



Access to Justice Consultation

Northern Ireland



DEAF ASSOCIATION
NORTHERN IRELAND



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Colette McMahon

Access & Inclusion (BSL & ISL Charter) Officer

British Deaf Association (Northern Ireland)

Unit 5c, Weavers Court, Linfield Road, Belfast, BT12 5GH

T: 02890 437480

E: eco.ni@bda.org.uk

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Introduction and Overview

In October 2015 the British Deaf Association Northern Ireland (BDA) received funding from the Department for Communities (DfC) [formally known as the Department for Culture Arts and Leisure] to research Deaf people's access to the justice sector. Historically, no work has been undertaken within this sector in Northern Ireland in relation to making its services accessible to Sign Language users. Feedback from the BDA's Advocacy team indicated that an increasing number of vulnerable 'Deaf adults experience significant issues in accessing appropriate legal advice and representation due to language and communication barriers. In order to do this research, two consultations were held between the Deaf community and representatives from the justice sector.

A second aspect of this funding was to deliver Deaf Equality Training (DET) and British Sign Language (BSL) Taster Training. In order to do this, the BDA (NI) worked directly with The Law Society NI, The Bar Library, Legal Services Agency Northern Ireland, The Police Service of Northern Ireland (PSNI) and The Northern Ireland Courts and Tribunal Service.

For a number of years now, the BDA has been operating its British Sign Language and Irish Sign Language (BSL & ISL) Charter to encourage public and private organisations to adopt good practice and build on existing capacity to eliminate unlawful discrimination, advance equality of opportunity and develop good relations with the Deaf community.

The Charter has five Pledges:

- 1.** Ensure access for Deaf people to information and services
- 2.** Promote learning and high quality teaching of BSL/ISL
- 3.** Support deaf children and their families
- 4.** Ensure staff working with Deaf people can communicate effectively in BSL/ISL
- 5.** Consult with local Deaf communities on a regular basis

As a result of this funding, it is envisaged that justice organisations involved will have worked towards achieving pledges one, four and five.

The BDA's research and production of this report coincides with Lord Justice Gillen's two-year 'Review of Civil and Family Justice', which commenced in September 2015. It is hoped the outcome of the Review will improve access to justice, achieve better outcomes for court users, create a more responsive and proportionate system, and make better use of available resources. In order to make the process as inclusive as possible, BDA assisted in the organising and promotion of a meeting between Lord Justice Gillen and the Deaf community.

¹ Please note use of convention of using deaf (lower case "d") to indicate the audiological condition of not hearing, and Deaf (upper case "D") to indicate those who identify culturally and linguistically as members of the Deaf community.

BDA (NI) has collated the information obtained through the mechanism of the two consultations to produce this document. The first consultation was held in The Law Society and the second was in Jordanstown School (the Northern Ireland school and centre of excellence for children who are deaf or visually impaired). This report reflects upon the experiences shared, both positive and negative and offers a number of suggestions for areas which can be improved upon in order that the Deaf community will receive a high level of access to legal services.

This is the first report of its kind in Northern Ireland and follows steps taken to consult with members of the Deaf community and to share their experiences with representatives of the Justice System.

2 Objectives

The overall objective of this report is to assess the current level of the Deaf Community's access to the Justice system.

We aim to focus upon

- The barriers Deaf people face when accessing solicitors and barristers
- The use of British/Irish Sign Language Interpreters in legal settings
- Access issues which Deaf people face in court and prison
- Deaf people's experiences of accessing and using the legal system and suggestions for improvements

We hope that this report will work towards:

- Improving the Deaf Community's access to the Justice system
- Eliminating the barriers which Deaf people face when accessing solicitors and barristers
- Improving Deaf Awareness amongst people working within the Justice sector and the service as a whole
- Ensuring that the information and services received by the Deaf Community is equal to that of wider society

3 Methodology

3.1 Primary Research

Deaf people attended two consultation meetings conducted and facilitated by BDA (NI). The first consultation, held in The Law Society, took place on Wednesday 10th February 2016. In attendance were six representatives from The Law Society, The Bar Library, Legal Services Agency and The Police Service of Northern Ireland. The event was a three hour session and was well attended by twenty six members of the Deaf Community. The group of eleven men and fifteen women spanned across a wide age range and consisted of a mixture of BSL and ²SSE users. At the meeting participants were asked to share their experiences of accessing the Justice sector. This took place in the form of a question and answer session led by Alice Johnston, Access and Inclusion Officer (Advocacy) and Colette McMahon, Access and Inclusion Officer (BSL/ISL Charter).

The second consultation was held in Jordanstown School on Tuesday 22nd March 2016 and was attended by Lord Justice Gillen, members of the Deaf community and parents of Deaf children. This was a two hour session and had sixteen people in attendance. The group consisted of seven men and nine women from across a wide age range, and consisting of a mixture of BSL and SSE users. At the meeting the participants were asked to share their experiences of accessing the justice sector. This took place in the form of a question and answer session chaired by Lord Justice Gillen and Brian Symington.

3.2 Secondary Research

The following reports and articles were used as useful control factors and to broaden the scope of evidence.

- Access & Inclusion: A Report on Hate Crime in Scotland's Deaf Community.
A report by BDA 2015
- Must do better! Barriers to achievement by deaf children. A report by NDCS 2007
- In search of justice, BDN, August 2015

4 Findings

The key concerns for Deaf people and those most frequently expressed in the consultations regarding access to the Justice system included the following areas:

Access to Information and Services:

Interpreters

- Who pays for the interpreter? When a Deaf person visits a solicitor, quite often there have been queries over who books and pays for interpreters.
- Normally solicitors cannot apply for legal aid until they have been “instructed”. The interview where solicitors receive “instructions” requires interpreters but many solicitors do not provide this.

One participant said:

“I wanted to see a solicitor but when I asked, I was told that they would not pay for interpreters.”

The Disability Discrimination Act (DDA) came into effect in 1995 and has been amended a number of times since by regulations implemented in Northern Ireland. Anyone with a disability is protected by the DDA which defines disability as “a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities”. The DDA covers key areas of life such as employment and training; education; goods, facilities and services; premises and transport. The Act makes it unlawful for service providers to discriminate against disabled people in certain circumstances. Those who are Deaf are recognised under the DDA and therefore, solicitors / barristers are responsible for the booking and payment of sign language interpreters as noted in the Law Society statement³.

- The small number of interpreters who work in the Legal domain.
According to statistics from The National Register of Communication Professionals working with Deaf and Deafblind People (NRCPD)⁴, as of February 2016, there are 24 BSL Registered Sign Language Interpreters (RSLI’s) in Northern Ireland. The BDA recommends that only RSLI’s are booked to work within the legal/justice domain. However not all of these 24 BSL interpreters work within the Justice sector – it is estimated that only eight BSL RSLI’s work in this domain. Of these eight there are five female and three male interpreters. Our recommendations regarding interpreters and legal work are that they should be 5 years Post-qualified and have undertaken a further training element focused on legal work. As there are no protocols in place, we recommend this be adopted by legal establishments as a baseline.
- This situation is further exacerbated by the lack of Irish Sign Language Interpreters in Northern Ireland. There is one ISL interpreter working in a limited capacity within the legal domain. If a Deaf person requires an ISL interpreter, the agency with the current court contract (Action on Hearing Loss) has to source ISL interpreters from the Republic of Ireland.

³ <http://www.lawsociety.org.uk/support-services/advice/practice-notes/interpreters-in-criminal-cases/> (4.3)

⁴ <http://www.nrccd.org.uk/news.php?article=126>

Court

- The Defence and Prosecutor in court need to have their own interpreters
- Courts provide interpreters - but if a Deaf person is given a prison sentence - what happens then? Interpreters do not go with the convicted person whilst they are being transported to prison resulting in the prisoner being immediately cut off from communication. This raises a further question: is there continuity of information between the services (court, prison, probation) to ensure the Deaf persons' needs are taken into account?
- It is advisable to provide a private room for the Deaf client during consultations as a busy corridor in court can be a barrier to effective communication.

Prison

- Are interpreters booked for a prisoner to participate fully in prison life, attend courses, rehabilitation sessions etc? Do Deaf people receive equal treatment as their hearing peers in prison? The BDA's reports in England⁵ suggest not.

Communication barriers

Police

- Concerns were raised on the issue of handcuffing Deaf people as this takes away their ability to communicate
- It is important for police officers to be aware that Deaf people's body language may make it look like they are aggressive when this may not be the case. In the Deaf community among sign language users, anger is expressed by a person using a larger signing space – this can result in situations of stress or high level emotions when a Deaf person is giving an explanation but without aggression
- The use of tear gas reduces a Deaf person's ability to communicate i.e. lip-read, see sign language, therefore affecting the Deaf person's ability to understand what is happening, which in turn may lead to the Deaf person becoming frustrated and aggressive
“How can you lipread or communicate when you can't see properly?”
How many police officers can use sign language, either British Sign Language or Irish Sign Language?
- How a police officer approaches a Deaf person is important. The officer needs to explain reasons for stopping the Deaf person and asking questions. How does this happen when the officer cannot communicate with the Deaf person?

Information / Websites

- As English is most Deaf people's second or sometimes even their third language, concerns were expressed about accessing written information. In addition to this, it needs to be considered that the lack of educational attainment of Deaf people, due to a number of factors, compounds the lack of access for them.

5 A Double Sentence, Deaf Prisoners in the UK 2000 and internal report: Throw Away the Key?, How Britain's Prisons don't rehabilitate Deaf people 2016

Table 1: Northern Ireland – educational achievement of deaf pupils (2005/06)⁶

Percentage of school leavers	Deaf Pupils	All Pupils	The attainment gap in relative terms
Gaining 5 or more GCSEs graded A*-C in any subject	48%	64%	-25%
Gaining the equivalent of 2 A levels	31%	44%	-31%

Data from NDCS school leaver survey. Data from Northern Ireland specifically excludes deaf children who have some form of additional learning need

Contacting Emergency Services

- There is a new SMS service/facility for Deaf people to contact emergency services. User feedback raised concerns on this more recent system and the response time – experiences suggest it appears to take longer to get a response as the emergency text is sent to a national system rather than a local one.

“I saw someone running away after snatching an old lady’s bag and so I texted the emergency services. I got an answer the next day – what use is that? The old lady was very upset.”

Citizenship Jury Service

- A number of Deaf individuals mentioned that they have been excluded from jury service due to needing an interpreter present. The reason for this exclusion is that the interpreter is seen as the 13th person and by law there can only be 12 people in a jury room.

Ireland and UK

Legal challenges to exemptions for Deaf people carrying out jury service led to a number of public commitments to end this discrimination – which were, ultimately, not taken forward. Most recently, in late 2011, the Government’s Office for Disability Issues (ODI) submitted in their initial report to the UN on the UN Convention on the Rights of Persons with Disabilities that the prohibition on Deaf jurors should be reviewed⁷. However, concerns remain within the legal profession around the role of sign language interpreters and whether they could potentially participate in a jury. Judges in both regions have also expressed concern about having a 13th person in the jury room which would breach jury law⁸.

Court

- A lack of understanding of the role and remit of the various courts
- Deaf people should be trained to act as intermediaries– currently there is just one Deaf person trained in this role and based in England. This is very different from a Deaf “Relay interpreter” (who works to the same code as a qualified sign language interpreter and is restricted to

⁶ Data from School Leaver Survey (2005/06)

⁷ See HM Government Office for Disability Issues UK Initial Report: On the Convention of the Rights of Persons with Disabilities, (May 2011) at page 113. Available at <http://odi.dwp.gov.uk/docs/disabled-people-and-legislation/uk-initial-report.pdf>.

⁸ <https://www.bda.org.uk/in-search-of-justice>

facilitating communication only) as the intermediary can add to the communication process by, for example, explaining court procedures or intervening in court proceedings if they feel their client has not fully understood what is happening or what a question meant in order to ensure a fair trial.

- There has been government funded court intermediary training within Northern Ireland but to date no Deaf people have been included. One Deaf person who expressed an interest was too late to avail themselves of the training as the information was not easily accessible and resulted in too late an application. At the time of compiling this report, there are no known plans for further training to be provided. There is therefore a continued lack of Deaf intermediaries within the NI court system.

Prison

- How much access to information and services does a Deaf person have in prison?

Good Practice:

- Not all experiences with solicitors are negative. There have been cases where solicitors have done extra work to ensure that Deaf sign language users feel included and have full access to information related to their issues. One participant shared her experience of using a solicitor who was very willing to book an interpreter for their consultations
- There are solicitors who have attended or are still attending BSL classes to be able to communicate with their Deaf clients. There are two solicitors in Northern Ireland that have Level four and Level six BSL qualifications
- A Deaf man in an employment tribunal setting originally thought he could cope without interpreters was advised by his Deaf aware legal team to use interpreters as he would have full access to all the proceedings. The Deaf person quickly realised once in the setting that they had been given the most appropriate advice
- Another Deaf man cited his positive experiences with the Equality Commission and their support for his disability / religious discrimination case.

5 Case Studies

- A** A Deaf couple with a deaf child were due to attend a tribunal and had been asked if they had any specific requirements, to which they had responded “sign language”. However the family use two different sign languages, i.e. Irish Sign Language (ISL) that the father and child both use while the mother uses British Sign Language (BSL). The tribunal was informed of the need to book an ISL interpreter but in reality they had only booked a BSL Interpreter and so the mother ended up relaying the information from the interpreter to her family and vice versa. This limited the amount of information and interaction.

The same family attended a tribunal on a second occasion and this time both ISL and BSL interpreters were present. Proceedings went smoothly until it was decided that there was a need to have an informal discussion with the Deaf child outside the court room and there was an expectation that the interpreters that had been booked for the tribunal would be able to do this. However, the recommendations by one of the interpreting professional bodies is that there needs to be separate interpreters for discussions outside the court room (see [https://www.asli.org.uk/all_documents/best_practise_advice/asli_legal_interpreting_best_practice_libp_2015_Section F12.1](https://www.asli.org.uk/all_documents/best_practise_advice/asli_legal_interpreting_best_practice_libp_2015_Section_F12.1)). On the third tribunal attendance BSL and ISL interpreters, were booked, who were to interpret inside the courtroom. However the tribunal refused to pay for an interpreter for discussions with the legal team outside of the courtroom. A third party had to cover the costs of a BSL interpreter for these discussions.

This case study raises two issues. When booking interpreters it is important to confirm if the Deaf person requires BSL or ISL as there are two sign languages in Northern Ireland. The second point concerns the cost of interpreter provision outside the court room, as it should be recognised that discussions which take place outside are vital and can detrimentally affect potential outcomes if there is not clear communication

- B** Participants commented that while the Court Service makes provision for interpreters during the hearing no provision is made for the person’s communication needs once they are taken from the court room. This was felt to be a denial of the person’s right to understand procedural information.
- C** A solicitor did not cover interpreter costs to enable a Deaf person to access their professional service during consultations. The client’s right to accessible information was denied. Consultations continued without interpretation. This resulted in the solicitor misunderstanding the client’s instructions and was instrumental in leading to a child custody case.

6 Deaf Equality Training & BSL Taster

BDA's Access & Inclusion Officer (BSL & ISL Charter) invited people working within the justice sector to a full days training on Deaf Equality and British Sign Language taster. The training was advertised by The Law Society NI to their members and by Legal Services Agency Northern Ireland, who advertised this course to their contacts.

The demand for the course was so high that the BDA provided training over two separate days. The first session had ten participants, which included members of the Bar Library, staff from The Northern Ireland Courts and Tribunal Service and solicitors. The second session was delivered in April and had ten attendees from the PSNI, The Equality Commission and Legal Services Agency Northern Ireland.

7 Recommendations & Conclusion

BSL/ISL is the first or preferred language of participants involved in the consultation process and as such, access to services in BSL/ISL is vital in all areas of a Deaf person's life, including education and learning. Without this a Deaf person is likely to be excluded from, or experience significantly reduced access to services. The findings of the consultation meetings are consistent with the findings of the limited national studies available, thus supporting the evidence that Deaf people face a number of barriers in accessing legal services and the Justice system and that access to the justice system, lawyers/solicitors, and police forces currently falls short of the expectations of Northern Ireland's Deaf BSL/ISL users.

There are a number of recurrent themes regarding access which have been consistently reported on and evidently disadvantaging Deaf people:

- All staff should receive Deaf Equality Training. Law students could receive this as part of their university programme and front-line staff would receive this as part of their continuing professional development
- All those involved in the legal process, including solicitors, barristers, Clerk of Court, the PSNI and so forth need to understand the importance of booking fully qualified sign language interpreters
- It is difficult for Deaf Sign Language users to make direct contact with the various departments and bodies within the justice system as these are most often either written or by phone. Email or mobile telephone text messaging for appointments and enquiries would be more appropriate and effective
- Staff need to be aware how to use technologies to aid communication.
- Family members should never be used to communicate and staff should be aware of how to book an interpreter
- A video relay service is an option in a police station when no interpreter is available or if a person is attending without notice. However, when possible, it is preferable to have a face to face sign language interpreter in legal settings.

Deaf participants suggestions for key points to be included in any training delivered to legal representatives and Department for Justice staff:

- Understand that the interpreter is not as an emotional support for the Deaf person
- Visual communication to be used
- Avoid assuming a baseline level of understanding of legal issues
- Use plain English when using written communication and avoid jargon
- Ensure the Deaf person fully understands all the legal terms used and the implications
- Appreciate that many Deaf people prefer to be seen as a minority language group rather than disabled
- Legal documents such as letters, How to make a will etc should be delivered to the Deaf client in both a hard copy format but also translated by a qualified sign language interpreter so they have full access and understanding or sign posted to the relevant deaf organisation who could assist the Deaf person in understanding the correspondence, for example advocacy services.

8 Glossary & additional information

Hearing

This is a term used by Deaf people to denote those who are non-deaf.

Deaf (upper case 'D')

This term refers to someone with a strong cultural affinity with other Deaf people and whose first or preferred language is BSL. The BDA uses the capital 'D' to denote adults who have BSL as their first or preferred language and have Deaf culture.

deaf (lower case 'd')

Because many Deaf people do not use BSL while at school, we tend to use the lower-case 'd' for children. This is also used for people with significant hearing loss who tend to use exclusively speech and lip reading to communicate as English is their first language.

BSL/English Sign Language Interpreter

This refers to a fully trained and registered interpreter proficient in both British Sign Language and English. They are sometimes referred to as BSL/English Interpreters.

Registration

The National Registers of Communication Professionals working with Deaf and Deafblind People (NRCPD) register Sign Language Interpreters on two levels:

- Trainee
- Registered

They have achieved the appropriate skill qualifications and have undertaken interpreting training resulting in a recognised qualification. Registered and qualified BSL/English interpreters tend to be members of a representative body.

The current membership bodies are:

- **Association of Sign Language Interpreters (ASLI)**, exists to maintain and improve standards of service within the interpreting profession, raise awareness of sign language interpreting within the Deaf and mainstream communities and lobby government and regulatory bodies in order to achieve high levels of recognition and provision wherever possible. ASLI is a membership organisation that encourages members to maintain and enhance their practice by offering opportunities for continuous professional development (CPD)
<https://www.asli.org.uk>
- **Visual Language Professionals (VLP)** <http://www.vlp.org.uk>
- **Institute of translation & Interpreting** <http://www.iti.org.uk>

The current regulator body (recognised by the Ministry of Justice⁹) is:

- National Registers of Communication Professionals working with Deaf and Deafblind People (NRCPD), exists to protect the public by regulating communication and language professionals who work with deaf and deafblind people. <http://www.nrccd.org.uk/>

The Scottish Association of Sign Language Interpreters (SASLI) is a special case – being both a membership organisation and maintaining the register of Sign Language Interpreters and Communication Professionals in Scotland.

Videophone

This is usually used online, via a webcam, or by using stand-alone videophone equipment that uses the telephone system to transmit visually in addition to audio calls.

Video Interpreting Services (VIS):

There are two types of Video Interpreting Services:

Video Relay Services (VRS)

This is used when the Deaf person and the hearing person are in separate locations. The BSL/English Interpreter is in a different location to both parties. BSL/English interpreter relays the conversation back and forth between the two people using a telephone link to the hearing person and a video-phone link to the Deaf person.

Video Remote Interpreting (VRI)

This takes place when the Deaf person visits an establishment to meet a hearing person. They use a BSL/English interpreter or ISL/English interpreter using an online video link to communicate with each other – no telephone call is involved. Some local authorities are experimenting with this as a way to improve access for BSL or ISL users.

⁹ Statement by ASLI in February 2016: "The Ministry concluded NRCPD and SASLI meet its requirements, but "RBSLI does not at this stage have sufficient governance, policies and processes in place to be named as a voluntary regulatory body in our specification"."

9 BSL / ISL Charter

The BDA is asking local and national services across the UK, in the public, private and voluntary sectors, to sign up to our Charter for British Sign Language (BSL) and Irish Sign Language. The Charter sets out a number of key pledges to improve access and rights for Deaf people who use sign language.

The five pledges:

- 1.** Consult formally and informally with the local Deaf community on a regular basis
- 2.** Ensure access for Deaf people to information and services
- 3.** Support Deaf children and families
- 4.** Ensure staff working with Deaf people can communicate effectively using British Sign Language
- 5.** Promote learning and high quality teaching of British Sign Language.

Please contact us for the full document.

The British Deaf Association – BDA

The BDA stands for **D**eaf **E**quality, **A**ccess and **F**reedom of choice

Vision

Our vision is Deaf people fully participating and contributing as equal and valued citizens in wider society.

Mission

Our Mission is to ensure a world in which the language, culture, community, diversity and heritage of Deaf people in the UK is respected and fully protected, ensuring that Deaf people can participate and contribute as equal and valued citizens in the wider society. This will be achieved through:

- Improving the quality of life by empowering Deaf individuals and groups;
- Enhancing freedom, equality and diversity;
- Protecting and promoting BSL.

Values

The BDA is a Deaf people's organisation representing a diverse, vibrant and ever-changing community of Deaf people. Our activities, promotions, and partnerships with other organisations aim to empower our community towards full participation and contribution as equal and valued citizens in the wider society. We also aim to act as guardians of BSL.

- 1. Protecting our Deaf culture and Identity** – we value Deaf peoples' sense of Deaf culture and identity derived from belonging to a cultural and linguistic group, sharing similar beliefs and experiences with a sense of belonging.
- 2. Asserting our linguistic rights** – we value the use of BSL as a human right. As such, BSL must be preserved, protected and promoted because we also value the right of Deaf people to use their first or preferred language.
- 3. Fostering our community** – we value Deaf people with diverse perspectives, experiences and abilities. We are committed to equality and the elimination of all forms of discrimination with a special focus on those affecting Deaf people and their language.
- 4. Achieving equality in legal, civil and human rights** – we value universal human rights such as the right to receive education and access to information in sign language, and freedom from political restrictions on our opportunities to become full citizens.
- 5. Developing our alliance** – we value those who support us and are our allies because they share our vision and mission, and support our BSL community.



020 7697 4140 | www.bda.org.uk | bda@bda.org.uk

The BDA stands for **D**eaf **E**quality, **A**ccess and **F**reedom of Choice

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