operation of the contract and whether this is adequate.**

This clause is not being enforced.

7.9. Legitimate requests made to the MoJ pursuant to the Freedom of Information Act are being systemically refused.

7.10. According to the Framework Agreement (page 98), the contractor will provide the following management data to the MoJ:

“J2. The Contractor will provide management reports through the web based portal. The reports will be capable of importing into Excel and will include but not be limited to the following:

- 1) Breakdown of available interpreter numbers by region, language, tier and vetting status;
- 2) Details of complaints received, upheld, timescale for resolution and outcome. (Per Collaborative Partner);
- 3) Number of new interpreters added per tier per region;
- 4) Gaps in availability of languages per region;
- 5) Report status on performance against collaborative partner KPIs;
- 6) Telephone Interpreting: Monthly breakdown of number of calls, number of minutes, total price. (Per Collaborative Partner);
- 7) Translation: Monthly breakdown of number of single linguist tasks, number of second linguist proof reads, total price, discounts for translation memory. (Per Collaborative Partner);
- 8) Transcription: Monthly breakdown of number of tasks and total price (Per Collaborative Partner);
- 9) British Sign Language/Deaf Blind: Monthly breakdown of number of assignments, assignment costs, and travel costs. (Per Collaborative Partner);
- 10) Face to Face: Monthly breakdown of number of assignments per region, per tier, per language, per Collaborative Partner plus total price.”

Of the above ten items, the only information published by the MoJ through the Official Statistics office was a partial report of the information in point 10. This information was collected by the contractor. It was presented in a way that implied ALS has been servicing 100% of HMCTS bookings, which it has not (see point 5.13).

When asked in Parliamentary Questions, the MoJ routinely denies that it holds the remaining information or that it is in a position to obtain it, within one working day, from the contractor (see point 7.7).

7.11. The MoJ appears improperly biased towards the contractor and is not making use of the sanctions included in the Framework Agreement.

7.12. The Framework Agreement (page 173) outlines that Service Credits will be applied where the KPIs (98%) of ‘Fulfilment of all assignments’ and ‘On time delivery of all assignments’ are not met: “For every % outside of the 98% a % charge will be credited to that collaborative partner at month end against the combined unfilled/late bookings 1st hour value”. Significantly, the KPI of 98% fulfilment of all assignments is with the exclusion of ‘cancellation by the

**7. We will investigate what the control environment is for the operation of the contract and whether this is adequate.**

collaborative partner' (see point 8.11 for more about this figure).

Up to 12 March 2012 the MoJ had not applied these service credits.

7.13. Under clause 12 of the Framework Agreement, the MoJ is able to unilaterally deduct from the contract price being paid to ALS the additional costs to the public purse occasioned by ALS's failings. Up to 12 March 2012 the MoJ had not done so.

7.14. Appearing before the Justice Committee on 6 March 2012, the CEO of HMCTS was asked by Rt. Hon Sir Alan Beith:

"Was the contract structured so that you have sufficient penalty and cancellation provisions at your disposal, to deal with this situation?"

Peter Handcock CBE's verbatim reply was:

"It is. It is. And I have made it very very clear, made it very clear, right from the outset, that step 1 was to revert to our old arrangements, simply to roll back, and step 2, if, if the level of performance didn't improve very rapidly, would be to withdraw from the contract."

No timescale for potentially withdrawing from the contract, and the associated performance indicators, has been published.

7.15. We have evidence that many ALS workers are operating without having undergone the supposedly compulsory ALS Ltd assessment and without their personal details and qualifications having been verified. In addition we have evidence of ALS workers assessed to Tier 3 being offered Crown Court trials, and ALS workers attending CJS assignments without having passed the police vetting. Page 150 of the Framework Agreement states it is ALS Ltd's responsibility to verify these matters and answers given in Parliamentary Questions reiterate this. Independent verification that these checks were carried out is what is required.

7.16. It is unclear whether the MoJ is undertaking any steps to independently monitor ALS Ltd's failings, for example by keeping records on the volume of HMCTS bookings not being handled by ALS Ltd.

7.17. We have evidence in the form of reports from our members that direct bookings by courts are not diminishing.

7.18. Since the start of the contract, a log of ALS defaults has been maintained by interpreter organisations. The log has been communicated to the MoJ at several points in time but received no formal acknowledgement.

7.19. On 22 May 2012, PIA submitted a formal complaint to ALS Ltd logging 250 instances where ALS workers did not show up, arrived late or left early, or ALS causing disruption to the courts. In addition, there were seventy quality complaints about ALS workers.

**7. We will investigate what the control environment is for the operation of the contract and whether this is adequate.**

PIA's complaint to ALS Ltd was copied to ministers and procurement officers at the MoJ. PIA has received no reply from ALS Ltd or the MoJ.

7.20. Even according to ALS Ltd's own figures, 12% of the bookings it fulfilled resulted in a complaint.

7.21. The various functions operated by ALS Ltd are in direct conflict with one another. ALS Ltd is not an independent arbiter in disciplinary matters. For example, the ALS worker who caused the Snaresbrook Crown Court trial to collapse was back working in courts within days; disciplinary functions are overridden by a shortage of workers.

7.22. It is entirely unclear what arrangements are in place regarding professional indemnity insurance for ALS workers. Are they covered by a policy held by ALS Ltd and if so, is the underwriter aware of the actual risk?

If not, are ALS workers required to have their own professional indemnity insurance and has this been verified in respect of all those registered with ALS Ltd?

7.23. The process for billing shown in flow-chart form in Appendix A to the Service Level Agreement document appears, in layman's terms, to work as follows: ALS decides what it delivered and charges the Procurement Card / Lodge Card accordingly. There does not appear to be any objective scrutiny.

- 8. We will look at how well ALS and the MoJ (including its agencies and NDPBs) responded to the crisis and whether or not service levels are improving.**
- 8.1 The 'crisis' was entirely avoidable and is one that interpreter organisations warned the MoJ against from 2009 onwards.
- 8.2 It is not clear what monitoring there has been by the MoJ of the disruption caused to courts; according to ministers no information is held (see point 6.5).
- 8.3 Whether or not service levels are improving should not be measured solely on the number of bookings fulfilled and the number of complaints received, but on an audit of the actual qualifications, competence and performance of ALS workers.
- 8.4 It is only for the first two weeks of the contract that ALS Ltd attempted to manage 100% of service delivery for HMCTS across England and Wales.
- 8.5 Two weeks after the HMCTS contract started on 31 January 2012, the MoJ instructed HMCTS to revert to the previous system for urgent bookings and propped up the patchy ALS provision further by providing the support of the AIT call-centre. Those 'contingency arrangements' (Crispin Blunt, 15 March) are still in place.
- 8.6 By then, many independent freelancers who were already boycotting ALS Ltd had decided to also refuse direct bookings from courts.
- 8.7 The MoJ was provided with a copy of the survey carried out among interpreters in February 2012 on behalf of APCI and SPSI. 1,206 professional interpreters responded to the survey, representing 51% of those listed on the National Register of Public Service Interpreters (NRPSI). The key findings were:
- 95% of respondents believe that the MoJ Framework Agreement will reduce the quality of public service interpreting in the UK.
  - 90% of respondents have not registered with ALS and state that they do not intend to. Their reasons are due to the unfair, degrading, unethical and unviable terms and conditions offered by the Contractor.
  - The majority of interpreters asked, feel strongly that ALS and the MoJ have significantly undermined the professionalism of public service interpreting as a whole.
  - 6% of respondents have undergone the ALS 'assessment' process, with 94% reporting negative experiences.
  - 60% of respondents operating under ALS have reported that since 30th January 2012, they undertake fewer assignments than under the previous arrangements, contrary to ALS promises; 25% receive less than £5 per hour, therefore it is hardly surprising that 14.3% of ALS interpreters are considering supplementing their income with benefits.
  - Of those currently registered with ALS, 79% stated that they will not continue to work with them.

**8. We will look at how well ALS and the MoJ (including its agencies and NDPBs) responded to the crisis and whether or not service levels are improving.**

- 8.8 In the first weeks of the contract, ALS Ltd in an open letter published on the ALS Ltd website on 15 February 2012, made allegations of an 'interpreter intimidation campaign' on the part of 'interpreters who are against the agreement'.
- 8.9 Since the start of the contract, ALS Ltd has responded by slightly amending its pay rates.
- 8.10 ALS Ltd has responded to recruitment problems by targeting (foreign) students and by advertising as far afield as Poland.
- 8.11 In March, ALS Ltd tried to engage with individual NRPSI registered interpreters by making unsolicited telephone calls to them. Some interpreters received calls from ALS Ltd's Chief Executive Gavin Wheeldon himself and others were contacted by other senior management personnel such as David Joseph. NRPSI interpreters were unconvinced.
- 8.12 In March ALS Ltd began offering a £250 bonus to workers who recommended a friend. (ALS Newsletter 6 March).
- 8.13 ALS Ltd responded by sending workers across vast distances (Scotland to Cornwall; Merseyside to Lincolnshire; Tyne and Wear to Suffolk).
- 8.14 In many cases it appears that ALS Ltd responded by sending someone, anyone at all, to assignments.

In cases where the ALS worker arrives too late to be of use, turns out to speak the wrong language or is otherwise found to be unsuitable, this is not logged as a failure by ALS but as "collaborative partner/client did not attend" and is effectively logged as a cancellation and charged for even if the fault lay with ALS Ltd. (See page 137 of the Framework Agreement and the large proportion of bookings logged in this manner in the published performance figures).

- 8.15 Until some months into the contract a fee of £100+VAT had been payable by every worker registering with ALS Ltd for its specially commissioned unaccredited assessment which, in theory at least and according to the Framework Agreement, is compulsory for all workers servicing this contract. ALS Ltd responded to the low take-up by removing the fee and undertaking to refund those who had paid already. Earlier initiatives to encourage take-up of the 'compulsory' unaccredited assessment included the option to pay in 60 instalments of £5.
- 8.16 ALS Ltd made informal approaches to interpreter organisations under the auspices of creating a 'Working Group' in April. The proposal was unanimously rejected by interpreter organisations who continued to seek talks with the MoJ.

**8. We will look at how well ALS and the MoJ (including its agencies and NDPBs) responded to the crisis and whether or not service levels are improving.**

This did not deter ALS Ltd, and in May 2012 the approach to some interpreter organisations was reiterated with the additional request to ‘call off the strike’. Again, the proposal was unanimously rejected.

- 8.17 The Lord Chancellor Kenneth Clarke before the Justice Committee (23 May 2012) incorrectly characterised the crisis as an “industrial dispute”. Ministers have made no effort to educate themselves and deny there are problems.
- 8.18 Interpreter organisations repeatedly requested to meet with the MoJ and continued to provide the MoJ with evidence of ALS Ltd’s failings.
- 8.19 The MoJ has responded by doing everything it can to nurture and support ALS Ltd.
- 8.20 The MoJ has refused to talk to interpreter organisations.
- 8.21 The MoJ has suppressed information relating to ALS Ltd’s performance by stating, untruthfully, that it does not have access to the information in question. Other information has been suppressed by simply not collecting it.
- 8.22 The information that was published by the MoJ was partial: approximately 10% of the management data ALS is contractually obliged to provide.
- 8.23 The presentation of that data was misleading. (see points 8.3 and 8.11).
- 8.24 We conclude that the MoJ is entirely unconcerned about the use of unqualified workers to interpret in CJS settings, as the MoJ has done nothing to encourage professional registered interpreters back to work.

## **Appendix B to the initial submissions by the Professional Interpreters for Justice Steering Committee to the National Audit Office**

### **Unanswered Questions**

- A. The FWA contract itself lays several responsibilities in respect of reporting upon the Contractor (p 99);

and

- B. Answers from ministers to a number of PQs state unequivocally that no data is held centrally.

Both A and B cannot be true. If ALS has supplied data in the required format then PQs should have been answered truthfully. If they were not then it may be that ALS is in breach of contract.

Questions which are not answered include;

1. How many court hearings (by court) required interpreters (by language)?
2. How many were filled by ALS?
3. How many were filled by other agencies?
4. How many were filled by direct booking of interpreters?
5. Of the bookings fulfilled by ALS, how many were assigned to the correct Tier of interpreter?
6. How many professionally qualified interpreters are contracted to ALS? (Professionally qualified meaning holders of the DPSI in Law, and/or the Metropolitan Police Test).
7. How many complaints have been received (broken down by court and language)?
8. How many service credits are due from the contractor?
9. Has clause 12 (Recovery of Sums Due) of the Framework Agreement been enforced?
10. Who has certified the ALS language assessment and to what standard?
11. How many hearings have been delayed due to failure to supply on the part of ALS?
12. How much public money has been wasted due to failures to supply leading to remands, adjournments and other ancillary costs?
13. How many trials have had to be aborted due to ALS interpreter incompetence?
14. What have the additional costs been to the public purse as a consequence of 11 above?
15. How many interpreters on the ALS list have had their data stolen by the company?
16. Has a full report ever been returned by ALS which includes the data required under section J2 of the FWA? (p 98-99).

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17. Has there been independent verification by the MoJ, at different review points in the competitive dialogue timeline, prior to the final award of the contract, and/or after the contract went live, of the following:
  - a) how many workers had registered with ALS Ltd;
  - b) how many had been through the 'compulsory' ALS assessment;
  - c) what qualifications they hold and whether these were verified;
  - d) how many had been allocated to each Tier;
  - e) how many had been successfully vetted by Warwickshire Police;
  - f) how many carried the appropriate professional indemnity insurance;
  - g) how many had actually consented to ALS Ltd's T&Cs;
  - h) how many were false profiles;
  - i) how many were registered with HMRC as self-employed;
18. How will the Framework Agreement implement the EU Directive?