

# Language barriers in the criminal justice system:

## Support for those who speak English as a second or additional language

In the series of tables below, we outline legal rights and entitlements – where these exist – and provisions in policies and practice guidance for statutory criminal justice agencies, for supporting individuals who speak English as a second or additional language (ESL) at various stages in the criminal justice process. Each table provides an overview of the language support available for different groups (e.g. victims, witnesses, arrestees/detainees, defendants and offenders) as they journey through the criminal

justice system (CJS). We also note relevant issues relating to judicial management of criminal trials and ‘expectations’ of Her Majesty’s Inspectorate regarding language support in police custody and prison. While we may not have identified everything that is relevant, we hope this gives an overview of the legal protection and the language support which should be available to adults in contact with the CJS who speak ESL. This provides the ‘baseline’ against which we explore, in our empirical research, the

knowledge and practices of criminal justice professionals who work with individuals who speak ESL and, importantly, the experiences of service users who speak ESL. We have repeated the rights, policies or professional guidance where these apply at different stages of the process or are replicated across national, European and international law and we have provided endnotes for further detail on the information contained in the tables.

Reporting, arrest and investigation	Court hearings	Probation (managing victim-offender contact)	Post-court
<p><u><i>The Code of Practice for Victims of Crime (2020)</i></u><sup>i</sup> Victim witnesses<sup>ii</sup> who do not understand or speak English have the right to:</p> <ul style="list-style-type: none"> <li>• Be given information in a way that is easy to understand and be provided with help to be understood through access to interpretation and translation services</li> <li>• Report the crime in a language they understand or with the necessary linguistic assistance if they don't speak English</li> <li>• Necessary linguistic assistance, including translation, when being interviewed by the police.</li> </ul> <p>The police should also provide on request:</p> <ul style="list-style-type: none"> <li>• Translation of the written acknowledgment of the reported crime</li> <li>• Translation, where it is essential for a police interview, of a document or relevant parts of a document.</li> </ul> <p><u><i>The Witness Charter (2013)</i></u><sup>iii</sup> Interpreters from the local community should not be used where they could put victims at an increased risk (e.g. of honour-based violence).</p>	<p><u><i>The Code of Practice for Victims of Crime (2020)</i></u><sup>iv</sup> Victim witnesses who do not understand or speak English have a right to:</p> <ul style="list-style-type: none"> <li>• Request interpretation into a language they understand when giving evidence</li> <li>• Request translation, where it is essential for a court hearing, of a document or relevant parts of a document</li> <li>• Be provided with translation of documents with date, time and place of trial</li> <li>• In hearings in Wales – the legal right to use Welsh when giving evidence (see below)</li> <li>• Translation of the outcome of proceedings where entitled under the Victims Code and at least brief reasons for the court's decision</li> <li>• Be provided with a response to any complaint or request made under the Victims Right to Review scheme<sup>v</sup></li> <li>• Receive an oral translation of documents (where appropriate).</li> </ul> <p><u><i>Welsh Language Act 1993</i></u> Section 22 (1) of the Welsh Language Act 1993 provides that:</p> <ul style="list-style-type: none"> <li>• In any legal proceedings in Wales, Welsh may be spoken by any party, witness or other person, with no prior notice, except in Crown Court proceedings where notice should be given to the Welsh Language Unit to make necessary provisions. A Welsh-speaking prosecutor should be provided, or the case adjourned until a Welsh-speaking prosecutor or interpreter can attend.</li> </ul> <p>Where Welsh is to be used, the court should be informed as soon possible, in compliance with the Practice Direction (1995 1 All ER. 575). Failure to comply may result in a wasted costs order being made against the defaulting party.</p>	<p><u><i>The Victim Contact Scheme (VCS)</i></u><sup>vi</sup> <u><i>Guidance Manual (Her Majesty's Prison and Probation Service)</i></u> on the statutory duty for victim contact managed by the Probation Service. This provides Victim Liaison Officers (VLOs), Offender Managers and other probation staff with operational guidance for duties under the Victims' Code (2020). It states:</p> <p>VCS must be accessible to all minority groups, and special needs must be accounted for before initial visit. Guidance to address language barriers is as follows:</p> <ul style="list-style-type: none"> <li>• Contact letters and leaflets should be provided in other languages, particularly if identified by Witness Care Unit (WCU) or via contact with victim</li> <li>• Interpreters should be offered and provided at visits</li> <li>• The probation service can decide whether to use the Ministry of Justice (MoJ) Framework Agreement<sup>vii</sup> for interpreting and translation services, or Local Authority or commercial agencies, or engage freelance interpreters via the National Register of Public Service Interpreters (NRPSI)<sup>viii</sup></li> <li>• When interpretation services are not obtained via the MoJ framework, the Probation Service will need to ensure that the quality, vetting and monitoring arrangements are sufficient "to discharge their duties in respect of victims sensitively and effectively"</li> <li>• Complaints about the Probation Service can be made by any person, including victims, offenders, and their families. The Probation Service is responsible for using translation services, where appropriate, to interpret complaints received from those for whom English is not their first language.</li> </ul>	<p><u><i>Criminal Injuries Compensation Authority</i></u><sup>ix</sup> (CICA) is an executive agency, sponsored by the MoJ which deals with injury claims brought by victims of violent crime.</p> <p><u><i>The Code of Practice for Victims of Crime (2020)</i></u><sup>x</sup> states that victims who do not understand or speak English have a right to:</p> <ul style="list-style-type: none"> <li>• Additional assistance upon request from the CICA when making an application for compensation, such as the assistance of an interpreter at the hearing and be provided with advice about who to contact to make such arrangements</li> <li>• If a victim disagrees with a CICA decision about compensation, they can appeal to the Criminal Injuries Compensation Tribunal.<sup>xi</sup> In so doing the victim should receive a letter from the Tribunal, in which they will be asked if they need any assistance in support of their appeal to meet their particular needs. For example, the Tribunal can arrange an interpreter to support them at the hearing.</li> </ul>

## Reporting, arrest and investigation

*The Witness Charter (2013)*<sup>xii</sup>

The police should assess pre-interview witnesses' language and communication needs:

- Support and reasonable adjustments should be made to ensure equal access to information and services, including use of an interpreter
- Needs and expectations of witnesses from minority groups should be considered, including police knowledge of religion, culture, customs and beliefs as this may have a bearing on their understanding of a witness account
- A witness should be interviewed in the language of their choice, (even if bi-lingual) unless in exceptional circumstances (e.g. unavailability of interpreter)
- Despite fluency in English, witnesses may need to use their first language to express intimate or more complex concepts
- Interpreters should be from the National Register of Public Service Interpreters (NRPSI) to ensure competence and ethical standards
- Investigators should avoid using grammatically complex questions or ones that include double negatives.

*Legal guidance on interpreters at the police station (CPS, 2019)*

Witnesses who have difficulty speaking or understanding English should have the same right to interpreting and translation support as suspects.

**Trials Issues Group (TIG)**<sup>xiii</sup> establishes the arrangements that should be in place for criminal investigations in England and Wales. TIG has agreed a standardised procedure for arranging interpreters for investigations into alleged offences. For witnesses in criminal proceedings:

- The prosecution or defence will arrange interpreters for their witnesses
- 'Active steps' need to be taken to check the competency of an interpreter in order to comply with responsibilities under the European Convention on Human Rights, especially Article 6 (The right to a fair trial).

**Victim Contact Scheme Guidance**<sup>xiv</sup> states that the arrangements should also apply to a witness who is not a complainant in a case (see above).

## Court hearings

*Welsh Language Act 1993*

Section 22(1) of the Welsh Language Act 1993 provides that:

- In any legal proceedings in Wales, Welsh may be spoken by any party, witness or other person, with no prior notice, except in Crown Court proceedings where notice should be given to the Welsh Language Unit to make necessary provisions. A Welsh-speaking prosecutor should be provided, or the case adjourned until a Welsh-speaking prosecutor or interpreter can attend.

Where Welsh is to be used, the court should be informed as soon possible, in compliance with the Practice Direction (1995 1 All ER. 575). Failure to comply may result in a wasted costs order being made against the defaulting party.

*The Witness Charter (2013)*<sup>xv</sup>

Interpreters are required for those with limited/no understanding of English to facilitate communication at court. Witnesses should expect:

- Defence or prosecution to apply in advance of trial for an interpreter to assist them giving evidence
- To find an accredited interpreter if need has been identified in advance
- To see the interpreter and be seen by them if using a screen<sup>xvi</sup>
- To be seen and heard by the interpreter when giving evidence by Live Link<sup>xvii</sup>
- Judges and magistrates must ensure that the witness understands what is happening
- To be provided with an interpreter by the police or defence lawyer, to help defence witness give evidence or if asked to make a statement to the police, or to defendant's lawyer.

*Equal Treatment Bench Book (ETBB, 2021)*,<sup>xviii</sup> Section 8 provides guidance for judges on communicating with speakers of ESL (incl. prosecution and defence witnesses giving evidence in court). "Although judges are not involved in making arrangements for interpreters, it is important that they are fully aware of potential difficulties experienced by witnesses who may have only a limited ability to speak and understand English, and the interpretation facilities available and the arrangements for securing them".

It warns against making assumptions about a witness's level of fluency, especially given the often formal and complex language that is used in court, and it gives advice about how to facilitate communication. This includes: Allowing more time, speaking more slowly, using plain language, not asking two questions in one sentence, avoiding negative formulation of questions, jargon, humour or irony, explaining any jargon and legalese and frequently summarising and checking that the witness understands. A summary of some key advice in the ETBB relating to court users who speak ESL is as follows:

## Reporting, arrest and investigation

## Court hearings

- The judge is guided to take a *'proactive role'* and make efforts to clarify and resolve the extent of any language difficulty faced by a witness. It is part of the judge's function to check everyone understands each other so as to ensure a fair hearing. If a judge hearing a case considers that an interpreter is required, an adjournment should be granted for that purpose
- It cautions against trying to 'manage' in English if an interpreter who has been booked does not turn up
- Where a party or witness has asked for an interpreter, but communicates in English during the hearing, this does not mean the interpreter was not needed. The witness may be anxious to communicate directly as far as possible but have an interpreter present to assist if understanding breaks down
- Regarding practical arrangements, it recommends the interpreter speaks the correct dialect of the language in question and that she/he is positioned in court in order to see (including facial expressions) and hear the witness
- There is also guidance about communicating through an interpreter, including addressing the witness directly, using the same techniques listed above for facilitating communication, and ensuring everything is translated so as to reduce any sense of exclusion from proceedings by the witness.

ETBB, Section 8 also provides guidance on *'communicating inter-culturally'*. This highlights the need for judicial awareness of cultural differences in how individuals might present or express themselves in court. Cultural differences might be present alongside a language barrier and may also apply where ESL is being used in court.

## Reporting, arrest and investigation

Authorised Professional Practice (APP) College of Policing provides national guidance on aspects of police work. The APP on Investigation – Working with Suspects, regarding arrest planning, notes that, “If the suspect does not speak English, an interpreter should be arranged”. The APP on Detention and Custody underlines practice in relation to PACE.

Police and Criminal Evidence Act 1984 (PACE)

**Code C:** details the rights of a detainee in police custody<sup>xix</sup>, of which they must be informed, including details of the offence they have been arrested for, and their right to free, independent legal advice, to consult and communicate privately with a solicitor in person, in writing or by telephone:

- The custody officer determines whether the detainee does not speak or understand English and requires an interpreter (also applies to rights to use Welsh language as set out in the Welsh Language Act 1993)
- Custody officer must ensure detainee has the assistance of an interpreter “without delay”
- The detainee is told clearly about their right to interpretation and translation
- The written notice given to the detainee detailing rights and offence of arrest is in a language the detainee understands and includes the right to interpretation and translation. If the translation of the notice is not available, the information in the notice is given through an interpreter and a written translation provided without undue delay.<sup>xx</sup>

## Court hearings

Criminal Procedure Rules (2015) apply to **Magistrates’ Court, the Crown Court, the Court of Appeal**

- The court must take every reasonable step to facilitate the participation of any person, including the defendant
- Facilitating participation includes finding out whether the defendant needs interpretation because the defendant does not speak or understand English
- Where this is the case, the court officer must arrange for interpretation to be provided at every hearing which the defendant attends
- The court may require a written translation to be provided for the defendant of any document.

Equal Treatment Bench Book (2021)<sup>xxi</sup>, Section 8 provides guidance for Judges on communicating with speakers of ESL (including witnesses and defendants if giving evidence). See table above (on Witnesses) for further information.

The Crown Court Compendium (August 2021) states that under the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>xxii</sup> it is the duty of the judge to verify whether the defendant has sufficient understanding of the English language to participate in trial proceedings and to understand the consequences of his plea, and in doing so, should ensure that adequate interpretation arrangements are made.

## Defendants

## Probation

Language support available for offenders as part of *Victim Contact Scheme* arrangements is described above.

There is currently no specific probation guidance on supporting offenders who speak ESL, with the exception of the Welsh Language Act 1993. In accordance with this Act, HMI Probation, when conducting inspections in Wales, treats the Welsh and English languages on an equal basis.

An Equality Information Form (EiF) is completed as part of the preparation of a pre-sentence report. The EiF captures equalities and diversity information as part of the assessment process and in order to comply with the Equality Act 2010. Immigration status and preferred language are collected on the EiF and this is signed by the offender as a true reflection of their needs.

## Offenders

## Prisons

## England and Wales

Prison Rules Act (1999) governs how prisons are run and rules are made under the authority of this Act. Prison Rules apply to every prison, but prison governors can also make local rules. The rules that reference language support are as follows:

PSI 05/2018: Prisoner Discipline Procedures (Adjudications)  
Prisoners with disabilities, mental impairments and communication or language difficulties:

- If prisoners have any disability, communication or language difficulty that may impair their ability to understand and participate in the hearing, adjudicators must consider what help may be provided for them and adjourn as necessary for this to be arranged.
- Prisoners who are unable to follow proceedings or present a written or oral defence due to language or learning difficulties, and (mental health problems), may need help from a friend or representative. Adjudicators will base their decision on the individual circumstances of each.

## European

European Prison Rules<sup>xxiii</sup>: At admission, and as often as necessary afterwards, all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.

Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.

Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

Prisoners charged with disciplinary offences shall:

- be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them
- have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

Director, management and majority of other prison staff shall speak the language of the greatest number of prisoners, or a language understood by the majority of the prisoners.

## Reporting, arrest and investigation

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**International**

*United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>xxiv</sup>* states that: Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence:

- In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter
- Prisoners shall be allowed to defend themselves in person, or via legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges
- If the prisoners do not understand/speak the language used in a hearing, they shall be assisted by a competent interpreter free of charge
- The prison director, his or her deputy, and the majority of other prison staff shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them
- Whenever necessary, the services of a competent interpreter shall be used.

*United Nations Rules for the Treatment of Women Prisoners<sup>xxv</sup>*  
Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need, in a language that they understand; and, in the case of foreign nationals, access to consular representatives.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>xxvi</sup>*

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands (all this information) and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Arrestees/Detainees	Reporting, arrest and investigation	Court hearings	Probation	Prisons
		<p><i>Expectations of HM Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS)</i> Police Custody</p> <p><b>The custody suite: Individual needs and legal rights</b></p> <p>Staff understand equality and diversity and know how to respond to specific needs. Expectations regarding the language needs of detainees include:</p> <ul style="list-style-type: none"> <li>• Access to information, including reason for detention and, where necessary, their immigration status and procedures in relation to status, explained in a language they can understand</li> <li>• Access to relevant Consulate, Embassy or High Commission where necessary.</li> </ul> <p>The needs of detainees who experience difficulties communicating are met:</p> <ul style="list-style-type: none"> <li>• Staff have access to accredited translation and interpreting services</li> <li>• Telephone translation is conducted using equipment that enables effective communication in reasonable privacy.</li> </ul> <p>Legal rights and entitlements and other relevant documents are provided in a range of formats and languages which reflect the population in the local police force area.</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Defendants</b></p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Offenders</b></p>

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- Prisoners have access to accredited translation and interpretation services whenever accuracy or confidentiality is required
- Prisoners have access to specialist support services and equipment (equivalent to that available in the community) to enable them to communicate and understand the regime
- Accredited interpreting services are used wherever accuracy or confidentiality is important.

Health: All prisoners have equal access to health, well-being and social care services regardless of location, regime, disabilities or language barriers:

- Information about available health services and current national health campaigns is easily accessible in all required formats and languages.

Education: Staff are aware of and plan for individual prisoners' diverse needs in teaching, training and work sessions and provide effective support, including for prisoners who speak English as second or additional language.

- Women are provided with accredited translation and interpretation services whenever needed incl. at assessment, care in custody and teamwork reviews, key worker sessions and health care appointments
- Peers are not used to interpret confidential or private information
- Women have access to key information about prison life in a range of languages which reflect the needs of the population
- Women are provided with information about their immigration status and immigration procedures in different languages/formats and helped to understand them.

Education:

- Library materials reflect the diverse needs of the women held and include a range of formats and languages
- Staff are aware of and plan for individual women's diverse needs in teaching, training and work sessions and provide effective support, including for women who speak English as a second or additional language.



# Endnotes

- <sup>i</sup> The Victims' Code is the statutory document which sets out the rights and entitlements of victims of crime.
- <sup>ii</sup> 'Victim witnesses' is a term used to describe victims who give evidence at court and have additional entitlements as described in the table.
- <sup>iii</sup> This details standards of care a witness should expect during contact with the criminal justice system.
- <sup>iv</sup> See Endnote i.
- <sup>v</sup> The Victims Right to Review scheme gives victims of crime a Right to request a review of a police or Crown Prosecution Service decision not to prosecute, or to stop the case.
- <sup>vi</sup> The statutory Probation Service Victim Contact Scheme (VCS) is offered to victims of violent and sexual offences where the offender receives a sentence of 12 months or more.  
The purpose of the VCS is to provide eligible victims with information and advice about the criminal justice process by a designated Victim Liaison Officer (VLO).
- <sup>vii</sup> A centralised system for procuring language services for use in the Criminal Justice System.
- <sup>viii</sup> National Register of Public Service Interpreters (NRPSI) is a voluntary not-for-profit organisation with a core role of ensuring the maintenance of good standards within the profession.  
This includes only recognising those who are appropriately qualified, upholding professional and ethical conduct and investigating complaints made against those on the register.  
<http://www.nrpsi.org.uk/about-us.html>
- <sup>ix</sup> [Criminal Injuries Compensation Authority – GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- <sup>x</sup> See Endnote i.
- <sup>xi</sup> A judicial hearing established to settle disputes.
- <sup>xii</sup> See Endnote iii.
- <sup>xiii</sup> TIG membership includes representatives from the Association of Chief Police Officers (now National Police Chiefs Council), Bar Council, Crown Prosecution Service, Court Service, HM Customs and Excise, Home Office, Judiciary, Justices' Clerks' Society, Law Society, Lord Chancellor's Department, Magistrates' Association, Victim Support and the Probation Service.
- <sup>xiv</sup> See Endnote vi.
- <sup>xv</sup> See Endnote iii.
- <sup>xvi</sup> A protective screen is placed around the witness box to prevent the witness seeing the defendant in the court room and vice versa.
- <sup>xvii</sup> "Live link" will usually mean a closed-circuit television link but could apply to any secure technology with the same effect such as video conferencing facilities or the internet.
- <sup>xviii</sup> This offers practical guidance aimed at helping make the court experience more accessible and comprehensible for parties and witnesses.
- <sup>xix</sup> This also applies to those who attend the police station on a voluntary basis.
- <sup>xx</sup> Directive 2010/64/EU states *"Translation and interpretation must be of sufficient quality to allow the persons concerned to understand the case against them and to exercise their right of defence. To this end, EU countries are required to set up a register of independent and qualified translators and interpreters, which should be available to legal counsels and relevant authorities"*.
- <sup>xxi</sup> See Endnote xviii.
- <sup>xxii</sup> (Rome, 4 November 1950; TS 71 (1953); Cmd 8969, article 6(1) (right to a fair trial) and 6 (3)(e) (right to interpreter).
- <sup>xxiii</sup> Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules, Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies. <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>
- <sup>xxiv</sup> The Nelson Mandela Rules, General Assembly resolution 70/175, annex, adopted on 17 December 2015. <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>
- <sup>xxv</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) Resolution adopted by the General Assembly on 21 December 2010 [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)
- <sup>xxvi</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988 <https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf>
- <sup>xxvii</sup> This sets out the criteria to inspect prisons and other forms of detention. Criteria are based on international human rights standards and are used to examine all aspects of life in detention.
- <sup>xxviii</sup> See Endnote xxvii.

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

For more information and to view the whole series, please go to [www.bell-foundation.org.uk](http://www.bell-foundation.org.uk)

**The Bell Foundation is a charity which aims to overcome exclusion for individuals who speak English as a second or additional language by working with partners on innovation, research, training, and practical interventions.**

## About Victim Support

We are an independent charity offering free, confidential support to people affected by crime and traumatic incidents.

For information and support, contact us by:

- calling: Supportline **08 08 16 89 111**
- using Text Relay (add **18001** before any of our phone numbers)
- Online: **victimsupport.org.uk**

To find out how you can help us, visit [victimsupport.org.uk/get-involved](http://victimsupport.org.uk/get-involved)  
**victimsupport.org.uk**

## About the Institute for Crime & Justice Policy Research

ICPR, Birkbeck undertakes academically-grounded, policy-orientated research on justice. All our research is informed by concerns with justice, fairness human rights and commitment to bringing about improvements in justice policy and practice.

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