

The Immigration Law Practitioners' Association's Comments on LSC Consultation Paper on Interpreters in Publicly Funded Immigration and Asylum cases.

1 General Comments

The Immigration Law Practitioners' Association (ILPA) agrees that the services of interpreters play an essential role in facilitating the provision of advice by legal representatives in immigration and asylum cases.

ILPA acknowledges that lawyers in publicly funded immigration and asylum cases frequently instruct unqualified and sometimes inadequate interpreters. ILPA further agrees that steps should be taken to end this practice.

The most important single reason why unqualified and sometimes inadequate interpreters are used by suppliers is the low hourly rate of pay, effectively set by the Legal Services Commission. This is significantly below the market rate for qualified interpreters.

ILPA is broadly in favour of standardized terms and conditions of interpreters instructed on behalf of the client where interpreters fees will be met by the LSC, provided those terms are fair, and are in the best interest of the client.

ILPA believes that the problem of poor quality interpreters should be looked at systemically, and considers that there is also a substantial problem with the quality of interpreters used by the Home Office. We wish to know what steps the LSC are taking to ensure the quality and assurance of the Home Office interpreters. This is particularly important now that most applicants are no longer represented in most interviews. There is therefore no independent interpreter at the interview to ensure that the interviewing officer's attention is drawn to any problems of interpretation.

ILPA would like to know if the proposed changes are based on LSC research into the quality of independent interpreters' work. If so, has there been similar monitoring of the Home Office's interpreters' performance? Has the LSC commissioned any research in the number and nature of interpretation issues arising at appeals both before and since the withdrawal of funding of representatives and independent interpreters at substantive asylum interviews? Since the NAO has admonished IND for taking decisions that are overruled at appeal, the accurate interpretation and recording of interviews is likely to be a higher priority of IND. The LSC should reconsider its decision not to fund appropriate representation and independent interpretation at the substantive interview so as to contribute to improving the decision making process.

ILPA notes the proposals set out in Paragraph 9 a-c. Although ILPA as an organization does not have expertise in the interpreting supply sector, the organization's feeling is that a requirement that only qualified interpreters are instructed for publicly funded work may

in the short term lead to a shortage of interpreters. This may persist in the medium to long term unless the rates of pay are sufficiently increased to attract qualified interpreters

In relation to paragraph 13, ILPA agrees that ineffective interpreting can detrimentally affect the chances of success of individual cases funded by the LSC. This is true both of interpreters who are provided by suppliers and those by the Home Office. The imposition of a qualification requirement together with a proper remuneration package and an adequate supply of qualified interpreters will assist. However, in assessing the importance of providing good quality interpreters on the quality of decision-making generally, the decision to remove representatives and independent interpreters from asylum interviews is likely to have had a far greater effect on the prospects of the correct cases succeeding at first instance, and on appeal.

ILPA does not immediately understand why the greater assurance that clients receive competent services will have a positive effect on race relations.

2 Turning to the specific questions raised in the Consultation:-

Question A1 – ILPA does not have sufficient expertise to comment on the qualifications listed at Annex A.

Question A2 – ILPA suspects that there are not enough qualified interpreters to meet current demand at the proposed pay scales without the provision of transitional arrangements.

Question A3 —ILPA does not have expertise of the interpreting market, but suspects that an exception should be retained for use of unqualified interpreters in particularly rare languages.

Question A4 -ILPA does not have sufficient expertise to comment on this.

Question A5 — The LSC may wish to fund interpreters obtaining the appropriate qualifications. Any funding proposals should be from a separate budget and not reduce the funds available for immigration advice. After all the whole community benefits from having competent interpreters in the community, so the LSCs asylum/immigration budget should not bear the cost. The LSC should also ensure that it pays the going rate for interpreters to ensure there is an incentive for individual interpreters to remain in the field. The LSC should not establish its own interpreting service, so that issues of confidentiality/conflict can be avoided.

Question A6 — Family/community members should only undertake the most routine interpreting tasks. Examples would be communicating the date and time of an appointment or assisting a person to complete a benefits application form (for which there is no LSC funding). All substantive instructions should be via a qualified interpreter. It is not possible to be sure about the ‘non-critical’ nature of the attendance in

advance and what may seem a straightforward issue may turn out to be far more complex. There are obvious implications for client confidentiality in using family and community members, and a client may have no way to communicate sensitive issues if their only means of communication with their adviser is through a family or community member

Question A7 — No.

Question A8 — The LSC may wish to fund the acquisition of the qualifications in certain circumstances. The LSC must also bear in mind that very often when it funds work undertaken by a bi-lingual member of staff, that work takes longer and times available to do work may need to be adjusted accordingly. This issue has been raised on audit. The LSC must also consider whether notes on files have to be translated into English for audit purposes or whether files may be kept in other languages. If the former approach is followed, bi-lingual practitioners may end up spending a significantly longer time on files.

Question A9 — ILPA takes the view that a requirement for a qualification may reduce the instance of touting somewhat, but not to any greater extent. Likewise the introduction of standard terms.

Question B1 - ILPA is not sure that the comparison between the daily rate for a public service interpreter and for an interpreter working in a supplier's office is necessarily apt, particularly given the rate of payments for traveling and waiting. A fixed daily rate may well be of more use if there is a constant flow of clients with sufficient numbers to ensure that an interpreter has a reasonable supply of work in the same place.

Suppliers typically use interpreters for shorter periods of time, and interpreters move from office to office. ILPA thinks it is likely that interpreters doing LSC funded work will therefore spend significantly longer traveling than other public service interpreters. Furthermore, a very significant amount of the work, particularly of asylum lawyers responding to emergencies, are to very tight time limits, with impecunious clients. It is far more difficult to plan a sequence of appointments with different clients, with no waiting in between, when so much of the work is responding to emergencies. For these reasons, ILPA thinks that a flat rate of per hour will result in significant underpayment for interpreters.

Question B2 — No. See above.

Question B3 — Yes, a front loaded payment would assist in this problem, although it will need to be clear whether it is per office or per client.

Question B4 — It will be necessary to exceed the maximum rate in unusual languages.

Question B5 - ILPA thinks, for the reasons set out above, that it is not unreasonable for waiting time after the proposed time of appointment to be funded.

Question B6 — Yes for the reasons set out above.

Question B7 — If the traveling and waiting rate is to be recalculated as half the going rate. The fairness of such a decision depends on the going rate which is finally documented.

Question C1 — The terms of employment require more contact/communication between the supplier and the interpreter than is currently the case. Is this to be remunerated time? If not, then it is yet another administrative burden on practitioners.

ILPA thinks that the appropriate term for payment for the interpreter should take place 30 days after a stage or a final claim has been submitted.

Question C2— See above.

Question C3 — There should be guidance on whether or not a cancellation fee can be charged for an interpreter.

Question C4 — Provided that suppliers have a running disbursement record, ILPA can see no particular point in requiring practitioners to combine the two, which might require expensive changes in the software.

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