

### **Statistics, Damned Statistics, and the Truth**

Wheeldon's experience at the hands of the Justice Select Committee on 30.10.12 was akin to being 'savaged by a dead sheep' to quote Denis Healey's words about Geoffrey Howe in 1978. Still Howe was not so woolly when he jugulated Margaret Thatcher's political career in 1990, so perhaps the JSC will prove to be wolves in sheep's clothing after all. Let's hope so.

#### **Short-notice Bookings:**

Be that as it may I want to start with the answer to question 132 of that JSC hearing. When Wheeldon miscalculated the percentage of short-notice hearings to be 'in the region of 5%' instead of 'more like 25% to 30%' he blamed the MoJ's Management Information. He's not the Delphic Oracle after all. Nevertheless this was a serious miscalculation which had profound consequences for the contract. It led to the withdrawal of ALS from the short-notice element of the booking requests. As a consequence of that, the statistics for such short-term requests (such as they were) were omitted from the official figures, meaning that the findings of the two statistical reports published so far must be hopelessly skewed.

On short-term bookings in general, the MoJ maintains two positions that are not mutually tenable. On the one hand, in the first statistical report, it peddles the line that the super-efficient ALS deals with bookings 'made less than an hour before they are needed' (p.10). On the other hand, back in February, the MoJ had issued the following directive: 'HMCTS *will* revert to the previous arrangements for *all* bookings due within 24 hours at the Magistrates' Courts'. Note the pseudo-robustness of the words 'will' & 'all'. Perhaps the MoJ would call this sort of directive 'long overdue diligence'. To move on however, the MoJ's submissions to the JSC (CI 67 paragraph 4) include the following sentence: 'statistics published in May 2012 [the initial report] show that just over 90% of bookings (*excluding short notice bookings*) were filled in April'. We will return to the subject of the availability (or otherwise) of statistics for short-notice bookings, but, for now, given Wheeldon's answer above, it seems that, even when the servicing of the contract was reaching a head of speed, only a maximum of 75% of 90% of all court interpreter bookings were being fulfilled. That is 67.5%.

#### **The Success Rate and the Customer-Absent/Interpreter-present issue:**

Now that 67.5% represents the contract's so-called 'success rate'. As Kasia Beresford has shown, this 'success rate' is a 'leger-de-main' (or should that be 'lourd-de-pied?'). The 'success rate' is calculated by adding the 'fulfilled cases' to 'customer-absent/interpreter-present' cases and dividing that by the total number of 'completed requests' (from which grand total all short-notice bookings and 'cancelled' requests are, however, excluded). Now this 'customer-absent/interpreter-present' category is of great interest for the very reason that the figures for it are unbelievably low. They add barely 0.1% to the 'success rate' and their inclusion alongside 'fulfilled cases' is therefore statistically negligible. According to the statistics it almost *never* happens that the defendant absconds when the interpreter turns up. But, if the bailed foreign defendant has a well-founded fear of prosecution and if the interpreter has every interest in earning what money he can from ALS, surely there should be a plethora of 'customer-absent/interpreter-present' cases? Our common experience as former denizens of the courts is that there were at least 12.5% of cases where we used to turn up to court to find no defendant. So should we conclude (A) that foreign defendants have suddenly become a conscientious bunch? Mmm. Or should we conclude (B) that in virtually all cases where the defendant does not appear *neither does the interpreter*. This is the stuff of high comedy. In other words Capita's fulfilment statistics would be boosted by nearly 12.5% if only their interpreters could simply make it in on time (or at all). They wouldn't have to translate a word (assuming they could). But they just can't get to court. Or ALS can't get one to court. This also shows that the Chief Statistician has overplayed his hand. He (or she, *pace* Kasia) has included a subcategory of statistics ('customer-absent/interpreter-present') that he or she thought would prove a useful top-up for the

‘fulfilment’ statistics. Instead it has made a laughing-stock of Capita’s ‘success rate’, because it adds nothing to that ‘success rate’ & must rather be accounted a resounding failure if judged on its own merits. And the Chief Statistician, by devising the tendentious phrase ‘*success rate*’, has rendered any further satirical comment superfluous<sup>1</sup>.

One apparent discrepancy leaps out from the first statistical report. On page 3 it says ‘Of all the initial requests for language services 2,825 or 11 per cent were either cancelled by the Courts and Tribunal Service, or the person for whom the translation service has been requested failed to attend. Of the remaining 23,234 requests the contractor Applied Language Solutions were able to fulfil 18,719 or 81 per cent of the assignments’. Despite here lumping the 27 ‘customer-absent/interpreter-present’ cases with the 2,798 ‘cancellations’, the report later decides to include these 27 cases alongside the ‘fulfilled cases’ in order to arrive at the ‘success rate’ (see above & note 2 on p.5 of the report). It is only the remaining 2,798 cancellations that are then discarded from the statistics. Nevertheless even with this *volte face*, the ‘success rate’ still comes out at 81% due to that shockingly low figure of 27 ‘customer-absent/interpreter-present’ cases. Overall one is left with the impression of a report that makes it up as it goes along. The second report does not repeat this error.

### **Cancellations**

And so to the ‘cancellation rate’. We must first ask ourselves in what circumstances a court would feel it appropriate to cancel an interpreter. Clearly whenever an interpreter turns up promptly, any ‘cancellation’ after that time will simply be recorded as a ‘customer-absent/interpreter-present’ statistic, not as a ‘cancellation’. We are left with following as possible scenarios:

#### **(A) The defendant has turned up. There is no interpreter.**

It will be 4pm, the court will be closing, there will be no interpreter, & the clerk will be wanting to reschedule the booking. Kasia has highlighted the anomaly that many of these it’s-too-late-in-the-day reschedulings have been recorded as ‘cancellations’ not - as they should have been - as ‘failures to provide’. At the JSC hearing Van Loo claimed that after the first couple of weeks of the contract there was no further misunderstanding among ALS staff about what constituted a ‘cancellation’ and what constituted a ‘non-fulfilment’. For a while, it seems, ALS had been classing ‘non-fulfilments’ as ‘cancellations’. Despite Van Loo’s assurances however, we cannot assume that most of the cases defined in the first sentence of this paragraph were deemed ‘non-fulfilments’ instead of ‘cancellations’. One has the uncomfortable feeling that the 4pm phone conversations may have started as queries before finishing up as cancellations. In any case we can be sure some (many?) such instances were recorded as ‘cancellations’. It would be interesting to know how many complaints made in the context of such cases were processed, and how many (all?) were simply binned on the grounds that they relate to a ‘cancellation’, that is, a ‘non-statistic’ to be wiped from the record. This is an important point. It seems unlikely to me that a 4pm ‘cancellation’ was *never* accompanied by a complaint.

#### **(B) The defendant hasn’t turned up. There is no interpreter.**

The first report clouds this issue by stating that requests can ‘fail’ [not quite the same as ‘be cancelled’] when ‘either the supplier (translator or interpreter) or customer does not attend (or arrives so late that the job is cancelled)’. By putting the phrase ‘or arrives so late that the job is cancelled’ in parentheses immediately after the word ‘customer’, the report is in danger of

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<sup>1</sup> Such a fine-sounding title: ‘Chief Statistician’. But such a lousy job description (‘Here’s your conclusions. Now reach them!’)

suggesting that it is generally the *customer's* tardiness that causes a cancellation. This is relevant to the discrepancy discussed in the previous section. The report-writers initially thought that the overall 'customer-was-too-late-or-never-appeared' category should constitute a cancellation (assuming the listings officer had rung in to cancel). But then they realised that they were losing a precious 0.1% of 'fulfillments' by not including the 'customer-absent/interpreter-present' subcategory alongside 'fulfillments'. This is also why the word 'fail' is used above. The report-writer would not want 'customer-absent/interpreter-present' cases to be categorised as 'cancelled'. At the same time this writer *would* want 'customer-absent/interpreter-absent' to be categorised as a 'cancellation'. The word 'fail' is a useful fudge. Of course the phrase 'or arrives so late that the job is cancelled' really means that either the customer or the interpreter (or both) arrive too late for the hearing.

In any case, we are interested here in the client's non-attendance or tardiness. This would only prompt a cancellation after 11.30 a.m at the very earliest since issuing an arrest warrant is a serious matter & not to be undertaken lightly. The court must initially assume the client has been unavoidably delayed. Indeed in many cases, the court will be too busy (or too inert) to bother cancelling an interpreter until after lunch (if at all).

### **Cancellations: Some Conclusions:**

Whatever the truth of the cancellations issue, there is one overriding conclusion that jumps out from all of this, one which hasn't been mentioned yet, & one which renders everything else insignificant. The point is that a cancellation should not be necessary under either of these scenarios (A) & (B) because the interpreter should have been at court by 10 a.m. If ALS & its 'linguals'<sup>2</sup> were doing their job, all instances of 'client-non-attendance-or-tardiness' should be entered into the 'customer-absent/interpreter-present' subcategory mentioned above. Yet that subcategory is virtually empty. Thus virtually all cancellations within categories (A) & (B) above will prove *per se* that the interpreter was late or did not arrive<sup>3</sup>. In that sense they should all be accompanied by an official complaint. I repeat: VIRTUALLY ALL CANCELLATIONS SHOULD BE INCLUDED IN THE 'NON-FULFILMENT' STATISTICS AND SHOULD AUTOMATICALLY DESERVE THE STATUS OF COMPLAINTS. That is why the statisticians want to excise all cancellations from the report. They don't want to excite interest in data that proves wholesale failure. At the same time they want to reduce the figure for overall requests in order to boost their 'success rate' percentages.

### **Cancellations: A Qualification and another Conclusion:**

Now, to be fair, perhaps a maximum of 5% of cancellations may be considered 'advance cancellations'<sup>4</sup>. For example on the day before the hearing the client phones in to say they are ill, or the court has an unforeseen training morning, or the solicitor has a (vehicular) breakdown a.m.

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<sup>2</sup> I suggest we use the word 'lingual' instead of the derogatory term 'terp' which is too close to 'twerp' for comfort. The word 'lingual' could convey 'monolingualism' (Tier 3 maximum?) or 'basic bilingualism' (Tier 2) but not 'interpreter professionalism' (Tier-less). The expression of the word 'lingual' is ungainly however. The middle consonants roll around the upper nasal cavity & the back of the throat. It is best expressed on paper.

<sup>3</sup> Note the statistics differentiate between 'unfulfilled' cases (ALS's fault) & 'customer-present/interpreter-failed-to-honour-their-booking' cases (not really ALS's fault). This is because this latter subcategory may prove useful to the MoJ at some stage in the future in the sense that it may be detached from ALS's (own) 'non-fulfilment' rate to bump up ALS's apparent performance. Notice also the undifferentiated use of the word 'customer' to mean variously (a) the court and (b) the client (see table 1 on p.5 of the initial report).

<sup>4</sup> Note that in principle no short-notice bookings (overnight remands) should ever be cancelled, given that the defendant is in custody and needs some form of disposal (for which the interpreter would be necessary). How convenient for the statistics that short-notice bookings are not part of the contract. If they had been part of the contract they would have seriously diluted the overall cancellation percentage.

before a p.m. hearing. But in general the inertia that prevails in court listings offices ensures that even in these cases the cancellation is rarely made. In any case, when a hearing has to be cancelled on the day through third-party failures (solicitor/barrister), the court might well take the view that they should not cancel the interpreter because the client will generally turn up & need to be informed of the new arrangements. On the other hand, unlike Kasia, my experience of the IAT tribunals is that advance cancellations *were* quite common. Nevertheless we can be confident that, given 11% of total requests were cancelled, at least 90% of these cancellations reflect ALS's inability to service the contract. In other words had the 'cancellations' been included in the statistics, ALS's effective fulfilment rate under the original terms of the contract would have been 67.5% minus 10%, namely 57.5%. And this is at a time when they were supposedly up to speed (April 2012).

### **The quality of ALS Interpreters and the Pilot Scheme for redirecting short-notice bookings back to ALS:**

The quality of ALS interpreters is another issue. In this regard there is a very curious comment in the MoJ's submissions to the JSC (CI 67 paragraph 32). In the context of a reference to a pilot scheme whereby several courts have reverted to using ALS for short-term bookings, we have the following: 'Overall, the courts have been happy with the communications that they have been receiving throughout the pilot and the interpreters that were sourced for the bookings attended the courts on time and conducted themselves appropriately within the court setting'. By implication this suggests that back in February when ALS *had* succeeded in getting an interpreter to court for a short-notice booking, that interpreter was invariably late or behaved inappropriately. Why would the writer feel moved to mention the quality of the short-notice interpreter unless such interpreters had previously had a dubious reputation? Has the report writer unwittingly let slip a thumbnail sketch of the type of 'linguals' that were being used at that time? Has the writer been subconsciously influenced by his or her knowledge of the complaints directed at such short-notice linguals? Are we to suppose that, in February, last-minute interpreters had been (at best) Tier 3, all other Tiers being exhausted? More questions than answers. As usual. Note also how there is no mention of the quality of the interpreting in this pilot scheme. What fools we were in the old days. It seems that if we'd turned up by 10, worn formal black attire, & not sneezed all over the Clerk, we needn't have worried about our language skills.

But of course, as the MoJ's submissions state (paragraph 39): 'The previous system for booking interpreters was inefficient and risky'. Indeed. The 'risk' was that that things would go smoothly.

### **The Hypothetical Figures for short-notice bookings (Jan-Aug):**

There is much more to be said about the pilot scheme however. During the JSC hearing on 30.10.2012 Van Loo said the following: 'So<sup>5</sup>, there are *a number of tribunal* bookings that are short notice, which currently aren't provided for by ALS, but we are in the process of moving those back under the framework agreement'. If Wheeldon's estimate is correct that (a minimum of) '25%' of requests were for last-minute

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<sup>5</sup> I dislike the modish use of 'so' to mean 'well' at the beginning of one's reply to a question. The reason it is so common is that it is assertive, whilst the word 'well' sounds conciliatory and engaging. In other words 'well' really means 'it's all *well* & fine what you say, but...'. Conversely, the word 'so' allows the interviewee to set their own agenda, partly because its meaninglessness and inappropriateness catches the questioner off-guard. By rejoining with the word 'so' it sounds as if the interviewee is reaching *their own* logical conclusion ('so' = 'therefore') rather than countering any challenge contained in the question. It is a power tool, nothing more. This sort of linguistic development is a diagnostic of the way our verbal culture is being appropriated by the power-players. What power-players never realise however is that their little games are obvious to the ones they consider 'non-power-players'. Whilst we 'non-power-players' may not answer back or challenge (immediately), we do, nevertheless 'judge'. In many ways these little games are useful to us. It is our good fortune that the power-players are too busy 'being powerful' to notice they are being judged.

bookings, and if there were 72,043 requests altogether handled by ALS between January & August<sup>6</sup>, this means that, since mid-February, as many as an extra 24,013 last-minute language requests, were thrown back onto the old 'risky' system during this period<sup>7</sup>. So Van Loo's phrase 'a number' comes to 24,013 in 35 weeks which is indeed 'a [big] number'. This works out at 686 cases per week or 114 cases per Magistrates' Court day (6 days a week). This does not seem an exaggerated figure for the whole country. Indeed it seems more likely to be an underestimation. Meanwhile Van Loo's phrase 'a number of tribunal bookings' utterly mischaracterises the problem. She knows the numbers are large & that the problem is essentially a Magistrates' Court problem.

### **The truth about the Short-Notice Bookings issue:**

But were these cases really thrown back? There is a fundamental misapprehension here. Throughout the Spring, Summer, and Autumn, and continuing into Winter, ALS have continued to field umpteen requests from police forces seeking an interpreter for short-notice remand hearings on the following day. The MoJ may have blithely declared that 'all' short-notice requests 'will' revert to the old system, but nobody told the police who are clearly responsible for making these bookings in the first instance. I am personally aware that Cambridgeshire Police, Suffolk Police, and Norfolk Police are still phoning ALS late at night for a court interpreter to be provided in the morning. What becomes of these requests? Are they being logged? If so, are they logged in such a way that the MoJ can access their details through the web portal, alongside the other statistics? That seems very doubtful as the telephone must be the main conduit for such bookings. Are ALS processing all these bookings? Or only a handful (the easy ones)? Do they bin some of them straightaway, knowing that the court has the discretion to call in a professional the next day? What about the Police themselves? It would be very convenient for the Police not to phone ALS at all. In so doing they would not have to pick up the tab for the interpreter. Money is tight after all. If the court calls the interpreter, the court pays. Nevertheless you can rely on most officers to follow the guidelines even when ALS makes life difficult by asking for the court reference number (as they have done in some cases).

In other words there *should* be statistics for these 'requests'. However, even if the statistics exist they will never see the light of day. Officially these 'requests' must be presumed not to exist. Or,

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<sup>6</sup> See table 9 of the 2<sup>nd</sup> report. Notice that this second bulletin reports that 163 languages were the subject of requests between January & August. The 1<sup>st</sup> report however had found that only 142 languages were active. Were there 21 languages dormant between January & April? Perhaps the Olympics & Tourism attracted an influx of exotic languages. Just as the Olympics & Tourism probably helped bump up the employment figures by 82,000? Temporarily, that is.

<sup>7</sup> If 72,043 is multiplied by 100/75 we get 96,057 which represents the overall number of cases (short-notice & subsequent cancellations included) which ALS would have had to deal with (Jan-Aug) if their short-notice work had not 'reverted to the old system'. We know that virtually 100% of short-notice bookings must be for overnight remands to Criminal Courts, a small fraction of which relates to Crown Courts, whilst the vast majority are remands to Magistrates' Courts. The MoJ admits as much in their JSC submissions at CI 77 paragraph 2 when they reveal their pilot scheme for redirecting short-term bookings to ALS is being carried out at 19 Magistrates' Courts and 1 Crown Court. No mention of tribunals. In any case, if we subtract 72,043 from 96,057 we get the potential number of short-notice bookings that ALS should have had to deal with Jan-Aug (24,013). Note that, given the detained status of the defendant, the number of cancellations for short-notice bookings should be virtually zero unless the interpreter failed to attend as instructed (see above). Note also that Wheeldon meant '25% to 30%' of *all* booking requests were short-notice. He did not say 25% to 30% of the Criminal Courts' *share* of booking requests were short notice [his words were 'it ended up that more like 25% to 30% of bookings were short notice']. Nevertheless this entire short-notice category (25% to 30% of all bookings) will be made up virtually entirely of Criminal Court remands (see above in this note). There is another corollary of these statistics. The 2<sup>nd</sup> report states that 53.4% of all requests were for Criminal Courts. Effectively therefore, if Wheeldon's 25% figure for short-notice-bookings is correct, the actual number of booking requests that should have been received for Criminal Courts (short-notice cases included) shoots up to 51,294 (53.4% of 96,057).

more precisely, any such requests that result in actual 'fulfilment' may be (somehow) logged while those that do not will no doubt default back to 'cancellations'. Yet there are countless cases where the court's policy (the next morning, as it were) is NOT to call in a professional interpreter, meaning that ALS's failure to provide for overnight short-term hearings will be causing serious disruption. This is the nub of the issue. It is these invisible 'non-events' (ALS short-notice booking request failures) that are creating havoc. But because the statistics for this havoc are invisible, the havoc itself does not seem (or 'is not seen') to exist. We are deep into the bowels of Kafka's Castle.

But can we prove this disruption without statistics? Peter Beeke, the Peterborough Senior District Judge has stated in his submissions to the JSC (CI 53) that there are 'still...cases where no interpreter is present and **we are not permitted to use local contractors** which might get round the poor level of service provided by ALS... **The blanket ban** is unnecessary as that would in certain circumstances provide an acceptable solution'. On the one hand this gives the lie to the idea that 'all' short-notice bookings had reverted to the old system. If that were so Cambridgeshire Magistrates' Courts would be phoning around every day looking for a professional interpreter for the numerous overnight remands that I know the courts are fielding<sup>8</sup>. The notion that 'all' short-notice bookings had reverted to the old system was always arrant nonsense designed simply to provide a pretext for the blanket non-publication of statistics on short-notice requests addressed to ALS since February. I live in Cambridgeshire yet since March I have not been called by any local court to step into the breach. Norfolk courts, on the other hand, have a more flexible policy on calling in professionals, yet even there the Police routinely call ALS to provide a court interpreter for overnight remand cases.

The truth must be that ALS are still fielding a very large number of short-notice calls & perhaps, sometimes, they do find an interpreter available. Very, very often they don't. But the important point as far as the MoJ is concerned is that NONE of these short-notice requests should ever appear in the official statistics. If they did, the MoJ's precious 'success rate' would be holed below the water-line. There would be all hell to pay. Hence the MoJ's in their submissions (CI 67 paragraph 4) can happily declare that '...just over 90% of bookings (*excluding short notice bookings*) were filled in April...'. The devil however is in the parenthesis. Unfortunately my FOI request for information on the direct booking of interpreters by courts has borne little comparative fruit (so far). All I have gleaned so far comes from the office which processes direct interpreter claims for the courts in Cambridgeshire, Essex, Norfolk, Suffolk, Kent, Surrey, Sussex, Bedfordshire, Hertfordshire and Thames Valley. It seems an average of 90 claims are received by this office every week. That means an annual figure of 4693 cases. If each claim averages out at £135 (including expenses) that gives an annual figure of £633,555. Time (and further FOIs) will tell if only £4 million is likely to be spent on these claims in the first year of the contract, as the MoJ have suggested.<sup>9</sup> Incidentally it is disappointing not to have received any information on which courts are calling in NRPSIs to make good ALS's failures of provision, for this would have also told us which courts were *not* calling them in.

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<sup>8</sup> The logic is this. If the MoJ say 'all' short-notice requests have reverted to the old system, then all overnights must be being covered by NRPSI interpreters. But at Peterborough Peter Beeke knows NRPSIs are NOT being called in. Therefore, either there are no overnight cases in Cambridgeshire, or the overnight cases are being left unprocessed in the cells since ALS do not currently have a mandate in Cambridgeshire for this short-notice element of the contract. In reality of course ALS *is* dealing with overnight requests for Cambridgeshire Courts, but not dealing with them very well. Yet there will be no statistics for this because in theory 'it is not happening'. And the intransigence of Cambridgeshire HMCTS in imposing a 'blanket ban' on calling in NRPSIs must be to reduce the statistics (and costs) relating to NRPSIs stepping into the breach. In other words the MoJ is happy to cause untold misery for defendants IN ORDER TO save face (& money) viz-viz the Framework Agreement.

<sup>9</sup> See CI 77 paragraph 11 of the submissions to the JSC

### **The Short-Notice Bookings Pilot Scheme and CI 77: Paragraph 1**

Now that we have mentioned material from CI 77 it is time to look at one of the most intractable paragraphs ever published by the MoJ during this sorry saga. At CI 77 section 2, in answer to the JSC's request for 'details of the short-notice booking pilot', we have the following reply: 'The pilot consists of 20 criminal courts, consisting of 19 Magistrates Courts and 1 Crown. This has progressed well and both the Midlands and Northwest HMCTS regions will begin to return their short notice bookings to the contract, commencing with the Midlands from 22 October. ALS provides booking services for interpreters in other areas and sectors; it is not possible to relate this to fulfilment or complaint statistics since some interpreters will choose only to work under one sector or contract, others may cover more than one'.

Whilst it would be useful to know which courts were actually involved in this pilot, one would most want to know the mechanism by which these pilot bookings are made. I repeat. Short-notice bookings are made by the police in the first instance; the court has no say in this except in cases which are adjourned by the court overnight, to be rescheduled the following morning at either the same court or a different one. This is a relatively infrequent occurrence. So in what sense does this pilot relate to courts when it is the police that initiate the majority of the bookings? Presumably these 20 courts are the recipients of cases referred by the police. But the courts are simply bystanders. They are not active in the booking process. Unless, that is, these pilot courts ring ALS at 09.45 once they find out (to their horror) that there are three Lithuanians & a Romanian in their cells for which the police have not booked any ALS interpreter. If that is the way it is set up, I very much doubt that the pilot 'has progressed well'. In such cases I know what I would do if I was a harassed Listings Officer with 55 other things on my mind. Call a professional. In any case Cambridgeshire Courts, amongst others, do not (apparently) need pilots. As we have seen, they are merrily fielding ALS overnight interpreter bookings from their respective police forces. Or should that be 'fielding overnight interpreter no-shows'? In conclusion the paragraph quoted from CI 77 is designed to convey the impression that the ALS court contract is revving up to full speed ahead, from a position where it had been shorn of ALL short-notice bookings until very recently. That the paragraph's words do not square with the situation on the ground scarcely seems to matter.

### **The Short-Notice Bookings Pilot Scheme and CI 77: Paragraph 2:**

The second paragraph however represents the high water mark of MoJ obfuscation. We'll take it phrase by phrase.

(A) *'ALS provides booking services for interpreters in other areas and sectors'*

In this context, '*other...sectors*' must refer simply to '*the Police*' in its role as a 'sector' (of the wider justice system). Meanwhile '*other areas*' must refer to the geographical '*areas*' that is the '*counties*' or '*blocks of counties*' which geographically define the areas where ALS have a police interpreting franchise (such as the North-West or Staffordshire). Thus there are several (geographical) '*areas*' but only one other '*sector*' (I suggest)<sup>10</sup>. That is because the only sector that can have any relevance to short-term bookings is the Police. And that relevance is crucial.

(B) *'it is not possible to relate this to fulfilment or complaint statistics'*

Now the word 'this' is left completely uncontextualized but it must relate to 'the pilot project' since this is the issue under discussion in this section. Perhaps it more specifically relates to 'the pleasing progress of the pilot scheme'. Yet the position of the demonstrative pronoun ('this') naturally relates 'this' to the

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<sup>10</sup> The vagueness of 'sectors' meaning merely 'sector' will be noted.

immediately preceding clause, namely the fact that 'ALS provides booking services in other areas and sectors'. This is designed to confuse the reader. In any case, 'this' refers to 'the pilot scheme'. What is really going on here? The writer of these paragraphs, having appraised the pilot scheme ('progressing well'), now anticipates the implied question ('so where's the proof?'). The writer tries to throw the reader off the scent (yet again) by suggesting that the statistics for the pilot scheme cannot be extracted from the reports' sets of data. Clearly this is an absolutely vital set of statistics bearing in mind what has been said in this article so far. The MoJ needs to know whether short-term booking can ever be safely entrusted to Capita again. I cannot stress enough the importance of this issue. Here we have the MoJ washing its hands of any responsibility for the statistical monitoring OF A PILOT SCHEME. What is a pilot scheme for if not to furnish statistical evidence for a future policy? Any organisation with any wish to avoid a complete debacle, any Ministry with any wish to be taken seriously as a branch of government, any government with any wish to avoid public embarrassment will *at very least* ensure that a pilot scheme is rolled out ON THE BEDROCK of data that can be statistically analysed within the strict parameters of that pilot study. Yet here we have a weasel-worded attempt to justify the shirking of all responsibility.

(C) *'since some interpreters will choose only to work under one sector or contract, others may cover more than one'*

Now the reason why the data cannot be extracted is blamed on the interpreters. On the face of it this is pouring salt on sore wounds. Let us try to examine what logic, if any, underpins this statement. The best way to do this is by way of an illustrative tale.

### **The Story of Frederic & Ferdinan:**

Two brothers Frederic & Ferdinan are Esperanto interpreters living separate lives in Preston. Frederic has 3 children with another on the way. He needs all the money he can get. To maximise his potential earnings he has signed up with ALS under both the North-West Police contract and the nationwide HMCTS contract. Ferdinan is younger, unmarried, likes sleeping late, but is happy to earn money late at night at Preston Police Station. He has only signed up to the North-West Police contract. In any case he has little or no court experience.

On a Tuesday night Ferdinan is called by ALS to go to Preston Police Station for a 'going equipped' case. The client is remanded to Preston Magistrates' Court the next day. Technically Ferdinan could do the court hearing under the N-W contract under the terms of which first hearings at court can be booked by the Police via ALS. But he wants to lie in. In any case ALS do not want Ferdinan to do the court hearing, partially because it is not good practice to have the same interpreter for the same case at both Police Station & Court. However, the main reason for ALS not wanting Ferdinan to take the court hearing is that Preston Magistrates' is one of the pilot courts for the redirection of short-notice bookings to ALS. ALS realise they must maximise the number of bookings made under the pilot to demonstrate their short-notice credentials. ALS therefore contact Frederic who, unlike Ferdinan, *is* registered under the HMCTS contract. Frederic duly deals with the case next morning.

The next night Ferdinan is out clubbing. A call comes in from ALS requesting him to go to Preston Police Station for a Section 5 Public Order offence. Ferdinan refuses the job. Instead ALS call Frederic who attends. Again the case is remanded to Preston Magistrates' Court the next day. But Frederic is visiting relatives the following day. No other interpreters are available under the HMCTS contract (there's a surprise). So ALS call Ferdinan who is luckily having a smoke outside the club. It is 23.50. Ferdinan agrees to go to court the next day (in a black suit, at 10.00, shaved as normal). But he has to go under the terms of the North-West contract because he is not signed up to the national HMCTS contract. He is duly booked for court the next morning.



So a print-out of the minimum necessary statistics for our pilot scheme might look like this:

23.10.12: Language: Esperanto (for 23.10.12)

Interpreter: Ferdinan Booking Origin: Preston Police Station Booking Destination: Preston Police

23.10.12: Language: Esperanto (for 24.10.12)

Interpreter: Frederic Booking Origin: Preston Police Station Booking destination: Preston Magistrates'

24.10.12: Language: Esperanto (for 24.10.12)

Interpreter: Frederic Booking Origin: Preston Police Station Booking Destination: Preston Police

24.10.12: Language: Esperanto (for 25.10.12)

Interpreter: Ferdinan Booking Origin: Preston Police Station Booking destination: Preston Magistrates'

Unfortunately at court on the 25<sup>th</sup> there is a complaint lodged against Ferdinan for being inappropriately attired. Ferdinan had struggled in on time but dressed in jeans. Being principally a Police interpreter, he had no suit. The complaint is logged as follows:

25.10.12: Language: Esperanto

Interpreter: Ferdinan Booking Origin: Preston Police Station Booking Destination: Preston Magistrates' Court Nature of Complaint: Interpreter inappropriately attired

However, even if this *is* comparable to the way statistics are compiled at ALS, nevertheless, later down the line, when statistics come to be collated, it will be impossible to tell whether Frederic's 24.10.12 appearance at Preston Magistrates' came under the N-West contract or under the national HMCTS contract (Frederic is registered for both). It should however be easy to distinguish under which contract Ferdinan carried out his job at Preston Magistrates' on 25.10.12, because he is not registered for the national HMCTS contract. All you need is a separate register of interpreter details for each contract. If those registers are not kept separate then problems will arise. In a nutshell this is the issue I take to lie behind the CI 77 paragraph.

But it is easy to refine the statistics. First of all we need to include another column with or without the letters 'IP' (= 'Interpretation Project') so that it is possible to differentiate the the FW contract in general from statistics relevant to the N-W contract. And we trust ALS know who is registered for which contract. Don't they? They do? Good. Well then, anyone can easily double-check the booking details by reference to these registers.

Or are we to understand ALS's statistics for overnight remand bookings utterly fail to distinguish which are N-W bookings & which national HMCTS bookings? And are we to understand also that that there is no way of distinguishing overnight bookings from any other bookings (that is, are the date *of* the booking and the date *for* the booking NOT both recorded)? But how could one monitor a short-notice pilot scheme without that diagnostic? Are we also to understand that ALS do not keep separate registers of interpreter details for separate contracts? As Kasia Beresford has shown, there is no security issue involved in not keeping languages or even interpreters' names confidential. Criminal Courts are open to the public.

Furthermore, it would be interesting to know if the criteria for interpreters to be able to work for the N-W contract are less exacting than the 3-Tier criteria for the national contract. If so, would not ALS want to avoid the scenario where overnight cases might be accidentally recorded as having been serviced by interpreters under the HMCTS contract, (such as could be the case with Ferdinan's court hearing), when those interpreters were only qualified to N-W contract standards? Shouldn't ALS have every reason to keep accurate and detailed statistical information? But, ironically, is this actually why the MoJ want to avoid accurate statistics? That is, does the MoJ prefer to ensure nothing can be gleaned for sure from their statistics so that no negative news can be unearthed, rather than ensuring

that everything can be gleaned from statistics so that the same negative news can help the MoJ to monitor, police, & supervise the contract like a responsible adult? A organisation that has a positive attitude towards its customers has this attitude towards its projects: 'perfect planning prevents pathetic performance'. However a defensive organisation that despises its customers has this attitude: 'incomplete information impedes inquiry into inadequacies'. In conclusion, one is forced to ask oneself the question: are the sources for the statistics-gathering process calibrated in such a way that allows ALS to claim not to know what interpreter does what job under what contract? If so, why?

This brings us to the entries on the record level data, which is appended to the MoJ's first statistical report. They begin with the court's name and sometimes give the language involved but not always. They certainly do not give the interpreter's name which, as we have seen, could be vital in deciding (or verifying) under which contract a particular case was carried out. Kasia has shown that these statistics have been redacted. Perhaps they used to provide more information. Clearly, as they stand, these statistics do not include information which would assist an analyst in extracting precise pilot data. They do not, for instance, contain any diagnostic feature that would indicate whether a job was a short-notice booking. In any case the assumption from CI 77 must be that such a diagnostic is beyond any statistical-gathering capability that the MoJ currently possesses. Furthermore, if these record level data include data which strictly speaking does not form part of the national contract that would be deeply disturbing. In other words are these record data contaminated with data from other contracts, such as first hearings at court under the North-West Police contract? Does ALS have just a single excel document into which all court booking statistics are entered by court name irrespective of the contract? The MoJ cannot blame professional interpreters for harbouring these doubts. These doubts only arise because paragraph 2 of CI 77 and the cloak of obscurity in which that paragraph has been veiled. That paragraph also includes a reference to the impossibility of evidencing *complaints* within the pilot scheme. In this regard, while Ferdinan's 'inappropriate attire' complaint should be logged under the N-W contract, given the lack of diagnostics in the record data sheets, it might end up as a black mark against ALS's pilot within the national HMCTS contract. We can't have that, can we? No, much better to have a system that does not allow precise data to be collected or collated so that any conclusions you like can be extracted from the undifferentiated mash of information.

If the FW statistics have become (or could become) contaminated with statistics from other contracts such as in the sample case I have outlined above, what does this tell us about the MoJ's regard for due diligence and robustness in policing the contract? It is a sham. It is also outrageous to blame one's inability to harvest statistics on the vagaries of individual interpreters' professional choices, especially when no statistics emanating from the contract contain any diagnostic feature relating to the interpreter's allegiance to different contracts. Quite the reverse. Often not even the language is disclosed, never mind the interpreter's name.

In the end, with statistics, if one lives by the sword, one dies by the sword. And it is not just about number-crunching. The deliberate vagueness with which one expresses oneself only makes one's readership more determined to get at exactly what one is trying to fudge. If one wants to avoid the charge of being economical with the truth one is better off publishing what one knows in a straightforward way. Unfortunately it seems that the MoJ's statistical sources are calibrated in such a way as to thwart any attempt to assess fairly such information as they provide. When one is a statistician without one's real tools (information) it is ill-advised to claim one has other tools (interpreters) that don't work. It won't wash. It is up to ALS to keep records of its contracts, not for interpreters to stick to one contract or the other. It is frankly embarrassing to have to point this out. And a word of warning to statisticians. The very act of excusing oneself from evidencing one's claims, can come back to bite one. It would have been far better not to have said that the pilot scheme was 'progressing well' because then one would not have had to explain why one cannot prove it. One makes one's bed, one lies in it. And I use the word 'lies' advisedly. Of course the MoJ will claim it is

ALS/Capita's fault the statistics are calibrated that way. The MoJ, they will say, cannot be blamed if commercially sensitive statistics are redacted or lack detail. What the MoJ will not say is that it has abrogated all responsibility for the proper stewardship of the HMCTS contract.