



*Deaf Studies Trust*

# Legal Choices – Silent Process

Engaging legal services  
when you do not hear





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*Bristol, March 2012*

# Legal Choices – Silent Process

## Engaging Legal Services when you do not hear

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In response to Tender “*Understanding the needs of legal services consumers with hearing loss*” by the Legal Services Consumer Panel, the Solicitors Regulation Authority and Action on Hearing Loss.

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## Foreword

The Equality Act 2010 requires service providers to make reasonable adjustments for disabled people in the way they deliver their services, and to ensure that disabled people are not put at a substantial disadvantage compared to non-disabled people in accessing services. Getting this right in legal services is fundamentally important, as people often seek legal advice in times of serious need, when justice is required and liberty could be at risk.

Every consumer has specific needs when obtaining legal services and some may face a greater risk of disadvantage due to a range of factors, including physical and mental ability, language skills, financial constraints, or other personal situations. If legal service providers do not respond appropriately to these needs, people may not be able to access the services that they need effectively.

There is a lack of information about how different circumstances affect access to legal services, suggesting a need for research into the experiences and needs of different consumers. On this basis, the Legal Services Consumer Panel, the Solicitors Regulation Authority (SRA) and Action on Hearing Loss jointly commissioned this report from the Deaf Studies Trust on the experiences of people who are deaf or hard of hearing. We chose this consumer group as a way of beginning to understand how different circumstances can result in disadvantage for individuals.

Our three organisations have welcomed the opportunity to work in partnership on this important project. Legal services need to be accessible to everyone; we want lawyers to innovate and strive for excellence in making this happen, and we want consumers to know how to make informed choices and make it clear to lawyers what they need.

This report raises a number of important findings. It clearly demonstrates the need to break down the communication barriers that exist for some people who are deaf or hard of hearing, especially in a legal world that typically employs complex language and emphasises verbal interaction. The report highlights the need for greater deaf awareness from legal service providers, for law firms to embrace diverse ways of communicating with consumers and to recognise the different needs of their clients.

There are some striking similarities with what we know about the experiences of other consumers. Any consumer can feel intimidated when seeking legal advice, may not understand legal jargon and may find it difficult to choose between providers. Consumers with hearing loss are unlikely to be alone in facing the difficulties that they describe, though due to their particular needs, some issues are brought into sharper focus, especially communication barriers.

That said, it is heartening to see that there have been some good experiences; situations where people have felt able to access legal services in a way they felt comfortable and where there was good deaf awareness from those providing legal advice. Such examples are important as it shows that accessible legal services are possible.

Looking forward, we hope to use this report to drive positive and practical changes in the delivery of legal services. We would like to see law firms adopt a Design for All approach to legal services, meaning that services are accessible to all people, and adaptable to different needs. If such change can be made, this should improve the experiences of people with hearing loss as well as for many other consumers.



The SRA will use this report as the catalyst for providing advice to those it regulates about best practice in delivering legal services to consumers with hearing loss. Firms and individuals regulated by the SRA should strive for flexibility in delivering their services in ways that best fit the individual circumstances of consumers, and we will aim to drive improvements and increase deaf awareness within firms across England and Wales.

Action on Hearing Loss will lead the development of support information for consumers, in both written form and British Sign Language. This will be made widely available through a range of organisations, including the Panel’s website and the SRA’s online consumer advice.

Drawing on the lessons learnt from this project, the Legal Services Consumer Panel will explore the factors contributing to vulnerability for other consumer groups and aim to identify additional steps that can be taken to improve access to legal services for all. The Panel will also be encouraging the approved regulators to adopt the new British Standard on inclusive services, as it has done to help think through its own approach to consumer vulnerability.

Finally, there are some specific issues raised by this research that are beyond our remit. In particular, the question of interpreting, both its regulation and costs, is clearly of pressing importance, and is likely to go beyond the legal market to many other services. The report highlights the need for greater clarity for consumers and service providers around who is responsible for interpreting and how interpreting needs can best be met. The Panel will be writing to the Equality and Human Rights Commission to seek greater clarity around the ‘reasonable adjustments’ required under the Equality Act 2010, and this report will be shared with other stakeholders in order to encourage wider action on the issues raised.

This project has been the first in a series exploring the needs and experiences of different consumers. We plan to continue to improve our understanding of how different consumers engage with legal services. If you would like to be involved in future work, we would very much like to hear from you.



**Elisabeth Davies**

Chair

Legal Services  
Consumer Panel



**Antony Townsend**

Chief Executive

Solicitors Regulation  
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**Jackie Ballard**

Chief Executive

Action on Hearing Loss

## The Brief

To sample the target group of Deaf and hard of hearing users/consumers in England and Wales in metropolitan and rural areas, who have experience of choosing a lawyer in the previous two years.

To answer the following questions:

- What circumstances contribute to people with hearing loss being vulnerable when purchasing legal services?
- Do these circumstances result in adverse outcomes when using lawyers? If so, how?
- Are the legal and communication support needs of the above group being met?
- If not, what practical steps could be taken by the profession and regulators to improve their access to legal services and avoid any adverse outcomes?

And in more detail about people with hearing loss:

- What are their legal needs?
- Where do they access legal services? Why do individuals choose a particular law firm/ legal service over other ones, and what are the criteria they look for in making this choice?
- Are there specific circumstances/factors/business practises that make accessing legal services, and obtaining satisfactory outcomes, better or worse? Why?
- What have been the experiences of different individuals?
- Are there common themes in these experiences?
- What changes could improve access to legal services or help avoid adverse outcomes?
- How, if at all, do the above issues differ depending on an individual's type and extent of hearing loss?

Responses to these questions are set out in section five of this report.

# 1 Executive Summary

## 1.1 Study aims

The purpose of this study was to determine how accessible legal services are to Deaf and hard of hearing people by examining the experiences of this group of consumers. The study also sought to identify good practice and make recommendations. The study was commissioned by the Solicitors Regulation Authority (SRA), the Legal Services Consumer Panel and Action on Hearing Loss (AoHL). There were four questions:

- What circumstances contribute to people with hearing loss being vulnerable when purchasing legal services?
- Do these circumstances result in adverse outcomes when using lawyers? If so, how?
- Are the legal and communication support needs of the above group being met?
- If not, what practical steps could be taken by the profession and regulators to improve their access to legal services and avoid any adverse outcomes?

## 1.2 The Study

Forty-nine participants were either Deaf sign language users or hard of hearing people. There was a wide range of experience of legal settings, and several themes emerged.

### *Expectations and access*

No one in the study indicated that they had received or found legal services materials which had been prepared or adapted for use by Deaf or hard of hearing people. Very often Deaf and hard of hearing people did not understand who they were dealing with and as a result were unaware of the extent of the legal expertise of their chosen adviser. Deaf and hard of hearing people suffer no cognitive impairment as a result of their hearing loss but they are often made to feel dependent and ignorant by their own legal team because of insensitivity and lack of preparation. Deaf people feel unhappy at continually having to rely on hearing people in order to negotiate the legal system.

### *Choice of provider*

Opportunities for choice of legal services provider for someone with hearing loss can be limited. People indicated that they chose a legal adviser from a simple recommendation from another person or an agency such as the Deaf club.

### *Deaf awareness*

Deaf sign language users measured access in terms of the service according to “deaf-friendliness” (including such factors as the surroundings, the personnel, and the use of simpler text). Hard of hearing people tended to focus on the perceived communication skills of the individual adviser. Perceived deaf awareness is a key factor in the expressed level of satisfaction.

There is a view that if people are engaged in legal matters with Deaf people they have a professional responsibility to prepare and to be more “deaf aware.” This bears on the issue of “whose side are you on?” and the extent to which a legal adviser needs to factor in additional preparation time for the specific needs of that client. As the legal process can sometimes be seen as adversarial, it is commonly expected that the legal adviser forms part of the team in opposition

to another team. This would normally imply them working in close cooperation with the individual client. However in the case of the Deaf or hard of hearing person there appears to be, at times, an adversarial relation with their own legal adviser. This centres on a battle for understanding. For example, it is most apparent in the perceived refusal of some solicitors to provide interpreting services and the perceived reluctance of some solicitors to make the necessary adjustments to face to face interaction. Deaf people and many hard of hearing people often consider that they are misunderstood *by their own legal professional*.

### *Communication choices*

Deaf interviewees were clear that they did not understand much of the text information that was provided to them by their solicitor or legal advisor, whether this was in letters sent by the solicitor or in documentary material. Deaf people complained that they needed a third party to explain the text and that this meant a loss of privacy. Hard of hearing people were able to read and were more happy to work at a distance. Some participants would try to speak, which was a good choice for most hard of hearing people and for many was unproblematic. However, there is a sub-group among hard of hearing people whose speech is not clear (since they have had a hearing loss from an early age). Speaking to solicitors often meant they were not understood.

The installation of loop systems may seem like a convenient adjustment for courts or firms but for it to be effective it needs maintaining and staff need to be trained on how to use it. The use of voice and loudspeakers in court waiting areas even when it is known that the person does not hear, puts Deaf or hard of hearing people at a disadvantage.

The evaluation of interactions with Law Centres<sup>1</sup> was more positive. Interviewees had found Law Centres equipped to deal with Deaf and hard of hearing people, quick to act and effective. Taking time to communicate effectively and being sensitive to the communication needs of Deaf and hard of hearing people were seen as major factors in determining how “good” the solicitor or legal adviser was.

### *Sign language interpreting*

One significant area of concern was the provision of sign language interpreting. Many people claimed that interpreters were not supplied by the solicitor even when they expressly requested it. There were considerable doubts about who should pay for the interpreter. Officially, interpreters are meant to be independent and to work for both the hearing and deaf parties. In practice, the universal assumption is that the interpreter is there to serve the Deaf person. Solicitors do not always perceive that the interpreter is needed to assist their own communication needs - only the needs of the ‘disabled’ client. As a result, interpreters are often treated as add-ons to the Deaf person’s presence.

## **1.3 Conclusions in brief**

### *What circumstances contribute to people with hearing loss being vulnerable when purchasing legal services?*

The core issue is communication between the lawyer and Deaf or hard of hearing person. This manifests itself in different ways. For Deaf people it centres on lack of ‘deaf-friendliness’ of the contact and the perception that an interpreter is only engaged to help a Deaf person, and not to facilitate the work of the lawyer. For hard of hearing people, it can be the lack of eye contact in

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<sup>1</sup> Law Centres are not-for-profit legal centres offering free advice and representation to disadvantaged people across England, Wales and Northern Ireland.

order to aid lip-reading and the lack of awareness in finding a suitable location for interaction. In both cases, the Deaf or hard of hearing client is rendered vulnerable by the perceived lack of empathy and problems with communication in the dealings with the lawyer.

*Do these circumstances result in adverse outcomes when using lawyers? If so, how?*

This is hard to judge overall – but there are certainly cases where the participants felt this, particularly where Deaf people may be penalised or pressured by their lack of understanding of the legal process; and also where Deaf people may be given incorrect treatment due to caricaturing of their supposed needs.

Hard of hearing people may be better able to press for their rights due to better competence in reading and writing.

*Are the legal and communication support needs of the above group being met?*

The legal needs of Deaf and hard of hearing people are the same as those for the rest of the population but the difficulties in the client-side communication make it less likely that their legal needs are always met to in the way they should be. It is very clear that communication needs are generally poorly supported.

*If not, what practical steps could be taken by the profession and regulators to improve their access to legal services and avoid any adverse outcomes?*

Provision of appropriate training and better information at the point of need would certainly help lawyers to respond more appropriately to Deaf and hard of hearing clients. More significant is the need to develop better empathy with clients and understanding that providing someone with support to communicate is more to facilitate justice than to help the client. Ownership of communication needs to be shared by lawyer and client.

## **1.4 Recommendations**

1. An **information at point of need** service to provide guidance to legal professionals on how to interact and about the options for support, would be a significant step forward. By locating this in a single site (on the Internet) legal professionals would be able to seek advice when they needed it.
2. **Deaf awareness training** offered online has significant advantages over costly on-site training programmes, and e-learning facilities, evaluation and certification can be provided. The content of such training (ie deaf awareness) would highlight the issues in this research: access to information; obstacles to the exercise of choice; deaf awareness among legal professionals; communication choices for interaction; interpreting services; personal reactions and legal consciousness.
3. **Professional training on deaf awareness** is important, and a possible adjustment to law degrees could require some engagement with Deaf and hard of hearing users combined with units on the situation and experience of Deaf and hard of hearing people. The provision of this as an advanced unit of CPD (for example, “Legal Consciousness of Deaf and hard of hearing people”) that is recognised within the legal profession would give it greater status, encouraging a professional approach to the learning where success is rewarded with credit points.

4. There is an expressed need for Deaf people and for hard of hearing people to have **greater access to case law** and for legal processes to be illustrated in video, alongside explanations of common points of law and its vocabulary. The most convenient location for such a resource would be on a dedicated Internet site.
5. **Allocation of more time** for consumers who are deaf or hard of hearing would be helpful. Time would be well spent asking each consumer exactly what communication support they might benefit from well in advance of any face-to-face meeting. Use of interpreters and other support staff may also require more time because they open up a previously unused channel for interaction. Preparation time by the lawyer might also be included.
6. **Obtaining the text number** of a person with hearing loss can help to make sure this can be used in a court waiting room to call them forward. A contact text number in case of queries could also be given to the person.
7. **A survey of legal professionals** on their experiences of Deaf and hard of hearing clients would be helpful, as this research has only been able to infer motives and rationale in regard to the professional view.
8. **Better use of existing technology** such as loop systems and text materials would be helpful and a consideration of how for example, relay services (such as those described at [www.reach112.co.uk](http://www.reach112.co.uk)) could open up immediate access both to and from the legal process.

## 2 Background and definitions

### 2.1 What do we mean by “Deaf”?

*Deafness, Deafhood, or members of the Deaf Community* – are terms most likely to be applied to those with a serious hearing loss from an early age. Deaf with a capital D refers specifically to those people who are within this cultural or language minority group. British Sign Language (or BSL) is likely to be used by this group. Most such people (over 90%) have no relatives who are Deaf – i.e. they have hearing parents and siblings, and have hearing children. The size of the community is often over-stated but based on an examination of the numbers who have attended Deaf schools from our research, the core community is likely to be around 25,000 in the UK with around the same number using sign language but not fully involved in the Deaf community.

A significant defining feature of the classification *Deaf* is the use of BSL. Deaf people use BSL whereas the other groups use English. The capitalisation in this report is therefore significant – Deaf people are users of British Sign Language just as French people speak French.

BSL is not new - language records of it exist at least as early as the 17<sup>th</sup> century in the UK - although its description and rise to prominence has been relatively recent. It is a non-spoken language with a structure quite different to that of English. It is a language of vision and space and is articulated not only with the hands but also with the face and head, shoulders and body. In a signed conversation, it is mandatory that the viewer looks at the face (not the hands). Since Deaf people have rarely had an opportunity to practise law, there has been no real opportunity for legal use of BSL to have evolved. Single sign-for-word translations may not exist and concepts expressed in BSL or in English may need to be fully interpreted rather than simply transliterated.

Deaf people may have lower levels of literacy, and it is repeatedly found in studies of reading that around 50% of young people with profound hearing losses are unable to read. This has a major impact on their capacity to process text and thereby to access information.

Terms which are still found in legal cases such as *deaf and dumb* and *deaf-mute*<sup>2</sup> – are considered inappropriate nowadays by the Deaf community. *Deafened* meanwhile has been applied to those who acquire a hearing loss at a later age – after early childhood (and certainly after they have learned to speak). Typically, deafened applies to those who have profound hearing impairments – Lord Jack Ashley, the UK's first totally deaf Member of Parliament, is a prominent deafened person. Usually, such people continue to associate with hearing people and they remain ‘culturally hearing.’ They will also continue to use speech, have auditory memory and their problems of communication can be attributed to other people’s inability to adapt to the reduction in the auditory channel. They can read subtitles, newspapers, books just as hearing people do. Although training in lip-reading may aid communication, the fact that much of English is invisible on the lips makes the application of such a skill highly dependent on the context of the interaction and the topic being discussed. Lip-reading is also more difficult in group settings.

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<sup>2</sup> seen again in the Guardian report of a court case 14<sup>th</sup> February 2012, page 16

## 2.2 What do we mean by “hard of hearing”?

*Hard of hearing people* are the largest group (up to 9 million<sup>3</sup>) who have a measurable hearing loss. The vast majority with a permanent hearing loss, are of retirement age and their hearing loss may increase in severity over time. Hard of hearingness is typically associated with elderly people and around 60% of people over 70 years are estimated to have a significant hearing loss (Davis, 1989). People in this group or who lose their hearing later in life are very unlikely to use sign language and are likely to remain culturally hearing.

There are two main groups within the hard of hearing category. The first group are those who have lost their hearing in adult life and over a period of time. For the most part, their capacity to speak is retained and they will be able to communicate their intentions to others satisfactorily (they just will not be able to fully hear the response). The second, smaller group are those who have had a hearing loss from early in life but have not learned sign language. They will be literate and effective users of English but may have speech which is difficult for untrained lay people to understand. They may have to rely on lip-reading since they cannot hear the spoken responses of others.

Hard of hearing people and those who are deafened are more likely to have had similar experiences to the rest of the population and retain their capacity to speak and to read and write when in a legal setting. Their difficulty may be in the lack of adjustment by others.

We should also point out that notwithstanding the attempt to be precise and despite the technical definitions above, the group we refer to as ‘hard of hearing’ may refer to themselves as ‘deaf’ or ‘hearing-impaired’. In common parlance, then, we find ‘deaf’ and ‘deaf people’ used to refer to everyone with a hearing loss. We will retain the more precise definitions for this report.

We know very little about why and how Deaf and hard of hearing people enter the legal system. It seems likely that Deaf community members enter reluctantly as they do with almost all public and professional services, since they do not believe they will be understood and because they have little understanding of the legal process itself. At the same time, those who find themselves having to deal with this (and who reported to us) seemed to be prepared to challenge the system and push for what they perceived to be their rights.

Those who have lost their hearing, or who are hard of hearing, may have a very different level of engagement since a majority retain their “hearingness” in literacy, in speech and in capacity to make their requirements known. Their situation may meet with greater perceived empathy on the part of lawyers.

## 2.3 Historical context

Lack of hearing has been a problem for the legal process for a very long time. For example, Deaf people were historically not recognised in rights of succession and in the holding of property. In 1230, a Deaf and dumb sister, Alice,<sup>4</sup> is mentioned in regard to coparcenary (joint right of succession). However, in some cases, sign language was used in a legal setting. In 1344, there is mention of a dumb man who “gaged his non-summons” and performed his law by signs<sup>5</sup>.

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<sup>3</sup> Determining the predicted numbers of people with a hearing loss has been quite complex, not just because it is quite hard to measure in a sufficiently large sample of the population, but because it is hard to determine where to make the cut-off of significant hearing loss. A national study (Davis, A, 1995, *Hearing in Adults*, Whurr, London) drew a cut off at 25dB which is a relatively mild hearing loss where the individual would not usually be issued with a hearing aid. This gives an estimate of around 16% of the UK population.

<sup>4</sup> (1579) *Theoall Digest* 6 Lib 1 Cap 7 S 4 – cites the case in 1230.

<sup>5</sup> (1579) *Theoall Digest* 6 Lib 1 Cap 7 S 6 – cites the case in 1244.



Nevertheless, there was a significant problem in determining what to do with someone who did not speak. Viner's (1791) recounting and translations of these cases, mentions

“one who was indicted for the death of a man who could neither speak nor hear and the Court was in doubt what to do with him and wherefore they thought that he should be remanded in prison.”  
(date unknown – likely 14<sup>th</sup> century)

The information that we have on these early cases is limited but the general ruling on this which appears in Hale (1610) is that Deaf people are to be treated usually as idiots and as being unfit to plead. As a result, the accused person who refused to speak or hear, could invalidate the legal process altogether. Considerable efforts were expended in determining whether someone was “really” deaf and could not speak “by the visitation of God”.

Interpreters have been used for some time. An early example of this is briefly described in Common Pleas<sup>6</sup> (1753):

“The vouchee being naturally deaf and dumb, Lord Chief Justice wrote down a question as to her consent to suffer recoveries of Estates in three different counties... Mr Henry Barker, being sworn, explained the question to her by signs which she answered by signs and then he deposed that she understood the question ....”

It is harder to trace hard of hearing people in the legal system as it may not be remarked up on unless the hearing loss is very great. It may also be the judge who is hard of hearing.

We can see that the issues of hearing loss have figured in legal cases for a very long time and although some adjustments have been made (provision of interpreters and provision of induction loops), there have always been difficulties in access to justice when a person could not hear or speak.

## **2.4 The Equality Act**

The Equality Act 2010 aims to protect people against discrimination based on a number of 'protected characteristics', one of which is disability. People with profound hearing loss may be defined as disabled under the Act, and the Act's provisions look to ensure they are not discriminated against, harassed, or victimised due to their condition. It also creates requirements for service providers to make reasonable adjustments so that disabled people are not placed at a substantial disadvantage in accessing their services.

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<sup>6</sup> Barnes H (1790) *Notes of Cases in Points of Practice taken in the Court of Common Pleas at Westminster, 1732-1756*, page 168

### 3 The Methodology

The research used a direct approach by creating a quota sample of the consumers. The means of investigation was primarily by semi-structured interviewing, focused on the recent experiences of contact with legal services. We also interviewed younger people and those who had not consulted legal professionals. In their case, we offered scenarios where a legal matter has arisen and asked them to discuss how they would deal with it, with whom and how they would choose the legal advisers.

#### 3.1 Choosing participants

Potential participants were approached through personal networks, hard of hearing groups and lip-reading classes. Some had responded to an online appeal. Although they do not form a representative sample for the UK, we believe they are illustrative of the Deaf and hard of hearing people who use legal services.

#### 3.2 Participant demographics

Participants were recruited from England and Wales, with the majority located in Southwest England, as seen in Table 3.1

**Table 3.1: Postcode Distribution (n=49)**

|                        | Deaf                    | Hard of hearing        | Inexperienced (Deaf and hard of hearing) |
|------------------------|-------------------------|------------------------|--|
| Bristol postcodes      | 11                      | 5                      | 6  |
| Bath area postcodes    | 1                       | 7                      |  |
| Welsh postcodes        | 3                       |                        |  |
| Manchester             | 5                       |                        |  |
| London                 | 2                       | 2                      |  |
| Birmingham             | 1                       | 1                      |  |
| Nottingham             | 3                       |                        | 1  |
| Gloucester             |                         |                        | 1  |
| Total interviewed = 49 | 26<br>14 male/12 female | 15<br>8 male/ 7 female | 8<br>3 male/ 7 female                    |

There was a wide range of experience of legal settings, as seen in Table 3.2.

**Table 3.2: Experiences in the last three years (numbers who said they had)**

|  | Deaf | Hard of hearing |
|--|------|-----------------|
| Education tribunal (eg dispute over a child's school)                      | 5    | 0               |
| Problem at work or a work tribunal (eg discrimination)                     | 7    | 5               |
| Buying a house (where you used a solicitor or conveyancer)                 | 9    | 4               |
| Writing a will or obtaining probate (when someone dies)                    | 6    | 3               |
| Having a divorce or being in a family court                                | 4    | 6               |
| Dispute with a neighbour or another person                                 | 1    | 2               |
| Complaints over equipment with a shop or company                           | 3    | 6               |
| Obtaining advice about how to run your business or how to start a business | 2    | 2               |
| Meeting a solicitor to discuss a matter which will go to court             | 12   | 4               |
| Attendance in Court  | 9    | 0               |

This description of the participants should be understood as descriptive only of this sample. They are not meant to be a representative sample of all Deaf or of all hard of hearing people. Further details on the participants can be found in Appendix 1.

### *3.3 Interview and analysis approach*

After establishing suitability for interview, dates, time and location were agreed. The project was explained, consent forms were completed and the interview proceeded in two parts. The first dealt with the personal details as above and this was completed directly on the interview schedules (without media recording) but the second was recorded: the semi-structured interview, allowing the participant to do most of the talking about their experience in using legal service or, for inexperienced participants, to discuss a range of hypothetical scenarios. This second part was either video recorded (for interviews conducted in British Sign Language) or audio recorded (for interviews conducted in speech). The instructions to the interviewer and questions used are shown in Appendix 3. Scenarios used with those with less experience are shown in Appendix 4.

Our analysis procedure was qualitative and undertaken directly from the original recordings in sign language or in speech. There were three ‘passes’ through the data. The first of these was a simple analysis of what people say; the words they use to describe their experiences. From those, we established common themes. These are concepts which people used in order to describe what has happened to them. The final stage of the analysis brought together these concepts and tried to establish what people really mean and how we are to understand their thinking in regard to legal services.

This approach helps us to describe the legal consciousness of Deaf and hard of hearing people.

The concept, legal consciousness, is used to name analytically the understandings and meanings of law circulating in social relations. Legal consciousness refers to what people do as well as say about law. It is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning-making. Consciousness is not an individual trait nor solely ideational; legal consciousness is a type of social practice reflecting and forming social structures. *New Oxford Companion to Law*, Oxford University Press. 2008.

This legal consciousness may be of considerable significance in planning for change and development.

## 4 Themes and Findings

Several themes emerged which describe the experiences of Deaf people and hard of hearing people when in contact with legal services. Inevitably in qualitative research the emerging themes do not follow a linear path and do not arise neatly as answers to the starting questions. In the conclusions chapter, these results are linked back to the starting questions.

It should be relatively clear that the single critical dimension is the one of communication. Unfortunately this does not lend itself to a simple one-dimensional measurement nor does it function in the same way in regard to the two groups of Deaf and hard of hearing. Various factors impact on the adjustment which is necessary to reduce the stresses which people reported. There are 5 overarching themes in the responses of participants.

- Expectations and access to legal information and process
- Choice
- Deaf awareness among legal professionals
- Communication choices
- Sign language interpreting services

We will examine each of these in turn. More detail is set out in the case studies in Appendix 5.

### *4.1 Expectations and access to legal information and process*

No one in the study indicated that during the legal services process they received or had found any materials which were specially prepared or adapted for use by Deaf or hard of hearing people. One hard of hearing person, when offered support for his participation in a court case, was completely unaware of what he could ask for and how it might help him.

#### *4.1.1 Lack of experience and lack of knowledge of legal processes*

As a starting point we can normally assume a relatively low knowledge of legal rights and about the application of the justice system among members of society.

We interviewed 8 (mostly younger, 6 Deaf and 2 hard of hearing) people who had not had recent experience of situations in which a legal issue had come up. We provided them with the scenarios where a legal issue affecting Deaf or hard of hearing people might apply (shown in Appendix 3). The purpose was to determine whether there was a level of understanding of procedure and rights, and to infer whether a Deaf or hard of hearing person might be able to initiate a case.

It was relatively clear from the outset that we might not identify many well-considered strategies for dealing with legal issues. The participants generally had simplistic views of how the legal system might work and typically assumed that there would be fairness and support for the position of a person with a hearing loss. As regards the process itself, there was often little idea of what do:

“you know, like, I don’t know nothing about any of these [situations). If these things happened to me I wouldn’t have a clue what to do or who to go to.”

Typically, participants mentioned family members as the first port of call for advice. Hard of hearing people would be likely to ask a family member to make telephone calls and would often take the family member along as support and adviser. Deaf young people assumed there would be recourse to legal advice.

Among those who have little experience, expected use of family members *as interpreters* is common – partly as a result of being uncertain as to the interaction with professional interpreters; and partly as a result of being inexperienced.

“I would use email and I would bring an interpreter, I might use my sister, like close family member who can sign well. She knows me very well. Sometimes it can be hard through interpreter if they do not understand me.”

Among the inexperienced group of interviewees there was a general theme that the “law would be fair” and the hope that it would uphold Deaf rights for access.

The rest of this chapter concerns those who have had experience and the reality of contact with legal processes.

#### *4.1.2 Knowing who you are dealing with*

Very often Deaf people did not understand who they were dealing with and as a result were unaware of the extent of liability and legal expertise of their chosen adviser. While this uncertainty can also be common amongst hearing people, Deaf people in particular can have little opportunity to discuss legal matters or gain awareness of the legal profession.

One Deaf person was advised to contact “AJC”<sup>7</sup> for support. However, he had no information about this company and its advisers. As far as we could determine, this company specialised in support to *employers* in creating worker satisfaction. In this case, the adviser worked with the Deaf person in a pseudo-legal role. On checking back with the Deaf person, it seemed that the Deaf person trusted to the credentials of the worker without having any certainty or any knowledge of the work of this organisation. The person accompanied the Deaf person to meetings and negotiated the redundancy/dismissal from the company.

We can see a similar situation in Case Study 2 in Appendix 5, where a hard of hearing participant admitted ignorance of the status of the legal professional he was dealing with.

#### *4.1.3 Lack of familiarity with court*

Deaf people reported some apprehension at being in a court where the visual surroundings (and the formality) are problematic. For a Deaf person the visual aspect can dominate and the spoken messages which hearing people exchange in order to re-assure will have little impact. Deaf people instantly evaluate their surroundings as ‘friendly’ or not.

Visual impacts are more significant when you cannot hear. One woman described her court experience as being very stressful and confusing. She was so overwhelmed that she stared blankly when questioned. It took several repetitions before she was able to begin to function.

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<sup>7</sup> AJC is a fictitious name. When it was suggested to the Deaf person, he was not aware of the status of AJC. He did not know if it was a law firm or an agency or a company.

Relaying of questions in sign language seemed to distance her further from the reality of the visual formality and from the substance of the case.

#### *4.1.4 Lack of community information resource*

One of the problems which arises is the lack of information available to understand the legal process or to make decisions. Deaf people seem reluctant to share information with each other about their experiences.

Interviewer: “So you found it was worth going to the Law Centre, would you tell others...”

Participant: Yes definitely... yes but do I have the right to tell them or not? No one else told me about the law centre so should they find out for themselves; am I right to tell them or not.”

This uncertainty contributes to the lack of access to information. Finding the appropriate means to inform others is difficult, and general leaflets are of limited impact until there is a case which requires that specific information. Deaf people need that information in an accessible format but that may still require a personal contact. When asked if the Law Centre should advertise, one participant said

“no, deaf people may panic if they get a letter; it’s better through their social worker”

This raises the question of how the social worker would obtain this information in order to give the right advice.

Although able to engage in discussion with interviewers on both positive and negative issues arising, the people we interviewed did not appear to be creating a community knowledge base. There was no means to individually rate or jointly to accumulate ‘ratings’ of experience. There appeared to be no shared discussion of legal access other than at the most superficial level. The reluctance to share is due to difficulties in separating and understanding the description of the process from the private details - that is, believing that they are bound by the same confidentiality codes as the professionals involved. This seems to mean that each new Deaf person has to approach legal advice from scratch with the same potential for misunderstanding and confusion.

Hard of hearing people have slightly better access to information as they are more likely to be literate and more able to search for information about legal services. However, there is again a lack of community knowledge and sharing of information that would be specifically of use to hard of hearing people.

## *4.2 Choice*

One of the key questions of the study was how individuals choose a provider when they have to make contact with legal services. We found that the opportunity for choice was limited. The people we spoke to usually indicated that a legal adviser was chosen from a simple recommendation from another person or an agency such as the Deaf club. Family (probably hearing members) were also likely to be asked.

People chose legal advice which was convenient and physically close to where they lived. Only one person in interview indicated that he had carried out any form of research or background examination of whether a particular firm would be suitable. Wherever there was forethought about choice, it was usually through word of mouth and was not based on an objective or public information source. There was little attempt to determine if a solicitor or adviser had any experience in working with Deaf and hard of hearing people. At this stage, we have found no evidence of informed choice on the part of the clients nor of any general advertising (visible to

Deaf people) on the service side, that legal advisers were able to deal with Deaf or hard of hearing people.

#### *4.2.1 Trying to exercise choice*

One Deaf woman tried to make contact with solicitors through email and then by telephone but felt rebuffed as soon as she had indicated that she was Deaf.

“I decided to start my own business.... I was in contact with three or four. The first one I contacted replied; so the second time I explained that I was Deaf. No reply since then. So I contacted the solicitor’s receptionist and she said she needed to talk to them before getting back to me. I was being ignored.”

The search for a solicitor to act on her behalf went on for three months. It was hard to prove that the obstacle to taking his case was the solicitor believing that he/she might be responsible for providing interpreter support, but this Deaf person certainly believed this to be the reason.

Two people chose to pursue additional cases after their first positive experience of solicitors. One person also had a mentor from the first case who was able to support in understanding the system so that he felt empowered to take on the next case independently. There is some degree of choice which builds up from positive first experiences.

Another person used a solicitor who was known by her mother; this was said to be of benefit as the mother was able to coach the solicitor in how to work effectively with a client with a hearing loss. A negative side effect of this is that the solicitor might be inclined to interact with the hearing person to negotiate. Attempts to exercise choice could thereby be affected by the tendency to use speech for interaction, to the exclusion of the Deaf client.

#### *4.3 Deaf awareness among legal professionals*

Perhaps one of the most common themes was the extent to which legal professionals demonstrated deaf awareness or how well they were able to interact with people with a hearing loss. Participants expected that some people and some agencies might exhibit “deaf awareness.” Deaf sign language users often considered the topic from a slightly different angle, calling it “deaf-friendliness” and using this to include the whole context i.e. the surroundings, personnel and all communication in text as well as in speech. Hard of hearing people tended to focus on the perceived skills of the individual adviser.

When this topic appeared, there were both positive and negative reports.

One hard of hearing person felt that she was well treated and she was given the time she needed to fully understand everything. She found the surroundings amenable (well-lit and quiet) and thought that the solicitor was aware of her needs. Another hard of hearing participant, also had a positive experience.

Yeah when I went to the CAB; an appointment was made and when I got there it was pretty much with everyone that was there. I mean it was quite a small .....and they were very clear, looked at me constantly, not covering their mouth, very deaf aware

Unfortunately, there were also negative experiences. Another hard of hearing person reported a poorly-lit environment and no adjustment to the hearing loss. This was common as was the simple plea to look directly at the hard of hearing person when talking. As guidance to the solicitor, one person offered:

“Don’t forget after the first four seconds<sup>8</sup>, that I can’t hear you. Actually look at me! Stay on topic or it throws me. Just get to the point.”

We asked several people whether the fact that they could speak well (as hard of hearing people) made it harder for hearing people to adjust. They agreed. One participant said he had been told that “*he didn’t sound like a Deaf person.*”

If a Deaf or hard of hearing person feels that a legal professional has good deaf awareness, they are more likely to be satisfied with their interaction with that legal professional.

#### ***4.3.1 Physical barriers and getting off to a bad start***

Access to the building was an issue for some.

“I went up in a lift, had to ring a bell. Couldn’t hear it speaking and so I just waited until they came. A woman came and talked to me and I had to stop her to say ‘excuse me I am deaf’. She told me to sit down. Ask what I was here for?  
... looked like a security lock. Felt like in prison. It is a scruffy place. I think it is the budget.”

Deaf people feel very uneasy about these door entry systems and such stress may not help the legal services relationship get off to a good start.

#### ***4.3.2 De-skilling the client***

The lack of deaf awareness was said to have a significant effect on self-esteem and on motivation. In some instances a highly confident person with a hearing loss becomes a dependent disabled person. They reported having a clear sense that they were being judged by their own legal team not on their ability to hear but on their competence. For a hard of hearing person, who may have felt perfectly comfortable with interaction with others in society until their hearing declined, this is particularly frustrating.

One person felt it would be easier to remove the task from the personal interaction with the solicitor, and let her sort it out herself. The solution would be in

“...giving me all that information and just letting me make my own mind up.”

Feeling reduced to observer status due to problems with interaction seems to be a significant problem.

#### ***4.3.3 The size of the task in persuading legal advisers to adjust***

There is also a belief that the situation is hard to change. As part of the notion of responsibility for the interaction, hard of hearing people tended to see the task as very challenging.

“The mouse taking on, not the lion, but the whole jungle.”

#### ***4.3.4 Making adjustment***

Hard of hearing people often felt that it was their own responsibility to make modifications and adjustments to the environment in order to aid communication. This feeling of ‘me having to change and me having the hearing loss’ is stronger among hard of hearing people. In situations of

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<sup>8</sup> That is ... ‘don’t forget, more or less as soon as I have told you, that I need you to look at me.’



difficulty or miscommunication, hard of hearing people felt that they needed to make the change rather than asking the solicitor or adviser to better accommodate their needs.

#### ***4.3.5 The fact that they should know better***

There is a view that if people are engaged in legal matters and tribunals with Deaf people, then they have a professional responsibility to prepare properly and to be more deaf aware.

“There must be a lot of them about (ie tribunals with Deaf complaints). I would have expected them to be trained with using interpreters and to think more about questions about what deaf people want. It is not about what *they* want ... (in regard to interpreters) they should respect our views because this is my voice. I have to trust, to feel sure that this person will say what I need to say and not to make up or not understand what I am saying. Really if there had been more awareness, they would be more considerate of clients and their needs. They need to be able to listen to deaf people and hear their opinions.”

This links back to the issue of “whose side are you on?” and whether a legal adviser has a responsibility to factor in additional preparation time for the specific communication needs of that client.

#### ***4.3.6 The conflict in client-side lawyer relationships***

It is a feature of the legal process that some cases are adversarial, with an X versus Y framework where one legal team and the client they represent are in opposition to another legal team and client, with both teams aiming to get the best possible outcome for their client. There is ‘my solicitor’ and ‘their solicitor’. This would normally imply the solicitor, barrister, or legal adviser working in close cooperation with the individual they represent.

In the case of a Deaf or hard of hearing person however there appears to be an adversarial relation with their own legal adviser, which centres on the battle for understanding. It is most apparent in the perceived refusal of some solicitors to provide interpreting services as part of their role and perceived reluctance of some solicitors to make the necessary adjustments to face to face interaction, where eye contact is vital.

Deaf people and many hard of hearing people consider themselves at odds within their own legal team over the degree of participation they can have. They often consider that they are misunderstood at a fundamental level *by their own legal professional*. They are frequently made to feel dependent.

Without understanding or experience of this type of individual, the legal professional may also be puzzled and impatient with the lack of engagement by the client. The client relationship may not be integrated nor coherent.

### ***4.4 Communication Choices***

Perhaps the strongest and most common underlying emotion is frustration that communication does not flow effectively. Instead of a smooth interchange with the professional, there is often imperfect interaction. The obstacles created by this produce considerable frustration in Deaf and hard of hearing clients.

#### ***4.4.1 Interacting with the solicitor***

At first contact, the Deaf person would usually go to the office and try to set up an appointment. This could be stressful involving writing down and trying to explain to a receptionist. At the first

meeting with the solicitor, there were often problems and several Deaf people said they wished they had taken a supporting person with them.

Participants often took on trust what the solicitor said but later discovered that this might not be the only interpretation. For example, one Deaf person did not realise that she could challenge a decision on legal aid (as fed back to her by the solicitor); she was put off by the advice that she might not qualify, without having properly investigated it.

One interviewee explained her positive experience of the trust she had to put in her solicitor to act in her best interests. Although she had an interpreter for the meetings, she still could not understand all the legal information and the process that was being followed. When the solicitor realised that the client was not understanding, for example the detailed content of a letter, she began to focus on the crucial elements that the client needed to know or act upon. The Deaf person viewed this as a positive adjustment.

Hard of hearing people tended to be more confident in talking to the legal adviser but in many circumstances could still be frustrated.

...”the only place I know to go to is a CAB. I don’t know anywhere else. So when I go to CAB and they are like that and they’re not helpful and I come out with nothing I come back to the same thing that what I went in for. I just feel really lost and upset because I don’t know what else to do or who to ask. I can’t just pick the phone up and ring anyone. I have to actually go down face to face .... so you just feel really stuck.”

Another hard of hearing person built a good professional relationship with one solicitor but when he was ill, she was unable to communicate with the replacement who was unable to make the necessary adjustments in speech clarity and eye contact. The replacement had to call in a third member of staff to mediate. This was sufficiently problematic that the hard of hearing person would not use this solicitor again.

#### ***4.4.2 Use of text***

Much of the information presented to legal services clients is in the form of text. Deaf interviewees were clear that they did not understand much of the text information that was provided, whether this was in letters sent by the solicitor or through documentary material which was a requirement for the particular case. Deaf sign language users (whose literacy is often limited as explained earlier) complained that they had to go to a third party to have the text explained and that this meant a loss of privacy.

Hard of hearing people in contrast, were much more likely to be highly literate and were happy to work at a distance in text format without having to meet with a legal adviser. Case Study 4 (Appendix 5) highlights the precarious trust in the written word which Deaf people may have.

Searching the Internet was the usual strategy for hard of hearing people, who would feel confident in requesting text, reading letters and carrying out the background reading.

One interviewee said that she had to use the in-house interpreter provision (at work) extensively to translate and explain the legal jargon that was used in the written documents.

#### ***4.4.3 Use of language to demonstrate power***

In some cases, the struggle for language became a question of the exercise of power (see parts of case study 8, Appendix 5). When it becomes apparent that another person has limited access to your language, continued use of that language (without recourse to translation) seems very close

to an oppressive use of power. Referring to a tribunal and its insistence on hearing-speaking Englishness

“They would be able to argue and beat my parents just like that because they knew more jargons, my parents would not know how to argue back.”

One person said that her father, who is deafblind, and her step-mother who had learning difficulties, would fax through letters that had been received so that she could try to understand and translate for them. The daughter would research the terms and contents of the letters on the Internet and also seek advice from a friend who was studying law. Then she would have a video conference call to explain in sign language what the letters said.

The exercise of power (by the legal system) through insistence on text, then creates stress and anxiety for this group of people.

#### ***4.4.4 Making yourself understood***

Some participants would try to speak. This was effective for most hard of hearing people since their speech was clear. However, there is a sub-group among hard of hearing people whose speech is not clear (since they have had a hearing loss from an early age). Using voice with solicitors did not always mean that the solicitor would understand what they were saying. This led to considerable frustration on the part of the hard of hearing person as the solicitor requested repetition. Hard of hearing people seemed to be resigned to this degree of mis-communication. One person reported having to go back repeatedly to sensitise the staff to her communication needs.

#### ***4.4.5 Using a loop system<sup>9</sup>***

Despite the fact that in some public locations (such as courts) there is a loop system operational, it may be rarely used. This could be because it is not functioning effectively, it is not switched on, or it is not understood by the hearing participants that they need to move to a room where the loop is installed. Deaf people tended not to comment on this but hard of hearing people could be dismissive.

“You get to a point where you don’t bother even trying because you just know it’s not going to work.”

The installation of loop systems may seem like a convenient adjustment for an agency or company as it supposedly needs little maintenance. However, in practice hard of hearing people may not use it as they believe that it may not function effectively. A SeeHear episode<sup>10</sup> which followed this issue in shops and banks, found that not many people seem to know how to use them.

#### ***4.4.6 Court waiting rooms***

When court waiting rooms were not equipped with visual displays to announce changes or to summon people to their courtroom, participants said there were problems. Nearly everyone said explicitly or implicitly that they had difficulty in active waiting.

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<sup>9</sup> Speech and audio signals picked up by a microphone are transmitted around a room by an amplifier through a loop. Hearing aid users by switching to the ‘T setting’ on their aids are able to pick up the signal from the loop. The system tends to reduce distortion and other noise caused by the room itself. The loop can be used by many hard of hearing people at the same time.

<sup>10</sup> See Hear is a long running magazine programme on BBC television, directed at Deaf and hard of hearing people.

“The first couple of times I got forgotten - which was fantastic and you just end up sitting in the waiting room for hours ...”

Deaf and hard of hearing people are continually anxious of missing their name being called out and fear the consequences of missing out and the lack of understanding.

“Like when I was in waiting room, this person kept calling. (My interpreter had not arrived yet). It was for me, ready to be summoned to the court ... even though they knew that I was deaf and needed an interpreter. At that point I knew it was going to be stressful. Would the jury understand about deaf issues etc? No definitely no.....”

The continued use of voice and loudspeakers in court waiting areas – even when it is known by staff that the person might not be able to hear, places the Deaf or hard of hearing at a disadvantage.

#### 4.4.7 Positive Outcomes

Several participants found their way to a Law Centre. Their evaluations of Law Centre interaction was very positive. They found them able to deal with Deaf and hard of hearing people, quick to act and effective. They appeared to be deaf aware and able to deal with both sign language users (with interpreters) and with hard of hearing people.

Because of the reliance on others to negotiate benefits and other complex systems, Deaf people may find themselves not only not understanding but being advised incorrectly, which can then lead to them seeking out the services of a Law Centre.

After complaining and questioning, one participant was referred to the Law Centre by a social worker and only then did they begin to unpick the situation and remedy her lost benefits. They provided an interpreter from the start

“at first I had never heard of Law centre, I thought it would be very strict, but it was not like that at all. They gave me lot of advice. This was much better than Jobcentre Plus, they never tell us anything. They keep asking us to bring different papers and it is always the wrong one; so I was going back and forward all the time. B at the Law Centre looks through all my papers with her thick book and checks carefully. What we had was all wrong. She made a lot of changes like we did not need to pay council taxes, and got help with paying our mortgage interest.

The perception of the Deaf person here was that she was receiving a client-side *service* rather than encountering someone who was *defending* the system. This produced a more satisfactory outcome.

“Yes it was brilliant, my life has changed. I am not worse off, I am now just comfortable.”

This experience of accessible legal advice changed the nature of the relation with the professional from helper to representative.

Very simple actions sometimes struck the Deaf participant as being very helpful and would appear to drive their perceptions on what was a good and a poor solicitor.

“Yes, they added post-it notes next to legal jargons to explain in simpler terms. It was a good solicitor, she would write, this means what ...or you would need to do what? This was a good solicitor but the one I had for car crash solicitor is not good.”

Taking time to communicate effectively and being sensitive to the fact that the Deaf person was not understanding were also seen as major factors in determining how “good” the solicitor was.

## *4.5 Sign Language Interpreting*

One of the significant areas of discussion in the interviews was the provision of sign language interpreting

### *4.5.1 Responsibility for the Costs of Interpreting Services<sup>11</sup>*

For Deaf people, the major issue was the supply of interpreting services. Many people claimed that interpreters were not supplied by the solicitor even when they expressly requested it. There were considerable doubts about payment for interpreters. One reported case concerned a Deaf person involved in divorce where an interpreter had been supplied by the solicitor (a pleasant surprise for the Deaf person). She welcomed this but had not realised until the end of proceedings that the costs of the interpreter were being charged to her account. She was faced with a bill of over £6,000 and the payment had to be extracted from the sale of her house. There was a lack of transparency about the fact that interpreter fees would be included in the bill.

In some cases, the Deaf person said that solicitors never provided an interpreter. This is in contrast to courts which usually provide interpreters (expenditure<sup>12</sup> £17.2m in 2010-11). One Deaf participant had argued extensively with his solicitor about the provision of an interpreter for their joint meetings. The solicitor did not respond to the client's claims that the rules on disability discrimination were being flouted. The Deaf person had to pay the interpreter himself.

In contrast, courts will generally accept responsibility for the provision of interpreting<sup>13</sup>. However, it seems that not all court staff are aware of this. One Deaf person was told by the court that the interpreter was only available for criminal cases. Only after asking for a written confirmation of this situation, was the story reversed and an interpreter provided.

One Deaf participant maintained that he had been told that the court provision is only for the main part of the proceedings and does not cover, for example, the judge in summing up, if there happen to be Deaf people in the gallery or if Deaf people were attached to the case in some way.

Although the requirements under the Equality Act 2010 suggest that interpreting services would be a 'reasonable adjustment', the above findings suggest that there is considerable confusion and uncertainty around the implementation of these requirements in practice. This is in part due to the fact that 'reasonableness' may only be decided in a court of law on an individual basis.

### *4.5.2 Lack of interpreters*

A variant of this theme was the lack of availability of interpreters at the correct time. People said that when they arranged to go to the solicitor it was impossible in the time available to obtain an interpreter.

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<sup>11</sup> Interpreting services for sign language have grown over the last thirty years. There are now over 500 members of the Register of Sign Language Interpreters; however this number is less than a fifth of the number there should be if UK were to have parity with the USA. Interpreters can be located through the register (see <http://www.nrccd.org.uk/>). Interpreters may work in agencies or freelance. They may have specialities in certain areas such as court work.

<sup>12</sup> Source <http://www.justice.gov.uk/downloads/global/foi-requests/moj-disclosure-log/cost-of-providing-interpreters-in-courts-2009-2011.doc>

<sup>13</sup> "Her Majesty's Courts & Tribunals Service will meet the reasonable costs of interpreters for deaf and hearing-impaired litigants for hearings in civil and family proceedings" – source: <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/interpreter-guidance.htm>

There is a shortage<sup>14</sup> of sign language interpreters in the UK. This may lead to a situation where the interpreter is already known to the Deaf person in other settings. One judge asked the Deaf person whether he knew the interpreter. It was explained that the Deaf person and interpreter were known to each other and had worked together in a work context but had had no personal interactions relevant to the case in question. This allowed the judge to proceed with the hearing.

One participant explained that the case had to be extended beyond its set time due to difficulties in booking interpreters for the meetings with the solicitor. Although the solicitor was responsible in planning ahead and arranging for interpreter provision, there were still delays in meeting deadlines.

#### *4.5.3 Inappropriate interpreters*

There were some instances where the interpreter who had been used during solicitor-client consultations was then engaged by the court. This seemed not to have been understood by the interpreter (who should have refused the booking, when she knew who was involved). This would not have been known automatically by the court although we can expect there to have been a protocol to query the interpreter's impartiality. It is considered by Deaf people with some experience that this use of the same interpreter is bad practice. Other Deaf people may not understand the conflict of interest.

#### *4.5.4 Not understanding the interpreter*

There were frequently complaints about not understanding the interpreter who was provided.

“Sometimes [in a tribunal] he would not understand the interpreter because the manager was speaking in high level English and the interpreter was not skilled enough to meet his needs.”

In a further example, a Deaf person arrived at court with the interpreter booked by the solicitor and found that the court had booked another interpreter for the formal proceedings. Unfortunately, the interpreter had come from London and the signing variety she used was simply not understood by the Deaf person. The court proceedings were paused while the judge enquired as to the best solution. The final compromise of the interpreter using signed English<sup>15</sup> was not satisfactory as it shifted the interpreting task from the interpreter to the Deaf person who had then to re-form the English message into sign language.

A cross-cutting theme here is the withdrawal from the interaction (or signed translation of the interpreter) by the Deaf person and trusting in someone else (friend, relative, advocate) to obtain the information and to explain it later. The concept of English at too high a level or not being Deaf-friendly is very common in Deaf discourse; however, there is also an issue in regard to the

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<sup>14</sup> At the present time, if all Deaf people in the UK of relevant age and activity level (say excluding young children and elderly people – 20% of the 25000 population) are allocated *one hour of interpreting per week*. We would require  $20,000 \times 52 = 1,040,000$  hours per year. A single interpreter can expect to work around 46 weeks in the year ie 35 hours per week, of which 20 hours would be realistic as the upper limit of contact interpreting (the rest is preparation). If there were allowed two weeks for sickness and other leave, a single interpreter would work 880 contact hours per annum. For UK, this would imply that  $1,040,000 / 880 = 1182$  full-time interpreters would be needed. At present there are around 500 registered and qualified. This optimistic scenario requires that the interpreters would never need to travel and that assignments were equally spaced so that only one interpreter was needed (generally meetings over one and a half hours, require two interpreters). To have a better idea of this need, where interpreting services are more developed in the USA, matching their population to ours, they have close to nine times the number of members of their Register of Interpreters as we do.

<sup>15</sup> British Sign Language (and all sign languages so far described) differ in grammar from the spoken language of the country. BSL typically uses a different sign order in sentences from the word order in spoken English. In some situations hearing people (and some Deaf people) may produce signing in English word order. For Deaf viewers this may require them to back translate to BSL (in effect, it requires the Deaf viewer to know the structure of English). Use of this signed English places a greater burden of interpretation on the deaf viewer. Usually a good deal of information is lost when the message is presented in this way. Due to lack of confidence, the Deaf client in this case, accepted that she would have to struggle with signs in English order as she could not follow the interpreter's BSL.

training of interpreters. Although there have been considerable developments in sign language interpreter training over the last 30 years, there remains much to do to create specialist interpreters who are able to work efficiently in the legal domain.

In the situations reported, there was a Deaf advocate present also and he or she was able to explain afterwards. However, in one situation, the Deaf advocate became a relay interpreter. She had to take the information from the interpreter and put it into a form of sign language that the Deaf person could understand. In slipping into this role, because of necessity, the advocate had to drop her advocacy role.

#### *4.5.5 Attitudes to interpreters and the effectiveness of interpreters*

We need also to consider the role and performance of interpreters (and lip-speakers and Deaf relay interpreters and any other support personnel) in the court setting and in one-to-one settings with solicitors and other advisers. Officially, interpreters are meant to be independent and to work for both the hearing and deaf parties equally. In practice, the almost universal assumption is that the interpreter is there to serve the Deaf person. Solicitors do not in general perceive that the interpreter is needed to serve their own communication needs - only the needs of the 'disabled' client. There is not the expectation that the interpreter is there to serve justice. As a result interpreters are often treated as add-ons to the Deaf person's presence.

Two accounts are interesting. The first was a young hearing person's case (the parent was Deaf).

"I thought this was strange because they asked the interpreter to swear and I was not asked. I thought about this and thought this is not right: she is here for me. Strange for her to take oath and not me. Later on the person, I think is called the clerk who checked for named person to bring them in, made an announcement that using this exact wording "unfortunately the defendant's mum who is the appropriate adult cannot hear or speak, so she is deaf, unfortunately, so we have this person (didn't know how to call this person) like a translator (waving his hands about)".

I could have stood up to dispute this but by that time so many things has happened it was easier to let it go but should this happen in court?"

A second example involved the police, and an identification parade.

"The police asked me to go pick someone from an identity parade through a video link ..... So I said OK but asked what about an interpreter. They did not know what to do but they made a phone call, and said someone would come and pick me up. I asked about interpreter again so they said better to bring a friend. I said I didn't think this would be allowed. They said yes you have to. So I asked a friend but with a warning that I did not think this would be allowed. My friend was not an interpreter but more hard of hearing but could sign well. I explained that I have a friend who I happened to be meeting but explained that she is hard of hearing. That is alright they said. I made sure that they were aware that she is a friend and not an interpreter and they kept saying this is fine. I didn't feel this was right. We went in the car and drove down. Another detective took our names and asked who was my friend. I tried to explain that really we should have an interpreter but she is my friend. He asked if she could sign and I said yes she is a strong signer but may have difficulty in understanding. He went away to check and it was decided to cancel the whole thing."

We can understand the pressure here to deal with a crime. However, the varying levels of knowledge by different police staff concerning good practice in dealing with deaf witnesses, and lack of interpreters, ultimately defeat the object of the exercise.

The crucial point is whether the interpreter sits outside the legal framework or is a part of it. For most of the time, while an aspiration is that an interpreter has been seen as a component of access to justice, the legal system takes no ownership for the professions of court interpreting. In

the case of spoken languages, these are self-regulated, often highly trained agents on whom the legal system in the UK spend a great deal. Yet there is very little (if any) performance monitoring in regard to the delivery of justice.

Where observation has been made of sign language interpreting in court, there are significant problems in relaying the precise message to the Deaf participants. Not only is the language to be used of a highly technical nature but the application of sign language has not developed in a legal linguistic-register (for the simple reason that there is no Deaf judicial system/Deaf courts). Much of the adversarial questioning by barristers for example, is based on the use formulaic utterances (is it not the case that you ...) or double negatives (do you not admit that at that distance you could not be sure about ...). As a result, and because of the varying experience and actual linguistic competence of the interpreters, the provision of interpreters in a legal setting does not guarantee access to the extent that a hearing person would expect.

The continuous demand (and point of conflict) in deaf-legal adviser relations is for the provision of interpreters. The reality however is that interpreting does not open up a precise transmission channel. Bringing a third person into a dialogue brings with it a third set of intentions and experiences. It may be limited by the nature of the (often emotional) content of the dialogue and by the linguistic skills of the sign language interpreter.

At this point in time, there is no firm requirement on English achievement levels in sign language interpreters. There can be no assumptions about the competence of the interpreter in understanding the use of language by the legal adviser. While much is made of familiarity with legal terminology and actual practical experience in legal setting, the interpreter may still have difficulty with meaning as embedded in legal process.

Difficulty in establishing the meaning makes it impossible to render the message accurately to the sign language user.

At this point in time, it is almost certain that legal professionals are unaware of the language form and the choices about language form which are made on the signed language end of the interpreted transaction. There can be no assumptions about the equivalence of the statement or question uttered by the legal professional, when it appears in signed form.

Interpreting has to be seen in terms of support to the communication process and not as is sometimes believed, an automatic equivalent translation device.

With these points in mind it then becomes apparent that providing an interpreter does not absolve the legal professional from making further adjustments nor indeed from ensuring by questioning, that the Deaf person is actually understanding the interpreted messages.

#### ***4.5.6 Other supporting professionals***

Needless to say much of the above applies in the case of other supporting professionals, such as

- Deaf relay interpreters (to support Deaf clients with limited sign competence or with non-BSL signed languages),
- lip-speakers (to provide a close-up clear lip pattern for the verbatim shadowing of the speakers in a court room),
- note-takers and verbatim text operators (to provide a text display of what has been spoken), and
- advocates (usually community supporters with some higher level knowledge of legal process).



However, provision of support personnel like these does not automatically mean that the legal adviser can then just proceed as if the client was hearing. There is still a need for empathy and adjustment to the communication.

#### *4.6 In summary*

Deaf people feel unhappy at continually having to rely on hearing people in order to negotiate the system.

“at the end of the day it would appear that I would need a hearing person to communicate for us, this is not right! I should be able to do this by myself. We do not want deaf people to rely on hearing people to do things for us. I shouldn't have to ask a hearing friend to help us out. It would have been great if I could email to solicitor explaining that I am deaf and for him to reply that this is not a problem if we could do this by email, but already there is a barrier there.”

This is indicative of a much deeper concern for self-determination.

For hard of hearing people the feeling of loss of independence may be even more severe as there is no intermediary to whom the problem can be attributed.

I don't think the guy (CAB) really knew much about it. He just spent most of the time just going on the computer or the phone and I was just sat there not knowing what he was doing and then I saw him chatting on the phone and he told them that I .... I was on sick leave in between the two jobs but I only caught that bit on the phone; and then I said to him I wasn't on sick leave it was a gap between employment but he ignored me and carried on... I just felt really frustrated because I can't talk to that person on the phone and sort out my worries. He's just sorting out what needs to be sorted but I'm just worried thinking, is this right? Know what I mean?”

We know that Deaf and hard of hearing people suffer no cognitive impairment as a result of their hearing loss but they are often made to feel dependent and ignorant by their own legal team because of insensitivity and lack of preparation.

Deaf and hard of hearing people engage with the legal system in a multi-dimensional and dynamic way. They should not be considered as a single group who can be considered on a scale of hearing ability. Legal professionals working with Deaf and hard of hearing clients may need to investigate their range of needs and prepare more extensively for the interaction.

It is true to say that the issues highlighted above are not confined to dealing with the legal profession but the nature of the contact with the law makes the interaction of much greater significance.

## 5 Conclusions

This research has involved reviewing client experience and questioning the need for adjustment of the systems in place. This has identified gaps and problems in the relationships between professionals and their clients.

There are examples of positive experience. Where deaf awareness has been encountered, Deaf and hard of hearing people report positively and may well be prepared to return to that provider to take up new cases and to follow their right to access to justice. However, the more frequently reported experience was that expected or appropriate outcomes were not always achieved. This is perhaps one of the most significant and worrying aspects of the findings of the study. Deaf and hard of hearing people are often in disagreement with their own legal professional and are just as likely to feel they are in opposition to their own legal adviser as in opposition with the other legal team. The root of this is the failure to communicate effectively – in sign language or in amended or augmented speech and writing.

A minority of legal professionals are likely to deal with cases with Deaf people involved. Probably more will deal with hard of hearing people. Of those, few will have follow-on cases or further involvement with people who are Deaf. The incentive to prepare adequately and to adjust to the needs of this minority of cases may have been limited, especially when no formal objections or apparent miscarriage of justice have arisen. There is limited formal training available via legal courses which highlight the issues of dealing with Deaf or hard of hearing clients. Not surprisingly, there is a mismatch in the expectations of these clients and the reality of service provision when they do present themselves to the legal system.

This is not a unique experience for Deaf and hard of hearing people – it is an almost everyday occurrence in all contact with public services. However, the seriousness of engagement with legal process gives greater urgency to improving our understanding of the interaction of these clients and the legal profession.

### 5.1 *Answering the research questions*

Although the qualitative analysis of responses by Deaf and hard of hearing people is extensive, the views can be mapped to the starting questions for the research.

*What circumstances contribute to people with hearing loss being vulnerable when purchasing legal services?*

The simple answer here is that Deaf and hard of hearing people are rendered vulnerable when their communication with legal service personnel is incomplete, stressed or denied altogether. Only in contact with Law Centres did the interviewees express satisfaction that a sign language interpreter was provided to support interaction. In all other case it seems Deaf people have had to get by in writing, trying to lip-read<sup>16</sup> or by bringing their own advocate to support them. In their reports, only in court is there a routine provision of sign language interpreter. In most circumstances a lack of deaf awareness has been found in contact with nearly all staff in legal settings.

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<sup>16</sup> It is important to clarify what is meant here, as earlier we have indicated that lip-reading is technically very difficult since less than half of the speech sounds of English are visible on the lips. Speech reading is therefore, a combination of sensitivity to lip-patterns, application of knowledge of the redundancy of English (ie predicting how sentences are formed) and reading the speaker's posture, facial expression and context of the utterances.

In the case of hard of hearing people, lack of deaf awareness takes the form of lack of adjustment to the visual need to be able to see the face of the person who is talking and a sensitivity to the communication requests of the client. Improved communication can be achieved through a simple adjustment, such as maintaining eye contact with the client.

*Do these circumstances result in adverse outcomes when using lawyers? If so, how?*

This is hard to judge overall in an objective way, as there was no examination of actual legal cases, nor of their outcomes. Participants report feeling stressed, pressured and that they have a reduced opportunity to win a case in the face of communication barriers and a general lack of understanding of Deaf people's needs throughout the legal process.

Hard of hearing people are more able to convey their instructions in speech and are more likely to be highly literate and able to read and understand correspondence. There is a group of hard of hearing people whose speech is not clear, who also report difficulties in making themselves understood by their legal adviser.

Only in a minority of cases have we had expressions that the Deaf or hard of hearing person would feel happy to go back to engage with that lawyer or with the process. This is of concern as it indicates that access to justice may be limited for this group of consumers.

*Are the legal and communication support needs of the above group are being met?*

Communication needs are poorly supported in contact with solicitors and other legal professionals according to this group of participants. There is lack of clarity on who is required to adapt and who is responsible to provide services such as interpreters and note-takers. It seems rare for any consideration to be made for the needs of hard of hearing people. No provision offered by a solicitor was reported by the interviewees.

In court, there is a formal process to detect and cater for the needs of Deaf and hard of hearing people. Deaf people are routinely offered sign language interpreters. Hard of hearing people may also have provision of note takers or lip-speakers, although it may not be obvious to the hard of hearing person what are the range of services which they can request.

*If not, what practical steps could be taken by the profession and regulators to improve their access to legal services and avoid any adverse outcomes?*

There are a series of recommendations in the next chapter in regard to practical steps to improve the situation in three areas: improving the access to information which might allow choice and engagement by the Deaf and hard of hearing person; providing the support to Deaf and hard of hearing people in the legal process; and the training of legal services professionals in deaf awareness at point of need.

*What are their legal needs?*

The legal needs of Deaf and hard of hearing people are not different from all other members of society. However their access to the provision is affected by communication. It would also appear in some circumstances that their access is affected by attitudes and lack of awareness by legal professionals. There is no report from our participants that indicates preparation by the legal professional for meetings with a Deaf or hard of hearing client other than in regard to the legal substance of the case.

*Where do they access legal services? Why do individuals choose a particular law firm/ legal service over other ones, and what are the criteria they look for in making this choice?*

In almost all cases, there is no informed choice; rather Deaf and hard of hearing people find their solicitors on the high street or in the yellow pages, through recommendation and by chance. In this respect, Deaf and hard of hearing consumers face similar difficulties to many other groups of consumers when attempting to choose a legal service provider.

However, participants in the research would wish to choose lawyers with demonstrable deaf awareness credentials.

*Are there specific circumstances/factors/business practices that make accessing legal services, and obtaining a satisfactory outcome, better or worse? Why?*

There are a range of simple adjustments illustrating deaf awareness which produce a positive response from Deaf and hard of hearing people. These include attention to the use of visual means to communicate – such as using email and written text, speaking clearly with good eye contact, providing sign language interpreters for all face to face interactions where they are required, using simpler English, and explaining the more complex legal processes and terminology. Deaf and hard of hearing people also highlight the need to offer an enabling environment with good lighting and easy access (not requiring speech/hearing) and positive attitudes which do not suggest hearing loss links to cognitive incompetence.

Greater preparation by legal professionals for work with Deaf and hard of hearing clients and more obvious statements of experience in working with such clients would make the legal process more effective.

*What have been the experiences of different individuals?*

Experiences of Deaf and hard of hearing people are set out in chapter 4 of the report and in case studies in Appendix 5. There is a considerable range of involvement with different aspects of legal services. The descriptions of the participants tend to highlight the obstacles and problems encountered.

*Are there common themes in these experiences?*

There are many common strands in the experiences which we can bring together in a description of legal consciousness for Deaf and for hard of hearing people. While the requirements for implementation of the law are the same for Deaf people, the limitations in Deaf education, their difficulties in literacy (arising from linguistic mismatch rather than cognitive weakness) and the lack of opportunity to discuss legal matters with other people, mean a Deaf persons view of the law tends to be overly simple and unduly optimistic in the expectation of special treatment. Hard of hearing people in contrast are likely to be literate, having only gradually acquired a hearing loss later in life and are likely to speak. However, this ability may mislead the legal professional into believing that all speech can also be heard and that there is no need to also provide increased visual interaction. These views and expectations shape their approach to legal professionals and may require an adjustment from the professional.

*What changes could improve access to legal services or help avoid adverse outcomes?*

The simple answer is the creation of resource to reduce the inherent division and lack of understanding in client-side service. How this might be implemented is discussed in the next chapter.

*How, if at all, do the above issues differ depending on an individual's type and extent of hearing loss?*

There are at least three groups to consider: those who use sign language (Deaf people); those who speak well but are unable to hear (deafened people or those who lose their hearing slowly over time); and those whose speech is difficult to follow and who do not hear well (partially-hearing people whose hearing loss arose in early childhood).

Experiences and requirement for interaction differ in each of the three groups. Ideally, legal service provision and interaction should be differentiated along these lines.

## *5.2 Emerging Legal Consciousness*

The research described has attempted to create a better understanding of the linking principles of Deaf and hard of hearing people's interaction with legal services. This is the 'legal consciousness' defined at the end of chapter 3, being the perspective of the legal process built on the person's experience and expectation. Some of the issues apply only to hard of hearing people and some to Deaf sign language users. The understanding of legal consciousness for these groups has to be multi-dimensional and has to take into account the factors highlighted in the research – such as ability to exercise choice, the perception of deaf awareness, the communication options available in each scenario, the interpreter availability, and so on. We also need to understand the self-confidence of the client in dealing with all of these factors and the effects of de-skilling by not accommodating the specific individual communication needs of each client.

Deaf people see the legal process as a three part interaction between self, lawyer and the other parties in the legal process. The contact between self and own lawyer is typically problematic due to communication mismatch between the preferred communication and information gathering mode of Deaf people (sign language), and the 'normal' conduct of legal business in speech, face to face interaction and text. This may produce resentment and lack of coherence. It is likely to mean that the lawyer does not share the worldview of the Deaf person and may not be able to adequately interpret the law in a way which links to the Deaf perception.

Provision of a fourth party in the legal interaction, i.e. an interpreter, may weaken the tenuous link further and leave a Deaf person feeling even more isolated. It may also reduce the perceived need by the lawyer to try to understand the experience of the Deaf person and to prepare for it as fully as possible. At the same time, and despite this distancing, a Deaf person may see this as the 'reality' of legal process and typically will raise no formal complaint about this situation. The likelihood of adding professional supporters such as Deaf advocates is limited by the lack of funding (or at least a perceived lack). Use of friends and family in a support role may also be seen as problematic due to the personal privacy issues.

Hard of hearing people are not simply to be placed part way along a continuum from sign language-using Deaf people to hearing people, but rather have different and at times, complex issues to face. Most hard of hearing people are literate and will be able to deal with text communication and information to the same extent as other hearing people in the population. However, in face to face communication in groups or in hearings, they will often have puzzlingly incomplete engagement with what is happening. The puzzle for legal professionals centres on the apparently fluent speech but the inconsistent response to the speech of others. Lack of hearing does not produce a one-dimensional comprehension of others' speech but is affected by location, speaker and extent of stress in the interaction. Many hard of hearing people will be unaware of the support which they can have in these situations.

There is much to be done to understand the experiences of both groups and correspondingly a great deal of work required to reach the legal professionals with whom they come in contact, and then to offer the appropriate insights and linked services.

Through this research project we have begun this process of understanding, and in taking forward the recommendations we may be able to impact the concerns which have been expressed and significantly improve the involvement of Deaf and hard of hearing people.

## 6 Recommendations

Establishing a coherent and accessible view of the legal consciousness of Deaf and hard of hearing people has to be a high priority for the project group members and other organisations. By legal consciousness we refer to the current concept in legal services research which describes the way in which groups of people construct the meaning of the justice and the services which support their access to it. It arises in their experiences in the legal system and is driven by the accessibility of legal services. It will greatly help relations between lawyer and client if there is a shared understanding of the expectations and aspirations for the legal process. The findings described and analysed here ought to provide the first step in that process.

### 6.1 *Simple adjustments*

#### 6.1.1 *Information at point of need*

There is an access issue for Deaf and hard of hearing people because as a minority group, they are not seen as frequently for legal professionals to naturally evolve an adequate understanding of their specific needs. An *information at point of need* service to provide guidance to legal professionals on how to interact and about the options for support would be a significant step forward. By locating this in a single site (on the Internet) legal professionals would be able to seek advice when they needed it and could reasonably expect such information to be up to date.

#### 6.1.2 *Accredited deaf awareness training*

There is a need for greater deaf awareness amongst legal services providers. This does not need to be provided through costly on-site training programmes; instead, there is scope for e-learning where the evaluation and certification can be offered online. The content of such training (broadly referred to in this report as deaf awareness) needs to highlight the issues in this research: access to information; obstacles to the exercise of choice; deaf awareness among legal professionals; communication choices for interaction; interpreting services; personal reactions and legal consciousness.

A sensible adjustment to law degrees could be to require some engagement with diverse users (eg while on a practical training placement) and specific taught units on the situation and experience of those who have different needs (from our point of view, Deaf and hard of hearing people).

The recognition of “Legal Consciousness of Deaf and hard of hearing people” training within CPD would give it a status beyond simply ‘deaf awareness’ and encourage a serious professional approach to the learning about and understanding of the diversity of consumers. Given the advanced CPD arrangements in the legal profession, it makes sense for such a training provision to be made specific to lawyers.

#### 6.1.3 *Legal resource for Deaf and hard of hearing people*

There is an expressed need for Deaf people and for hard of hearing people to have recourse to case law, to support service possibilities and for the more common points of law and its vocabulary. This resource would need to be available in sign language and in text and subtitles. The most convenient location for such a resource would be on a central Internet site.

We would expect to see a range of guides such as ‘how can I find a solicitor?’ ‘who pays for an interpreter?’ ‘are there any legal advisors with deaf awareness/specific deaf experience?’ Ideally,

there would also be illustrative cases described in sign language and in text. The possibility to illustrate these cases with some video representations of the way in which legal business is conducted in court, tribunals and in other settings can be explored. This may be an area of interest to the Law Society.

Where there are official forms or statements about service provision, some indication about the range of possible service provision and its purpose may be necessary, particularly for anyone new to the situation. Ideally, in profiling the client or in the case of direct service provision, a form with options for different forms of support service can be provided. This may be a development which could be taken on by the Solicitors Regulation Authority or other regulators. This would aid legal provision in creating the transparency in terms of total costs, and also help in locating the funding for such services.

#### *6.1.4 Time allocated and “listening”*

Many Deaf participants reported the need to take extra time to understand and to query the process. Use of interpreters and other support staff, while not extending the time per se, may require more time because they open up a communication channel which the legal professional might not have had previous experience of. Use of support professionals may also mean more frequent pauses are needed for the interpreter and for the viewer.

Deaf people will report the additional strain of watching an interpreter deal with high level technical language over time and others will report that concentrating on speech, facial expression and other visual cues makes more frequent breaks mandatory.

It seems that deaf and hard of hearing people may require longer than usual consultations.

The guidance on listening to one’s clients probably could be reinforced in this regard and ensuring that preparation is done sufficiently far in advance that the client is able to instruct their lawyer appropriately.

#### *6.1.5 Entry and waiting room procedures*

Some thought might be given to simple physical access issues, not because they cannot be overcome in some way or another, but because they add stress to an already fraught situation for many people with a hearing loss. Active waiting in a waiting area at a Court or in a legal adviser's reception area is also a further drain on emotional energy and the need to provide visual information systems is a high priority.

Connection to the Deaf or hard of hearing person can also be done by text message and a simple adjustment to ensure that the court or receptionist had the means to text to the participant would be helpful. This would seem to be an area which might involve the Crown Prosecution Service.

#### *6.1.6 Gaining familiarity with court procedures*

Without great expense and with minimal administrative load, it would be helpful for Deaf and hard of hearing people to be offered the chance to familiarise themselves with the court, layout and activity – prior to attendance for the court proceedings. This might reduce stress on arrival and on entry into the formal courtroom. This is likened to the procedure in pregnancy of visiting the maternity hospital in advance.



### *6.1.7 Training, assessment, monitoring and management of support personnel*

This borders on the bigger picture issues below. However, as things stand there is no means of quality control of the provision of support to Deaf and hard of hearing people. The root of the problem is in lack of certificated/recognised training routes for all of the various personnel who might be engaged. This extends from the most obvious sign language interpreters to the Deaf advocates who support the client emotionally as well as in information supply and legal advice. In each case, some attention has to be given to English competence as well as the other skills which are brought to bear.

Where possible e-learning should be used rather than more costly centre-based training and training which can be offered and / or accredited by the National Register of Communication Professionals working with Deaf and Deafblind People (NRCPD), and supported by the national professional body (Association of Sign Language Interpreters, ASLI).

## *6.2 General Issues*

### *6.2.1 Analysis of costs*

While there has to be consideration of cost of providing support services and the cost of the above adjustments, some analysis would be helpful of the costs of convening proceedings and immediate adjournment where no interpreter was available, or incorrect services were provided.

It would help to provide a cost benefit analysis of getting it right in terms of re-fitting the legal process for purpose in regard to Deaf and hard of hearing people.

### *6.2.2 Professional views*

It will be helpful to survey legal professionals on their experiences of Deaf and hard of hearing clients, as this research has only been able to infer motives and rationale in regard to the professional view. Such a survey might fruitfully be matched against the data already collected.

### *6.2.3 Better use of existing technology*

A frequent complaint was the uncertainty of inadequate loop systems and poor text materials. Some examination of the pattern of use of existing technology would be helpful and a consideration of how for example, relay services (see for example [www.reach112.co.uk](http://www.reach112.co.uk)) could open up immediate access both from and to the legal process. A simple change in a court environment might be to create an accessible display for the court stenographers production of text so that a hard of hearing person could read the proceedings as it progressed.

## *6.3 Looking at the Larger Picture*

However, the real change which is necessary is to find a means to share the understanding of the legal process and to communicate the meaning among all parties concerned. This would require a greater expression of duty of care from the legal professional in order to ensure that the client is fully engaged.

To start that process, we need to inform and to advise. The content of that advice has to come from the analysis of legal consciousness of the clients, and there needs to be a means to offer the views, experiences and emotions of those Deaf and hard of hearing people who struggle to engage with legal process. That requires a joining-up of all the component parts described so far. The analysis in this report may serve to begin that development.

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## **Appendices**

- 1. Participant details**
- 2. Project explanation**
- 3. Questions to be used**
- 4. Scenarios used for those who have had limited experience**
- 5. Case Studies**

## Appendix 1 Participant Details

The average age of the Deaf group was 46 years, while the hard of hearing group are younger at 43 years (although this includes one person, aged 73 years old). The average age of the inexperienced group was 24 years. Of the Deaf participants, there were 14 male and 12 female. There were 8 male and 7 female hard of hearing participants. There were 3 men and 5 women in the inexperienced group. There were two BME participants in the Deaf group. Three in the inexperienced group said they were of European origin – their parents were born outside of the UK. All other participants were of UK origin.

One of the Deaf group termed himself “deafened” while 8 of the hard of hearing said they were “deaf” (the others said “hearing-impaired” or “hard of hearing”). All of the Deaf group said they preferred to use sign language (although 6 said “signing and speaking”). Ten of the hard of hearing group, said they used speech, 3 said they used signing and speaking (one said only signing). The choices here are a little surprising as all of the hard of hearing group were interviewed in speech with an audio recorder. The inexperienced group were mainly signers with only one claiming to use speech and lip-reading.

Of the Deaf group, 20 were born Deaf and five had a hearing loss by the age of five years. The hard of hearing were more widely distributed with 8 having a hearing loss before the age of five years and six were deafened after the age of 21 years. This is indicative of the problem of recruiting those people who lost their hearing later in life: (a) because there are relatively few deafened people (b) the typical pattern for declining hearing loss in mid career is to deny it for many years and (c) the majority with a declining hearing loss are aged over 60 years and have less contact with legal services. Our contact with hard of hearing groups and lip-reading classes produced only two candidates from nearly 40 attendees whom we approached.

Deaf people were less likely to be hearing aid users (18 said “never”) while hard of hearing people did use their hearing aids (13 said “always”). One of the hard of hearing had a cochlear implant. All of the hard of hearing could hear a person talking to them in a one to one interview setting. Only 4 of the Deaf group claimed this. All of the hard of hearing group claimed to be confident in using a computer to obtain information, while four of the Deaf group were not confident.

Twelve (less than half) of the Deaf group were in full-time employment ; eleven (nearly three-quarters) of the hard of hearing group were employed. The hard of hearing group tended to be ABC1 in profile. The Deaf group while similar were less likely to be in full-time employment.

In dealing with legal terminology, the Deaf group would use the Internet and ask family or friends (58% in both categories). Hard of hearing were marginally more likely to use the Internet (66%) and much less likely to ask family and friends (26%).

None of the hard of hearing had used an interpreter in legal settings and only 6 had taken an adviser. In contrast, 15 (58%) of the Deaf group had used an interpreter, and 10 said they had taken an adviser.

## Appendix 2 Project explanation

### *Legal Choices – Silent Process*

#### *Engaging Legal Services when you do not hear*

Deaf people, just like hearing people, need to have advice at different times. Sometimes that advice relates to the law. Not everyone knows which law is relevant and many people do not know where to go to obtain that advice. Sometimes, a person becomes involved in a legal matter, unintentionally or may go directly to a solicitor in order to pursue a case. Nearly all of the time, the contact to be made is in spoken language and virtually all of the documents are presented in English text.

The Legal Service Board has set up a consumer panel (LSCP) to help it to understand and then to regulate the delivery of legal services. That is, they wish to provide equal access to justice and to the legal process. In order to improve and guide the legal professionals, the LSCP, in partnership with the Solicitors Regulation Authority and Action on Hearing Loss, has asked the Deaf Studies Trust to collect evidence on the recent experiences of legal services by people who are Deaf sign language users, and people who are deafened or hard of hearing. They also want to know more about people who have not yet consulted a legal professional.

In the next two months, interviewers from Deaf Studies Trust will be contacting Deaf, deafened and hard of hearing people, to ask them to interview, to learn about their experiences and views about legal services. Legal services can be:

Citizens Advice Bureau

Education or work tribunals

Buying a house

Writing a will

Having a divorce or being in a family court

Having a dispute with a neighbour or with a shop

Obtaining advice about how to run your business or how to start a business

Meeting a solicitor to discuss a matter which will go to court

Being in Court

The interviews will take about an hour and an interviewer will come to visit. There is an allowance for your expenses in taking part. All information given is confidential and will not be seen outside of the research team.

The information we collect will help to ensure that legal services are more appropriate and effective for Deaf, deafened and hard of hearing people in future.

For more information and to take part, contact [Anne@deafstudiestrust.org](mailto:Anne@deafstudiestrust.org)

Anne Stygall, Deaf Studies Trust, Vassall Centre, Gill Avenue, Bristol BS16 2QQ

For more information on the Legal Services Consumer Panel go to

<http://www.legalservicesconsumerpanel.org.uk/>

## Appendix 3 The Interview

### Interview schedule for personal data

Legal Choices Project

#### PERSONAL DATA RECORD

(store page 1 separately from the other details)

Location of interview:

Interviewer:

Date of Interview:

Purpose of interview explained? Yes

Consent form signed? Yes

---

*Participant Record Number:* \_\_\_\_\_

#### PERSONAL INFORMATION

1. **Full Name:** \_\_\_\_\_
2. **Address Details:** Post Code: \_\_\_\_\_
3. **Contact Details (one of these)**  
*Minicom or Text Number:* \_\_\_\_\_  
*Fax Number:* \_\_\_\_\_  
*E-mail Address:* \_\_\_\_\_
4. **Date of Birth:** \_\_\_\_\_ *Day* \_\_\_\_\_ *Month* \_\_\_\_\_ *Year*
5. **Gender:** *Male:*  *Female:*
6. **What is your ethnic group?**
  - A. White:  
English  Welsh  Scottish  Northern Irish  British   
Irish   
Gypsy or Irish Traveller   
Any other White background, write in \_\_\_\_\_
  - B. Mixed/multiple ethnic groups  
White and Black Caribbean  White and Black African  White and Asian   
Any other Mixed / multiple ethnic background, write in \_\_\_\_\_
  - C. Asian / Asian British  
Indian  Pakistani  Bangladeshi   
Chinese  Any other Asian background, write in \_\_\_\_\_
  - D. Black / African / Caribbean / Black British  
African  Caribbean   
Any other Black / African / Caribbean background, write in \_\_\_\_\_
  - E. Other ethnic group  
Arab  Any other ethnic group, write in \_\_\_\_\_

(page 2) Participant Record Number: \_\_\_\_\_

COMMUNICATION AND HEARING

7. Do you call yourself:

Deaf:

Hearing Impaired:

Deafened

Hard of hearing:

Partially Hearing:

8. What is your preferred method of communication? (Please tick one only!)

Sign Language:

Spoken Language:

Signing and Speaking:

Speaking and lip-reading:

Writing down:

Other:  \_\_\_\_\_

9. When did you become Deaf or lose your hearing?

At birth:

0 – 5 years:

6-20 years:

21-50 years:

51-64 years:

65 years +

10. Do you wear a hearing aid

Always

sometimes

never

11. Do you use a cochlear implant

Always  sometimes  never

12. When you are wearing your hearing aid or using your cochlear implant, are you able to hear another person (in interview for example) when talking in a one to one, quiet setting

Yes  No

13. Are you:

Employed:

Unemployed:

Retired:

Student:

At home:

Other:

14. What is your main job title? \_\_\_\_\_

15. How many hours per week do you usually work? \_\_\_\_\_

**WHEN YOU NEED TO FIND OUT INFORMATION**

16. Do you use a computer to obtain information?

Yes with confidence  yes but I am not confident  rarely or never

17. If you find a difficult legal word, do you

look it up on the Internet

ask a friend or family member

look it up in a book

don't bother

**LEGAL SERVICES**

18. Thinking about the last three years, how often have you been involved in

|  | Just one time | Frequently or repeatedly |
|--|---------------|--------------------------|
| An education tribunal (eg dispute over a child's school)                   |               |                          |
| Problem at work or a work tribunal (eg discrimination)                     |               |                          |
| Buying a house (where you used a solicitor or conveyancer)                 |               |                          |
| Writing a will or obtaining probate (when someone dies)                    |               |                          |
| Having a divorce or being in a family court                                |               |                          |
| Dispute with a neighbour or another person                                 |               |                          |
| Complaints over equipment with a shop or company                           |               |                          |
| Obtaining advice about how to run your business or how to start a business |               |                          |
| Meeting a solicitor to discuss a matter which will go to court             |               |                          |
| Attendance in Court  |               |                          |

19. Did you use a sign language interpreter in any of the above?

a) Yes - say which .....

20. Did you have an advocate, or adviser or another person to help you in the above situations?

a) Yes - say which .....



## **PART 2: Semi-structured Interview**

*This section to be used by the Interviewer only*

Encourage the person to talk openly and freely about the experiences.

Use only one question in each section – use the probing questions only if the interviewee does not give much information from the first question.

Remember that we want to find out more than just that it was difficult to have access (we know that already). We are trying to find examples of good practice or to find out what the interviewee thinks would have improved the situation.

We also want to know the outcomes – has it been fair? Did the interviewees reach the goal they wanted? Did the service meet their expectations?

Explain the purpose of the questions informally – for example,

“ we want to find out about your experiences of using legal services and receiving information. We want to know what happened and how you managed to get around the problems if there were any. We especially need to know about how you communicated and if you understood.

Explain that the session will be video recorded but will be used only to allow analysis of what has been said. It will be viewed only by the immediate research team at the Deaf Studies Trust and will not be shown elsewhere. Any quotes from what people tell us, will be disguised so that the person cannot be identified.

After the warm up, you can vary the order of the questions according to what the people say and you can add new examples if it makes it easier for them to describe their experiences. However, you should mark the order you used for the questions, in the margin.

Make notes if you feel it will not be obvious in the video or audio recording.

## Warm Up questions

**Remember that we are thinking of many different situations when we think about legal services.**

An education tribunal (eg dispute over a child's school)

A problem at work or a work tribunal (eg discrimination)

buying a house (where you used a solicitor or conveyancer)

writing a will or obtaining probate (when someone dies)

having a divorce or being in a family court

a dispute with a neighbour or another person

complaints over equipment with a shop or company

obtaining advice about how to run your business or how to start a business

meeting a solicitor to discuss a matter which will go to court

attendance in Court

**Remember that we are also thinking about positive experiences, not just problems.**

(a) Can you remember any situations where you went somewhere and were surprised to find the solicitor, legal adviser or receptionist could communicate with you in signing or fingerspelling or with very clear speech? Tell us what happened.

(b) Are there any other situations where you went and you found that the people at the desk or in the service, could not understand you or could not communicate effectively and you had to give up in frustration? What did you feel at the time and then afterwards, did you do anything to complain? Did you ever go back to that place?

## What made you choose ....?

When you had a legal question or were involved in an incident, what made you choose to go to a particular solicitor or adviser?

Was it a recommendation? Or was the person chosen for you?

Did you find a leaflet or look on the Internet?

## Can you give some information about ...

The particular case you are thinking about – one that you have been involved with in the last three years?

Was it in court? Or in a tribunal? Or in a family court? Or some matter you needed advice on – a problem at work? Or buying a house?

## **IF THERE WAS NO CASE IN THE LAST THREE YEARS GO TO THE ALTERNATIVE INTERVIEW PAPER**

### **Contacting Legal Services about a problem**

Thinking about this experience, how do you usually contact your solicitor/adviser if you or your family have legal issues?

Has this process been smooth or have there been some problems?

Do they book an interpreter or lip-speaker or note-taker, for you?

Do you find them helpful?

### **On arrival and at reception**

When you arrive at the reception desk in your advice centre or legal office, are you able to understand and be understood by the receptionist?

Do you feel this is a smooth process or are there some stresses?

How do you usually communicate with the receptionist?

Do you think this situation could be improved – how?

### **If you are waiting for service**

Can you tell us about good experiences or bad experiences you have had when in the waiting room?

How do you know when the solicitor or adviser is ready to see you?

Have there been embarrassing experiences in waiting your turn?

### **Going to court**

Can you tell us about the last time you went to the court for yourself or with a family member or friend; or because of an incident where you may have been a witness?

Did you feel you had a good service?

What were the problems? Which aspects were good?

### **Waiting at Court**

It is often the case when in court that there are delays, can you explain about any experiences you had in regard to this. Did you feel you received enough information about what was happening?

How would you improve facilities for the Deaf and hard of hearing people in the waiting rooms?

### **Going to an Advice Centre like Citizens Advice or a Law Centre**

Can you tell us about your experiences of going to an Advice Centre or a Law Centre?

Is it possible to improve this service for Deaf or hard of hearing people?

### **Use of loop systems**

In consultations with a legal adviser or solicitor or in court, was there a loop system available?

Did it work? Was there somehow who knew how to make it work?

### **Your Legal Assessment or information supplied (the legal brief)**

When you consult legal advisers, they often ask for background information or supply you with documentation. Have you found that information easy to understand?

When you did not understand did you feel able to ask questions?

Did you feel that your questions were treated seriously and answered patiently?

### **During a legal case**

There are often papers to sign and these may be sent to you. Were you able to understand these? Were they explained effectively?

Did you feel you were understanding what the process was?

### **After a legal case was completed**

Did you feel you fully understood the outcome or ruling or verdict?

Were you given the information directly or through an intermediary – friend, family, interpreter?

Did you feel satisfied that you had a fair outcome?

Do you think you would do the same again with the same legal adviser?

Which aspects would you change?

### **Internet**

Do you use the Internet ....

To find out which was the correct legal adviser or solicitor to contact?

To find out more about the case that you were involved in? ... to look up words for example?

### **Using newsletters, leaflets, video**

Some organisations have information videos with signing, or subtitles – have you ever seen or used these for legal matters?

Were they any good? What have you learned from these videos?

Have you looked at leaflets about the law or your rights? Were these helpful?

Have you seen information about the law in magazines? Was this helpful?

What is the best way to give legal information to someone like yourself?

### **Summing up**

#### **Taking these factors and situations into account**

How did you feel personally when in the presence of a solicitor, or barrister, or members of a tribunal or other legal adviser?

Nervous? Upset? Comfortable?

Did they respect you?

Did you feel they took the time to understand your point of view?

If you had a friend or supporter with you, how were they treated?

If there was an interpreter or advocate there, how were they treated?

#### **Thinking about all of these things**

What could have made your experience more effective or less stressful or more productive?

What would you like to see improved?

Do you feel confident to go back to choose a legal adviser now?

**(To the Interviewer ) remember to say Thank you**

**Don't forget to ask the person to sign the payment/claim form. Make sure you have completed all questions**

## Appendix 4: Scenarios for less experienced

### Legal Scenarios – to think about what if?

*(you can select some or all of these to talk about)*

1. You were caught by the police using your mobile phone (for texting or speaking) while stopped at traffic lights. Now you have received a letter which is a summons to go to court. Who will you ask for advice about what to do? If you need to find a solicitor, how would you do this – how do you choose a solicitor?
2. Once you have decided on a legal adviser, how do you think you would contact that person? Would you go along to the office and ask? Or send an email? Or a letter? Or ask a friend to go with you?  
Once you have an appointment with a legal adviser, how would you expect to communicate with that person – in speaking and lip-reading? Or writing down? Or in signing with a friend? Would you expect to bring an interpreter? Who would pay for the interpreter?

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3. You work in an open office with about 20 people at different desks and computers. Your job is to enter details from application forms for subscriptions. Some people seem OK and try to talk with you, but you can tell that other people are not happy trying to communicate with a deaf person and having to repeat things in meetings. One day, when the line manager had called a meeting (you did not know about), you were struck on the back of the head by a large ball of paper, thrown from across the room. People laughed, they were supposed to be getting your attention to go the meeting. You were very upset and talked to the line manager. He was not sympathetic and thought it was funny too. What should you do? Is this a case of discrimination? Would you look for legal advice?
4. If you had a child who had a learning difficulty who was about to start school. The school with a special unit is not so far away but your child will need to be transported. The Local Authority says you do not qualify for financial help with transport or a special taxi. Where would you go to find out if there was a legal issue here?
5. Your brother who is Deaf has been in a fight outside the Deaf club. Unfortunately there was CCTV filming and the police came to interview your brother at home. They were not able to communicate with him as he is Deaf, but they wrote down that he would be charged and has to go to the police station with a solicitor. How would you help him to find a solicitor?
6. You have been cutting back the bushes and trees at the bottom of your garden. A few days ago you received a letter from a solicitor saying that you had damaged the neighbour's fence and also cut his trees. What should you do?

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7. You were a witness to a car accident and the driver was charged with dangerous driving. You had a letter to say you must appear in court as a witness. How will you make sure they are aware that you are deaf or hard of hearing and make sure that they will have an interpreter or loop system for you to use?

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8. While you were in the supermarket, your car was damaged, someone must have banged into it. You think the supermarket has CCTV. However, they will not let you see it to check which car it was. Your insurance company says you have to talk to a solicitor, and makes an appointment. How will you manage with talking to the solicitor? Will you take a friend or family? Will the solicitor arrange an interpreter or supporter for you?

---

9. You and some friends have been renting a flat. Now you are finished and are going away. The landlord will not return your deposit because he says there was some damage to a shed at the back. You are sure that this was the neighbour who did it – not you. What should you do? Can you get advice? Do you need a solicitor? What are your rights?

---

10. You had an accident at work and you have been off work for 6 months. Now you have no more pay but the company says the accident was your fault as you did not wear a hat. That was because it affected your hearing aid and you could not wear their special hat if you wanted to hear people. The union says you should go to a solicitor but they will not pay for an interpreter or lipspeaker or notetaker. What should you do? Do you think you should take legal action? How do you do this?

---

## Appendix 5 Case Studies

These cases are presented in order to provide a more holistic view of the engagement with legal services. Although participants are requested to provide stories of positive experience, the underlying themes are of difficulty. The interpretation of their meaning is incorporated into chapter 4 and 5. Note that references to individuals or organisations have been changed to protect identity.

### *Case Study 1: Deaf in court*

This first case was explained by a Mark who acted as adviser to the Deaf person. The deaf person was charged with a serious offence and had to go to court. He had meetings with the solicitor and took Mark with him.

An interpreter was provided by the local Deaf Association. However the Deaf client did not understand the content of the meetings and had to rely on Mark (who had worked from the interpreter and from some lip-reading of the solicitor) to explain the issues afterwards. In the same way, Mark had to deal with paperwork and written materials in order that the Deaf person could understand what was going on.

The Deaf person assumed that he had to plead guilty because he 'felt' he was guilty. He had no explanation about the way in which a plea of guilty or not guilty might affect the outcome of the court's deliberation.

He was warned in advance that he could expect punishment since the offence was serious. They arrived at the court and after showing their summons letter, were instructed to wait outside one court room.

A person approached them who turned out to be a new solicitor. Mark had to figure this out from lip-reading as there was no interpreter. The information was that the usual solicitor had been called away to another court case. They were told to wait outside the court. They waited and waited. It was only by chance that the interpreter booked for the court appeared and explained that the court number had been changed. This had been announced over the loudspeaker system but neither had access to this.

The interpreter provided by the court was the same interpreter as had been used in solicitor client consultations.

The case presented by the defence (and monitored by Mark) was considered to be extremely patronising, playing on the sympathies for 'the poor deaf person.' The Deaf person was then let off very lightly. The Deaf person was overjoyed. He completely reversed his views about his treatment by the legal system and was overtly grateful to the solicitor and barrister.

### *Case Study 2: Contracts for house buying*

Nigel was buying a new house from a national builder. He was told that a solicitor would come to the house in order to finalise details. Nigel is hard of hearing and his wife is Deaf. The person who appeared on their doorstep did not explain who he was. There was no preparation or provision for the fact that he would meet Deaf people. There had been no choice in regard to the solicitor – this was just the person appointed by the builder or selling agent. In retrospect, Nigel



does not know if the person who came was actually a solicitor even though the company was a firm of solicitors.

They had a 2 to 3 hour session with considerable pressure exerted so that they could complete all the paperwork, there and then. There was a real sense that this was their only chance to buy the house.

They did not feel that anything was fully explained and there was very little opportunity for them to have a personal discussion with one another in sign language. Only now are they discovering problems in the contract. These were not understood nor do they believe they were explained, at that time.

They became aware that they had no idea if this person was a qualified solicitor or in fact simply a salesman. Two years later they continue to receive sales and marketing information from this company. It seems as if this was not a proper legal transaction but rather a sales procedure instigated by the builder/agent. There was no consideration of the fact that they were not able to hear. No interpreter was offered and they lacked the confidence to insist on this.

As someone in an executive position at work, someone who reads well and interacts effectively with hearing colleagues, Nigel is now surprised at how easily he was pushed into the situation and how little he and his wife questioned the motives and actions of the person who brought these contracts.

### *Case Study 3: family issues – solicitor resisting interpreters*

In this case, Barbara has good speech but is not able to hear. There was a problem concerning a member of her family and she needed a solicitor. She asked a friend and ended up with a solicitor some 5 or 6 miles drive from where she lived (she had no car). This was not a personal recommendation but the friend looked up the yellow pages and picked someone, phoned them up and made an appointment.

Right from the start there were problems with the solicitor. Arriving at reception, she explained who she was and asked about the interpreter. The receptionist said to talk to the solicitor upstairs. The interaction proceeded with writing down and exchanging notes. Barbara requested that in future there should be an interpreter present. The solicitor insisted that Barbara (the Deaf person) understood perfectly. However, Barbara explained that in one to one situations of simple exchange she was OK but was not understanding the technical words produced by the solicitor. The solicitor waved aside her concerns and refused to engage an interpreter. Barbara explained that her confidence just dropped at this point.

The explanation by the solicitor was that there was a funding problem. However, she was suspicious that it was the solicitor who was refusing to pay. She later was told by a friend that the solicitor was overheard talking to another solicitor, to say that 'the deaf are hard work.' At that point she says she lost trust in the solicitor. She had kept asking for the interpreter and it had been turned down repeatedly. She was also told by this solicitor that if she went off to another solicitor, she would have to pay. She was obtaining legal aid through this particular solicitor. She could not afford to pay, she felt stuck.

She also was sent paperwork which she could not understand and had to ask a friend. Some of the content was wrong and the solicitor apologised but still refused to have an interpreter.

When the case came to court, she was shown into a room adjoining the court and told to wait. Surprisingly an interpreter turned up saying she was to interpret for Barbara. She was told to

wait as the judge was out for lunch. They waited for over an hour. Barbara had a discussion with the solicitor for the first time using the interpreter. Then they went into court and she was surprised to find another interpreter who had been booked by the court. Unfortunately she could not understand this other interpreter brought from London and there was a pause while the judge tried to find out what was wrong. Questioning Barbara about why she did not understand, the judge made her feel very small and completely embarrassed. The solution of using signing and speaking was not ideal. A different interpreter was engaged in later hearings.

Barbara also told the solicitor that the personal interpreter was very good and made their interaction much better. But the solicitor ignored this and continued to have meetings without an interpreter.

At the end of the first hearing, a judgement was passed. This was not to Barbara's benefit or liking and she said so to the solicitor. His response was to say 'you have to accept this or you will lose legal aid.' She signed up to this very unhappily not knowing how the decision affected her legal aid.

She discovered later that she could appeal. She changed solicitors with help from a hearing person and was successful in the later appeal. The new solicitor was much better, a woman, and more Deaf aware. Unfortunately, she went off on maternity leave and Barbara was cut adrift again. When she returned from a maternity leave she did not want to take up Barbara's case.

In total, she has probably gone through 6 or so solicitors and feels very frustrated at their lack of adjustment to the needs of Deaf clients.

#### *Case Study 4: Using an on-line service*

Trevor had some experience of buying and selling his house but had been put off by high fees. He decided to look on line and found a website offering fixed fees. He thought £100 to sell a house was cheap. He was able to make initial contact from the website contact page.

The first email he had from them, "went over me, couldn't understand, their English was really high". So he sent them a reply saying that he was Deaf and that their English was much too high. They responded that this was not a problem.

They sent him some visual examples, like attaching a picture of driving licence. Trevor felt this was very useful.

However, he had never asked the firm if they had worked with Deaf or hard of hearing people before but thought that they must have had some experience – 'how else would they think to include some visual cues and show examples like utility bill with in brackets, electricity or water bills, etc.'

In regard to signing the contract, he thought this was easy as all they did was to send him a finished contract and he had to sign his name where they had put cross and then just post it back.

When asked if he was able to understand the wording of contract, he said,

"not really, I just look through where to add the signature. I know it is not too good, but that's me. I take a gamble, but if I had to read it through, I would do so and if I did not understand a word, I would google to find out meaning."

He also admitted that if there was a more complicated phrase, he would go to the Deaf Association or ask for a translation.

### *Case Study 5: Benefits*

Tanya thought she was being paid the wrong benefits so she went to seek advice from the Deaf Association. After a phonecall by them, she was assured everything was in order but she was still suspicious. She found out from other people that they were receiving higher benefit payments, including tax credit.

Her husband was unfit to work and her children were in full time education but she was worried about what might happen to her level of benefit when they left school.

Tanya went to see her social worker who recommended she visit the Law Centre. This was a completely unknown world to her. She was pleased to see that the Law Centre had booked an interpreter for her appointment and the adviser had brought with her all the relevant documentation.

From this analysis, she was informed that many mistakes had been made. They were able to make a claim to have her benefits backdated so that she could be reimbursed what she was owed.

Tanya had been referred to the Law Centre by her social worker and it seemed as if the relation between the two had led to better understanding of the needs of someone who does not hear. She had no idea that Law Centres existed or that she would be able to take her case to them rather than to the unemployment office. The result of this contact with a legal adviser was considered to be wholly positive.

### *Case Study 6: Tenancy*

Dominic had a son who was under 18 years of age and was therefore requested to sign his son's tenancy agreement as the guardian. He was reluctant to do so initially as he wanted the opportunity for an interpreter to translate the document in full so that he understood its contents prior to signing the tenancy agreement.

Dominic was 'reassured' by his housing trust that it would be fine to sign it without having the interpreter. He was due to be away for two weeks and they insisted they could not get an interpreter. There was pressure to agree to this because of the fear that his son would lose the property if there was a delay. So Dominic signed. (He was later informed by a solicitor that this should not have been done as the document created a liability on himself in the event of problems).

Of course, his 'gut feeling' about the document was correct and there were a series of problems. In the end the housing trust took them to court.

The son was entitled to Legal Aid but Dominic was not, even though he was unemployed at the time; he did not qualify, as he owned his own flat.

He found a solicitor after a recommendation but they said they could not provide an interpreter. 'Luckily' he had an interpreter friend who said he would take the case for free. They phoned the solicitor and were told the first hour was free.

When Dominic arrived with the interpreter at the solicitor's office, he was asked to pay the sum of £1,000 upfront. He had already checked and so the solicitor agreed that the first hour was free. So he set out all the paperwork and used the allocated free time to cover as many questions as he could via the interpreter. At the end of the hour, Dominic packed up and left. To avoid incurring legal costs Dominic had to represent himself in court.

When the court date was fixed, Dominic was unable to attend and was advised to prepare a letter of explanation; he sent this. He then went to court on the day before to make sure that the letter explaining his absence would be presented to the court. He also emailed the son's solicitor to explain but they responded that they could not be involved in this due to their duty to the son.

On the next day, the letter of explanation was not presented to the court and the judge asked the son where Dominic was. It appeared to them that Dominic had not bothered to turn up. The case had to be adjourned and a new date was set.

Dominic then requested an interpreter for the new court date and the court refused. He asked if the court provided interpreters for spoken languages and they said yes. So he requested a letter from them explaining why they would not provide a sign language interpreter. They agreed to do so. However, the next letter said that they had booked an interpreter.

The day before the case was due to be heard, the housing trust solicitor contacted them to say the case was to be moved to the next year. It was then subsequently settled out of court.

The outcome was that he was able to have his name removed from the tenancy agreement and end the liability.

### *Case Study 7: Uncertainty and Intermediaries*

This case was triggered by a car crash and the need to deal with the issues which arose. The statement of the participant is presented here almost in full as it is clear and direct. Some of the issues relate to the contact with the insurance company and not the solicitor – although it is hard to be sure which is which.

“Did you have to find your own solicitor for this?”

“No, what has happened is that when car crash has happened, ‘I was like what to do?’, so had to phone them through typetalk to insurance company. They said ‘thank you but we need to phone you back’, so I asked how do you phone me back so it was agreed that she would phone my work colleague, so they did that and the solicitor did the same. It was the one that was recommended by the insurance company

...They kept sending me letters with really deep information like if you were successful you could sign for some money at the end with how much per hour that kind of thing. I did not fully understand, so used my work colleague to explain and she said that is a normal - nothing to worry about. I was still worried but I signed the papers. My partner got the same papers. She was involved in the car crash too and is deaf as well. She asked me if it was okay to sign so I said my work colleague said it was okay, so she was relying on me but if you ask me if I had 100% understanding: no, not really. This is still in the process at the moment.

I was feeling unsure too. Her first question was ‘did I have to pay?’ ‘no it is the insurance company that paid that.’

So you still have at the back of your mind who would actually be paying for this?

Yes, and it is still going on. My girlfriend has peace of mind already because she is relying on me. She is fine but me, I still have that worry in my mind. We posted this back and they investigated wanting to know what happened. Then they phoned me ... what am I supposed to do with the phone? So gave this to my work colleague. She explained that I am deaf. She suggested it would be better to email her with the query. They said no. But they asked her to explain to me what has happened. My friend tried to explain that she was not there at the time. Luckily my work colleague is very deaf aware and tried to insist that they get in touch directly with me through email. So I sent them an email asking what was it that they needed to know and then they phoned my work

colleague again. So she had to be quite insistent that she would not talk to them. So now our communication is that they would send me a letter, and I would email them back and they send me a letter back. But like, this is going backward. They would not reply by email.

So when they send you a letter, were you able to understand what it was about.

Sometimes okay and sometimes no. Like easier when they send me a letter saying the other person involved wanted to settle this out by 50/50. I had to say no straight away ... I could understand that part. My girlfriend had to claim for her injury. They sent me a letter which we had to tick each column and I was not sure what it meant, like and she was asking me to help her, so we went through, with me explaining: I think this means this and that and this become clearer as we went on to clarify further with them. Like, the question was asked, 'do you want us to sort out some money for your massages for your injury. So we ticked yes. Then they would send us another letter, explaining if you want to do that, this would mean you would have to wait till she is fully recovered and claim back at the end. Like, to use the NHS first; that way it becomes more simple but it is a long process. Are they fully aware? No I don't think so.

What you would like to see in the future that would help other deaf people better in similar situation?

Simple, letters need to be simple like the first solicitor did using post-it notes or at least put it in simpler terms really. And should be able to communicate by email. They should have the confidence in communicating with us by email and not rely on the phone. They shouldn't have to speak to hearing person.

Do you know if this could not be settled out of court and that it would have to go through the court, do you know if they would provide interpreters?

... But if we do go through the court, I would have to insist that we are BSL users. My girlfriend is really strong BSL user so it would mean that they would have to provide interpreters for us, nothing is being mentioned at the moment.

Before your work colleague was helping you with phone and that stopped, do you feel this is better now?

I just feel it was not fair on her and secondly she doesn't know what has happened. So if she answered a question, it would cause a problem for her later on perhaps. What I have said, she may have picked up wrongly. No it is wrong to use her for this

I think the solicitor was wrong to ask her for help, putting her in an awkward situation, she was not there. No they needed to speak to me directly

So do you think the solicitor would benefit from some kind of training

Yes deaf awareness training like on how to work with deaf clients, like how to communicate with them and maybe to have to arrange to meet up face to face, to come for a meeting and to go through the form.

The case highlights a number of issues about professional behaviour in regard to contact with Deaf clients, in creating text (in letters) which is comprehensible and where it is not, providing a means to understand it, avoiding the use of uninformed intermediaries and so on. These would be appropriately presented to solicitors if there was a guidance available to be consulted in the case of having a Deaf client. This might take the form of a web resource.

## *Case Study 8 Educational Tribunal*

This was a complicated case where only persistence by the Deaf participant was able in the end to have some success. It illustrates many of the issues concerning interpreting, insensitivity to need, inflexible systems and the exercise of power through insisting on language which is inaccessible. As above, we use a lot of the participant's own words in this description.

"I asked for interpreter for the education tribunal, because my mum and dad are deaf. The case was about my step-mother's daughter, my sister. But my father is deaf and blind so mean he cannot see well. So I need to be with him to sign everything that is being said. I was there to represent my father, and support my step mum. I need to use hands-on signing<sup>17</sup> with my father so he could understand what is happening.

At first they refused to provide an interpreter. I had to step in to explain that the whole family are deaf and that we must have interpreter. They were reluctant to provide one because of the cost. I had to really battle with them and finally won.

Then two or three times, I had been to the tribunal where no interpreter turned up and I asked why. I had on paper clearly that we should have interpreter. I had to explain that it was our right to have one.

They said okay but on the first occasion, they said they had forgotten to book, so the second time, they booked one but the interpreter cancelled on the day of the tribunal. They weren't happy because they had paid out for interpreters for two occasions which meant there was no money left for the third time. So that was a really bad experience.

On the fourth occasion, there was an interpreter and they refused the request for a Deaf school.

So we kept putting in an appeal. Then, when we got to the last appeal they told us that this would be the last one we could ever appeal because we are only allowed to appeal a certain number of times.

... with the last appeal coming up, we discussed more with the family and I had to do a lot of reading, looking through thick information. It was really thick so I ask for some translation and they said no.

My step mother had no English understanding. They kept faxing me with different papers, so I had to read through carefully then get on the video to explain in sign back to them and keep sending the videos back to them so that they could watch this and we use web cam. I had to go from Gloucester to Leeds (where they lived) by train several times. I did ask the tribunal if they would pay my travel expenses, they said, no. I said that they should pay because I was supporting my parents. If I was not there, it would mean that my parents would not know what was happening. How would they be able to make decisions? They would be able to argue and beat my parents just like that because they knew more jargons, my parents would not know how to argue back.

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<sup>17</sup> Hands-on signing is commonly used for Deaf people who have limited sight. Typically, the Deafblind person rests his hands on the hands of the signer and interprets from the moving and changing handshapes, what the message is. This is often a highly personal system and may not be just made available by any new signer. It may be that the Deafblind has developed a convention with this particular signer. It is inevitably a modality which is less rich than signing or speaking as facial expression is absent in the communication and it is often very tiring for both signer and Deafblind person – requiring more breaks (certainly in a formal situation). It should also be noted that in this case, this was a relayed interpretation as the Deaf signer had to relay on messages provided by the sign language interpreter.

So when I was told this was the last appeal, I arrived there ready. Two interpreters were there, both from different parts of the country despite the fact that I had told the tribunal that they needed to use regional interpreters because my father is a strong Yorkshire signer which meant he would not follow other area signers. They have booked interpreters from London and Bristol. I told them many times, I feel, must have been a thousand times, have even emailed them asking them to use regional interpreters - why? because my step mother would not be able to follow either.

To book interpreters from London or elsewhere is more expensive than using the local.

Anyway we were waiting for the second interpreter to arrive. Eventually a phonecall came to say she had been involved in an accident.

Luckily my mother works in an office that can book interpreters, so I nudged my mum; she said leave it to her. So she was texting like mad to local deaf club and luckily they had one available and that she was a qualified MRSLI interpreter.

So I told them that we have second available, but they said no and that it would have to be cancelled.

So I asked why they had to cancel. They said because the interpreter had not turned up and that the first interpreter had refused to work on her own. I tried to explain that we had one available who was able to come right now.

The tribunal still said no.

So it was postponed, but in the end they won the case.

But really if they had listened to us in the first place about which interpreters to use things would have moved more smoothly. But they were defensive and kept saying no. Their system became so confusing it has put me off completely.

It was an awful experience really, never again. Going through an educational tribunal was really stressful experience for my mum and dad and I agreed never again. It was like who was representing who and then to have interpreter issues on top and not to have consistent interpreters throughout, they wouldn't do this again.

There was a special issue when a solicitor became involved?

Legal statement documents were sent then from the solicitor, this was for the last tribunal. It was because we had failed every one till the last one. It was part of our legal right. His (solicitor) English was really very high level so when he sent me the letter, I was really struggling so I had to do a lot of research to look up on the computer to check out each word to figure out what it could mean, ...

We received letters from the assessment centre, solicitor, and tribunal themselves with dates and times etc. Even the way they put the date of next tribunal instead of saying it was that day, was full of really long text in high English which made my parents really panic and made them unsure of what to do

When we first failed and had to go through the appeal procedure it was horrendous, really complicated, thick piles of papers about the process, there was nobody who could have helped them. If I needed to have them translated I would have to pay out of my pocket ...

I did see that they have translation available in other languages, so I asked them about having this in BSL. They said no, because it would have been more costly, so I asked for interpreting support, they also said no.

So between three of us, me had to go through trying to pick up an understanding of what it was all about. It was not easy.

The whole process had taken over three years, with a great deal of stress. But there were further issues about delay in sending papers out.

When they first sent me the documents with the date I had to ask for more time in order to understand the documents. Sometimes they would write with the date of tribunal with a list of papers to come and I had to wait for these papers to arrive. I had to email them asking about the papers that I was supposed to receive. Finally I would get them about two days before the tribunal was to start. Sometimes I had to rush to Leeds then get in the car and was still reading this on the way to the tribunal. I had to quickly sign to my parents about what it was about. My mother was driving at the time and she had to keep looking through the mirror to see what I was talking about while driving. It was not safe but we had to do that, there was no flexibility about this.

At the last stage of the appeal, they had to contact a solicitor and this was done through a teacher at the school who was supportive and recommended a friend with experience of education cases (although no experience of Deaf). This teacher could sign and offered to act as an interpreter.

I asked her what should we do. We were exhausted at that point with the battling. She suggested that we should bring in a solicitor and she knew one from her friends. This teacher could sign well so she would sign for the solicitor. She made the contact and this solicitor is really lovely. The teacher already explained the situation to her.

It was really lucky because they had the right attitudes, if it wasn't for her I am not sure where we would be now.

There was of course no interpreter provided for the discussions with the solicitor – the solicitor indicated that there was no legal aid available; so, no interpreter. The teacher had to do it on a voluntary basis (with no training).

There are so many flaws in the provision here and so many areas of insensitivity that it is hard to believe that this is a very recent case in the last three years. Despite directives and legislation itself, there remains a reluctance to properly serve the needs of Deaf clients.

### *Case Study 9 Challenging the Judge*

In this case related by a hard of hearing participant, there are a number of issues raised. There is the lack of awareness by the hard of hearing person about the support services which could have been supplied. There is the apparent passivity of the solicitor and the insensitivity of the judge. This leads the hard of hearing person to reflect that he did not have access to justice. He was however, able to appeal and did in the end feel that his case was properly dealt with.

“I was in judge’s chambers and there were 6 or 7 people present and that was problematic. There was a lot of detail and emotion and facts. The judge was softly spoken and so was the other solicitor. I very frequently had to ask for help or ask people to replay what they had said. And there were instances where the judge would have an aside with solicitor in the other legal team. And I wouldn’t hear it so I would have to ask them to record it on the tape.”

This has followed several meetings with the solicitor where the hearing loss was disclosed. However, when it went to court,

“At no instance was my hearing loss ever mentioned. My solicitor did not explain it. I was asked in the preliminary documentation that comes - there was a paragraph that said ‘do you require communication support?’ but it didn’t explain what that meant so I didn’t know what



communication support meant; I did not know why I might need it. I didn't expect people to be mumbling and talking over each other. With hindsight I would have had it."

The solicitor knew he was hard of hearing but it did not matter in a one to one situation as the hard of hearing person could cope well. Given the stress of the situation it would have been useful if the solicitor had taken responsibility for shaping the meeting. It would have been useful to have shared the need to adjust to the hearing loss.

"I did not know that that was a possible world. I had to explain it myself. It would have helped.

In theory, there are various support systems in place. However there was no loop system in the judge's chambers. The solicitor could have suggested that the meeting could be in a room with a loop; if the papers had said these were the options then that would have been different; if he had known why it would be of benefit. None of this was explained.

Because this was not made clear in advance, the judge and others behaved as if all parties were hearing. The judge who was softly spoken then had a conversation with the solicitor in the other team. This interviewee then spoke up to complain.

"The judge did not like to be questioned. It was her chambers and she was holding whatever she wanted. Someone who was less confident would have suffered (in silence). I had no problems in speaking out. My solicitor did not intervene. Most people just thought I was being awkward. And that is how I felt at the time and that was not a nice way to feel."

It is clear that all parties should have been informed. He did not feel he had access to justice

"Three meetings and the first was no (access to justice) – so I went back. I still do not know what they whispered. It was very rude and I said that. I let it go because there was to be a new judge, the other was retiring."

The issues of deaf awareness and of preparation in advance of meetings is a very strong theme here.

### *Case Study 10 Contact with hard of hearing legal professionals*

There was an interesting discussion on contact with a hard of hearing legal professional. The legal professional's perspective was from a position where he could determine the rules of interaction. As a result, he was positive about the reactions of his clients to his requests to speak more slowly or clearly. As with most people he was able to function well in one to one situations but in group situations, considerably more preparation had to be done and rules had to be followed.

He considered he was now able to disclose his hearing loss immediately and this was felt to be especially important when several people in a meeting, might want to talk at the same time. He also had developed a specific procedure for telephone interaction (which of course, was a desired means of communication for the hearing client). In this case he used a speakerphone with an assistant who wrote down what the caller was saying. Perhaps because he was setting the rules for interaction, he was much more positive about how well, people responded, than were the hard of hearing participants (in the rest of the study) when talking about contact with their solicitors.

It can be seen that adjustment to hearing loss may be as much about who is in control as in the nature of the adjustment itself.

Another legal professional interviewed, presented many of the same points, but also highlighted the fact that there are “only so many times, you can say, ‘I’m sorry I missed that. Could you repeat?’” This did not appear to be a magic number but rather a judgement about the nature of the interaction and the likelihood that it might provoke change.

It was usual to rely on a junior member of staff to take notes but these were not expected to be verbatim – rather only a set of points which could be expanded later in a write-up. In fact it was thought that having a verbatim text version might upset the personal relation with the hard of hearing solicitor.

Where information was being missed, it was often the case that the hard of hearing legal professional would use a technique of summarising the points (in order to clarify by asking a question) but in reality to ensure that key aspects were not being lost through lack of hearing. When asked about the use of recent technology to provide a visual record, he expressed some doubts.

“...the difficulty I have is how can you introduce almost artificial elements into the meeting by having note takers, maybe by having the meeting recorded, and still retain the level of spontaneity and personal connection really?”

The relationship between the professional and the client was valued above the exact representation of the speech.





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