



National Audit Office

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**Report**

by the Comptroller  
and Auditor General

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The Ministry of Justice's  
language services contract:  
Progress update

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National Audit Office

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# The Ministry of Justice's language services contract: Progress update

Report by the Comptroller and Auditor General

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Amyas Morse  
Comptroller and Auditor General  
National Audit Office

17 January 2014

This report examines the Ministry of Justice's progress in managing its language services contract and responding to the Committee of Public Accounts' recommendations.

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This report can be found on the National Audit Office website at [www.nao.org.uk/2014-language-services](http://www.nao.org.uk/2014-language-services)

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## Introduction

**1** When participants in the criminal justice system do not speak English as their first language, it is essential for justice that they are provided with interpretation services. The requirement partly stems from articles 5 and 6 of the European Convention of Human Rights and Fundamental Freedoms. These state that anyone arrested must be told the reasons for arrest and any charge in a language that they understand, and that they are entitled to access certain interpretation and translation services throughout the judicial procedures to which they are subject.

**2** In August 2011, the Ministry of Justice (the Ministry) signed a framework agreement for language services with a company called Applied Language Solutions (which was subsequently purchased by Capita). These services include translation and interpretation required by the justice sector. The Ministry has responsibility for managing the framework, including the Ministry's contract under it, and the principal user of the service is Her Majesty's Courts and Tribunals Service (the Agency). The aim of establishing the contract was to improve the efficiency of the existing system which the Ministry considered time consuming and inefficient. On 30 January 2012, the Ministry's contract with Capita was rolled out nationally and from that point, the majority of the Ministry's language services, for courts, tribunals and prisons were to be delivered through Capita, using self-employed freelance interpreters.

**3** The Ministry faced difficulties with the contract from the time it was rolled out nationally. Subsequently, the National Audit Office received correspondence, including from MPs, whistle-blowers and other members of the public asking us to look into the contract and its implementation. We produced a memorandum in September 2012.<sup>1</sup>

**4** On the basis of this memorandum, the Committee of Public Accounts (the Committee) took evidence from the Ministry in October 2012, as well as from representatives of interpreters and Capita. The Committee published its own report in December 2012.<sup>2</sup> In February 2013, the Ministry responded to the Committee's recommendations in a Treasury Minute.<sup>3</sup> The Committee has now asked the Ministry to give evidence again so that it can consider how management of the contract is progressing and the steps taken in response to its recommendations. The Committee's further consideration of the language services contract comes against a background of its wider interest in ensuring that government is effectively managing contracts for a wide range of services. This memorandum covers:

- Performance against key performance indicators.
- Number of interpreters.
- Bookings outside the contract.

<sup>1</sup> National Audit Office, *The Ministry of Justice's language services contract*, September 2012.

<sup>2</sup> HC Committee of Public Accounts, *The Ministry of Justice's language services contract*, Twenty-first Report of Session 2012-13, HC 832, December 2012.

<sup>3</sup> Treasury Minutes, February 2013, Cm 8556.

- Interpreter quality.
- Accuracy of data provided by Capita.
- Penalties for poor performance.
- Additional costs to the Ministry.
- Lessons learned exercise.

Our work involved document examination and data analysis. We also contacted staff in 48 courts involved in booking interpreters and asked them a standard set of questions about their experience of the current contract.

## Conclusions

**5 Progress has been made in implementing many of the recommendations made by the Committee in December 2012.** In particular, the Ministry is now performing audit checks of the security status of interpreters and some data generated by Capita; the number of interpreters available to work under the contract has increased significantly; spend outside the contract has decreased substantially for civil courts and tribunals; and the Ministry now routinely collects and monitors management information.

**6 However, there are a number of areas where the Ministry and Capita still need to improve.** Capita is still not meeting the target to fulfil 98 per cent of bookings and performance fell temporarily by 8 per cent between December 2012 and April 2013 as a result of Capita reducing mileage payments to interpreters. Capita is fulfilling a similar proportion of bookings in November 2013 to what it was a year earlier. The work the Ministry has undertaken has not established whether, and if so to what extent, there is an ongoing problem with the recording of customer cancellations. More than twice as many Tier 3 interpreters are being used under the contract compared with when we last reported and the Ministry is not auditing most of the data supplied by Capita.

**7 The Ministry has been slow to implement some recommendations.** A new assessment system has not been implemented and an independent review of quality standards has not yet been performed.

## Findings

### **Performance against key performance indicator (KPI)**

**8 Overall, Capita has not met the target of fulfilling 98 per cent of all bookings, and performance in meeting bookings varies by region and language. Performance dipped at the start of 2013 due to Capita reducing mileage payments to interpreters, but subsequently improved when Capita and the Ministry agreed a variation to the contract in May 2013. In the last four months the fulfilment rate has been between 94 per cent and 95 per cent.**

**9** The Ministry manages the performance of Capita through a KPI relating to the proportion of bookings fulfilled. The target is 98 per cent.<sup>4</sup> Currently, the Ministry does not employ other KPIs under the framework (for example, all calls for bookings being answered within 20 seconds) as it does not think they are useful in these particular circumstances. Instead, the Ministry collects and monitors other management data such as levels of complaints and booking fulfilment rates by geographic region. The Ministry and Capita agreed a new performance dashboard in December 2013. It gives greater detail in a number of areas, including information on complaints and geographical breakdown of performance.

**10** **Figure 1** shows the number of bookings made by the Ministry and fulfilled by Capita, and **Figure 2** on page 8 shows the proportion of bookings fulfilled. In September 2012, we reported that, in the first two months after the contract was rolled out nationally, Capita's performance against the target of fulfilling 98 per cent of bookings was poor – 69 per cent of bookings were fulfilled in February 2012 and 83 per cent in March 2012.<sup>5</sup> Shortly after this, Capita increased the mileage payments by 20p a mile to encourage more interpreters to register with Capita and accept assignments.

**11** However, by the end of 2012, Capita estimated that it would lose £14 million over the life of the contract and recognised it as an 'onerous contract' in its annual accounts for 2012 (meaning the contract is unlikely to be profitable). Capita told us that it considered the increased mileage payment was encouraging interpreters to travel and reducing the incentive to work locally. It chose to reduce the mileage payments to interpreters at the start of 2013 to the original amount. Following this decision, fulfilment rates dropped rapidly, until in May 2013 the Ministry and Capita agreed a variation of contract that resulted in an improved package for interpreters (paragraph 36). To date, however, Capita has yet to meet the target of fulfilling 98 per cent of all bookings, but has broadly returned to levels of performance achieved in September 2012, when we last reported. Of a total of 267,928 bookings made since the contract began in February 2012, Capita has not fulfilled 23,183 (9 per cent).

<sup>4</sup> The target to fulfil 98 per cent of bookings includes 'customer cancelled' bookings as having been fulfilled.

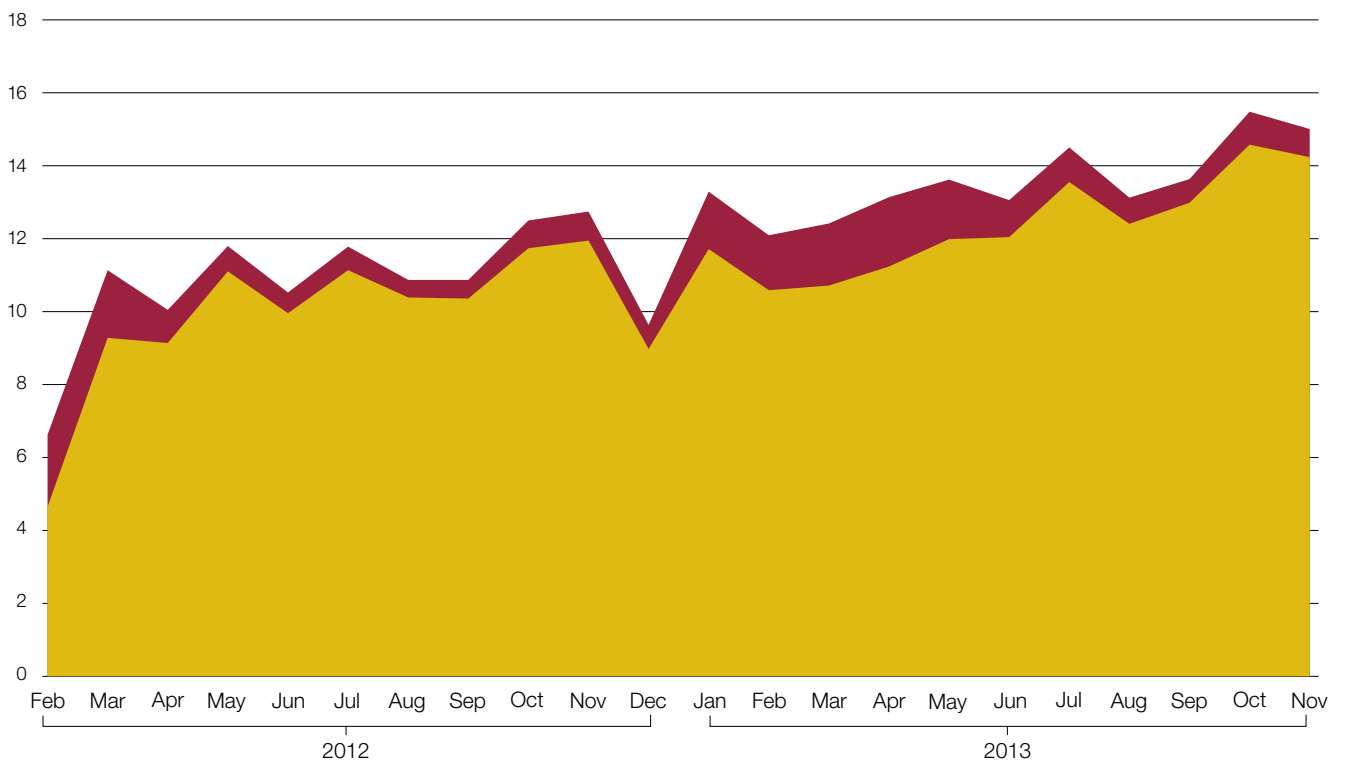
<sup>5</sup> Since we last reported, Capita has made minor corrections to historic data.



**Figure 1**

Number of bookings placed and fulfilled since the contract became live

Number of bookings (000)

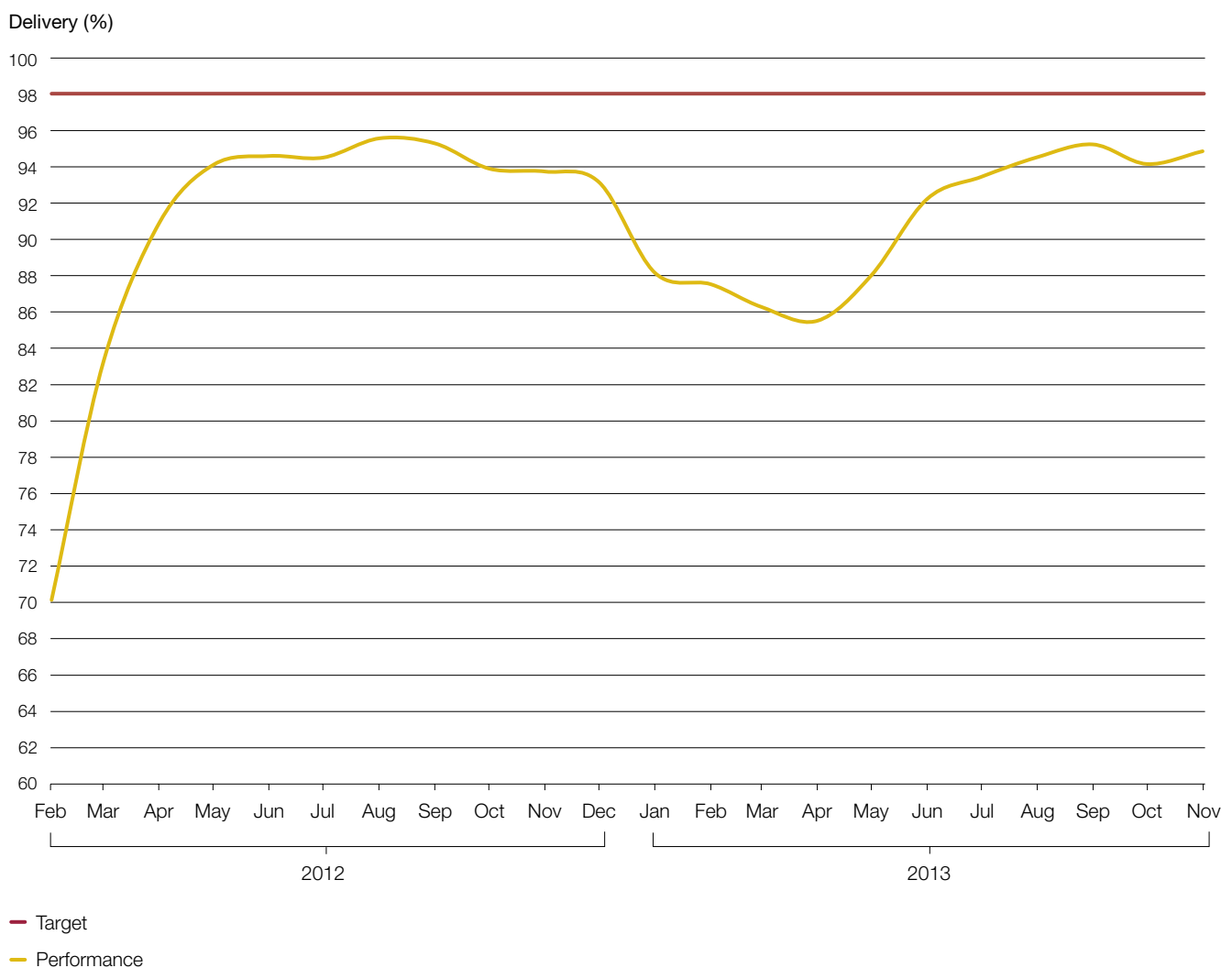


- Number of bookings placed
- Number of bookings fulfilled

Source: Capita data obtained from the Ministry of Justice

**12** Figure 2 shows the overall performance but within this, there are variations by language and geographical area. For example, in November 2013, fulfilment performance ranged from 97 per cent in London and the Midlands to 77 per cent in Northern Ireland, where it has proved more difficult to source interpreters. Capita told us that it is developing a specific solution with the Ministry to improve the fulfilment rates in Northern Ireland. In November 2013, Capita fulfilled fewer than 90 per cent of bookings for 60 different languages (a total of 294 bookings). In total, Capita failed to meet 774 bookings placed in November 2013, equating to 5 per cent. We spoke to booking staff at 48 courts and 41 (85 per cent) told us that Capita were able to meet bookings all or most of the time. Of the 43 booking staff who responded to the question, 14 said that they were able to source interpreters from elsewhere all or most of the times when Capita had failed to meet bookings.

**Figure 2**  
Capita's performance against its KPI



Source: Capita data obtained from the Ministry of Justice

**13** **Figure 3** overleaf summarises the volume of bookings month by month across the period of the contract. There has been an increase in the number of bookings fulfilled in every month for which a comparison is possible.

### **Number of interpreters**

**14** **Since we last reported, Capita has increased the number of interpreters qualified to work under the contract. Most of the increase is in Tier 2 and Tier 3 interpreters, although there has also been a smaller increase in the number of Tier 1 interpreters.**

**15** In September 2012, we reported that the Ministry estimated that Capita would need at least 1,200 interpreters available to work, but that, despite having 1,340 people registered on their database, by May 2012, only around 280 interpreters had passed a mandatory quality assessment as originally set out in the contract. The number of interpreters registered with Capita has since increased by 1,365 (102 per cent) to 2,705 in November 2013. Of these, 1,821 are qualified to work under the contract, but most have not been assessed as the contract originally required (see paragraph 24). **Figure 4** overleaf shows the change since October 2012 in the number of registered interpreters qualified to work.

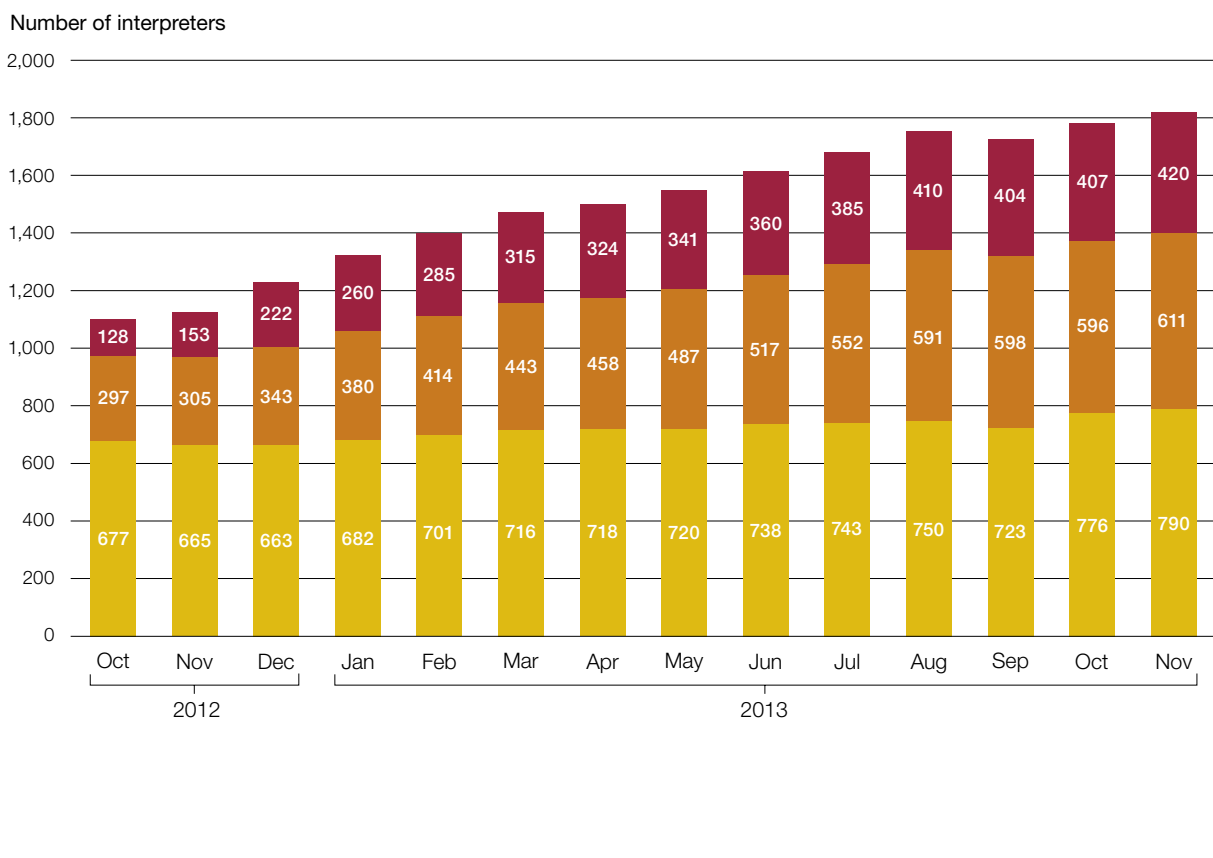
**16** Under the contract three tiers of interpreters are available. Tiers 1 and 2 are considered suitable for courts and tribunals work, with Tier 1 being the most highly qualified. Tier 3 interpreters have formalised basic training, plus experience in the public sector, but not the formal qualifications and public sector interpreting experience required for either Tiers 1 or 2. They were expected to be used for interpreting at events such as police community meetings. Figure 4 shows that in November 2013, Tier 1 interpreters remain the largest group (43 per cent). It also indicates that since we last reported there has been an increase in the number of Tiers 2 and 3 interpreters available to work under the contract (106 per cent and 228 per cent respectively), and a smaller increase (17 per cent) in the number of Tier 1 interpreters. We were advised that interpreters leave and join the register each month in some areas.

**Figure 3**  
The volume of bookings fulfilled by Capita

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2012	–	4,648	9,282	9,140	11,106	9,957	11,138	10,390	10,359	11,739	11,949	8,978
2013	11,718	10,588	10,716	11,238	11,989	12,044	13,554	12,408	12,987	14,579	14,238	–
Percentage change (2013 on 2012)	–	128%	15%	23%	8%	21%	22%	19%	25%	24%	19%	–

Source: Capita data obtained from the Ministry of Justice

**Figure 4**  
Number of registered interpreters qualified to work under the contract each month



Source: Capita data obtained from the Ministry of Justice

## **Bookings outside the contract**

**17 The expenditure on contingency bookings outside the contract, excluding criminal courts, has fallen since the contract went live in February 2012. However, the Ministry is still unable to identify the full cost of all bookings as it will not start collecting data on criminal court expenditure until January 2014 at the earliest.**

**18** Under the contract, bookings for language services are made through booking software. In our previous memorandum, we reported that the Ministry had used a contingency arrangement to continue to use the old system of booking interpreters for tribunals and short notice bookings. In September 2012, the Ministry estimated that 15 per cent of bookings were made outside the contract. In August 2013, the Ministry stopped using this contingency arrangement. Direct bookings outside the contract should now only be made where Capita is unable to fulfil bookings. Of the 48 court booking staff we spoke to, 29 (60 per cent) said they used Capita all the time to source interpreters, although 40 per cent have used another supplier at least once. Recorded expenditure outside the contract has fallen from a peak of £551,725<sup>6</sup> in February 2012, when the contract became live, to £47,220 in October 2013, 3 per cent of total expenditure on interpreters, indicating reduced reliance on old methods for sourcing interpreters. These figures include expenditure by civil and family courts, tribunals and prisons. They do not include expenditure by criminal courts as the Ministry does not expect to start collecting full data until January 2014. We are therefore unable to comment on whether off-contract expenditure has fallen in criminal courts.

## **Interpreter quality**

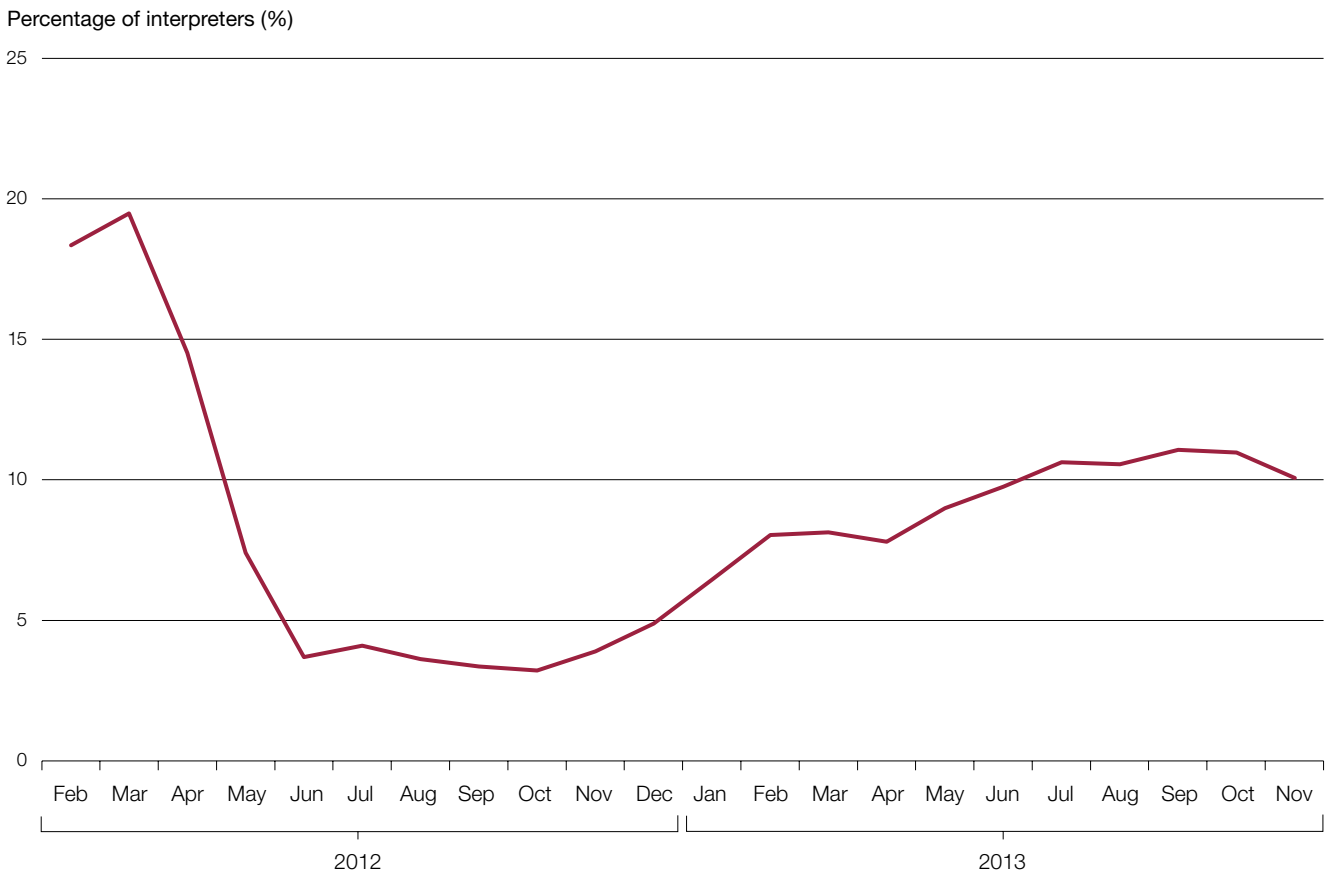
**19 The Ministry has exercised its audit rights over the contract by carrying out checks on the interpreter register. Since October 2012, all of the interpreters it has checked have been security cleared, but it stopped performing qualification checks pending a review of the qualification framework and only restarted these in December 2013. The Ministry has not met the target date of May 2013 to replace the assessment system. The proportion of Tier 3 interpreters working in courts has increased from 3 per cent to 10 per cent since we last reported.**

**20** Capita are required to meet the interpreter quality standards set out in the contract. The Committee recommended that the Ministry ensure that Capita has procedures in place to guarantee that only interpreters with the correct skills, experience and character work under the contract. These procedures should include agreeing and putting in place an alternative to the initial assessment regime to check the quality of interpreters before allowing them to work under the contract. The Committee also stated that the Ministry should test the effectiveness of these procedures through a programme of audits and spot checks on individual interpreters.

<sup>6</sup> We cannot calculate the proportion of total expenditure this represents as the Ministry does not have accurate data on total expenditure on interpreters in the early months of the contract.

**21** In November 2013, Tier 1 interpreters were used in 48 per cent of all bookings, Tier 2 in 42 per cent of all bookings and Tier 3 in 10 per cent of all bookings. The proportion of interpreters from the lowest level of interpreter (Tier 3) used in courts has grown from 3 per cent in October 2012 to 10 per cent in November 2013 (**Figure 5**). Of the 23 court booking staff we contacted who had booked Tier 3 interpreters, 21 (91 per cent) told us that when they had booked them it was always because Capita could not provide the level of interpreter they wanted. A Tier 3 interpreter should only be used if this is authorised by the judge. Seven courts (30 per cent) that had booked Tier 3 interpreters told us that Tier 3 bookings were always approved by a judge, but 12 courts (52 per cent) said that they had never sought approval from a judge before the hearing.

**Figure 5**  
Proportion of Tier 3 interpreters used in courts



Source: Capita data obtained from the Ministry of Justice

**22** Following the Committee's hearing, Capita completed its audit of the interpreter register and, in November 2012, removed 219 interpreters where not all documentation was available to confirm that they were security cleared and held the appropriate qualifications, as required under the contract. Of these, 33 have subsequently been reinstated.

**23** As at December 2013 the Ministry had conducted nine checks of interpreters on the register, each examining a random sample of interpreters (**Figure 6**). With the exception of the first audit (conducted prior to Capita completing their review of all interpreters), the Ministry has found all interpreters were security cleared, as required under the contract. For the first three audits the Ministry also checked interpreters' qualifications, but stopped doing this in March 2013. Of the 90 audited, 57 were suitably qualified. The Ministry stopped the qualifications checks as they had highlighted differences in the Ministry's and Capita's understanding of the framework. The Ministry concluded from its audits that Capita were accepting interpreters to work under the contract if they had previous experience of working in the justice sector but did not necessarily possess all of the qualifications required by the framework. As a result the Ministry and Capita performed a review to agree which qualifications should be acceptable under the framework. This was completed by 13 December 2013, and the Ministry subsequently included a check of qualifications in its most recent check of interpreters (18 December 2013). This check found that 47 interpreters (96 per cent) had the qualifications required to work under the contract. The Ministry is planning on carrying out monthly checks on qualifications and security of interpreters for 12 months from December 2013.

**Figure 6**

Results of the Ministry's review of Capita's register of interpreters

	1 Oct 2012	24 Oct 2012	11 Dec 2012	6 Mar 2013	28 Mar 2013	14 May 2013	16 July 2013	20 Sep 2013	18 Dec 2013
Number reviewed	30	30	30	30	30	30	30	30	49
Number and percentage security cleared	25 (83%)	30 (100%)	30 (100%)	30 (100%)	30 (100%)	30 (100%)	30 (100%)	30 (100%)	49 (100%)
Number and percentage appropriately qualified	16 (53%)	19 (63%)	22 (73%)	Not checked	Not checked	Not checked	Not checked	Not checked	47 (96%)
Total number and percentage meeting the requirements of the contract	15 (50%)	19 (63%)	22 (73%)	Unknown	Unknown	Unknown	Unknown	Unknown	47 (96%)

Source: Ministry of Justice data

**24** The contract required Capita to assess the abilities of all interpreters before assigning them to a tier and making them available to work under the contract. Our 2012 memorandum reported that when the contract came into effect, only 280 interpreters had been assessed using the criteria originally set out in the contract, and that the assessment approach set out in the contract was not workable. The Committee recommended replacing the assessment regime.

**25** The Ministry agreed with the Committee's recommendation and set a target date of May 2013, but has not yet replaced the assessment regime. In its Treasury Minute response of February 2013 the Ministry stated that it was in discussions with interpreter groups and Capita to find an appropriate source of independent advice to look at the assessment and tiering systems under the contract. It has held four workshops, attended by 21 interpreters, met with a group representing interpreters, and sent out a scoping document inviting tenders. It now expects to set up a contract with independent assessors to review the quality standards in the framework in early 2014. However, at this stage, it has not decided to reintroduce any assessment centres.

### **Accuracy of data provided by Capita**

**26** **Correctly classifying the reasons for cancellations of interpreter bookings is important because the Ministry may be charged £30 where the Agency (the customer) makes a late cancellation. The Ministry checked 5 per cent of bookings recorded as 'customer cancelled' between January and September 2013. However, the results were inconclusive. It is now introducing 100 per cent checks of customer cancellations. The Ministry has not audited any of the other data provided by Capita or any of Capita's key systems.**

**27** Payments under the contract are made based on the number of bookings fulfilled. The Ministry is able to withhold part of the payment where Capita fails to fulfil 98 per cent of bookings. The Ministry is, therefore, reliant on the accuracy of data generated by Capita's booking system to make accurate payments to Capita and to monitor performance.

**28** In September 2012, we reported that Capita had been overstating customer cancellations (where the Ministry cancels a booking) and understating bookings unfulfilled by Capita (where Capita has been unable to provide an interpreter) by the same amount. Capita informed us that it believed it had corrected this problem by providing guidance to its staff, although we understand this was only verbal. Correctly classifying cancellations is important because the Ministry may be charged £30 for a late customer cancellation.



**29** The Ministry told us that each month between January and September 2013, it checked 5 per cent of bookings recorded as 'customer cancelled', in order to examine whether they were correctly recorded. However, the results of these monthly checks have not enabled the Ministry to conclude on the accuracy of booking classifications. The Ministry told us that this was because the audit checks were conducted before the outcome of all bookings in the month had been finalised, and because the Agency did not use the same definitions as used in the contract when recording the reasons for interpreters not attending.

**30** The Ministry raised errors it identified through these checks with Capita on a case-by-case basis, but did not resolve whether there was a wider problem. However, Capita told us that it was not aware the Ministry was conducting these systematic checks. Since we raised this as a potential issue with the Ministry, it has changed its processes for checking the accuracy of customer cancellation data. Since November 2013, Capita is providing new management information detailing all customer cancellations, backdated to September 2013. The Ministry has told us that its contract management team will audit this data, including verification by courts. It believes that this process will identify any incorrectly recorded customer cancellations, and allow it to conclude on whether there is an ongoing problem and, if so, its extent. The Ministry and Capita have told us that they will also review, clarify and agree the definitions of terminology used to describe booking outcomes.

**31** The Ministry is entitled to audit or investigate any part of Capita's activities under the contract to gain assurance that payments to Capita are correct and that services are of the required quality. As noted above, the Ministry now performs audit checks on the security status of interpreters and the accuracy of cancellations data. From January 2014, it will also record details of individuals authorising the use of Tier 3 interpreters in courts. However, we consider it should take its scrutiny further by performing audit checks on other aspects of the data, for example, the deployment of Tier 3 interpreters, and by examining the strength of the control environment around Capita's systems to support delivery of the contract.

## **Penalties for poor performance**

**32 The Ministry has claimed back its full entitlement of service credits during the course of the contract, with the exception of the first three months.**

**33** In the first three months of the contract being rolled out nationally, the Ministry did not withhold payments from Capita for its poor performance (even though it was entitled to) because it considered that Capita was investing in improving its performance under the contract. Since then, the Ministry has withheld the maximum amount, given Capita's performance, amounting to £46,139 between May 2012 and November 2013.

**34** Individual judges are able to file wasted cost orders against Capita if they consider that problems with interpreters or their availability have caused additional costs for the court. Since the contract became operational, judges have filed a total of 11 wasted cost orders against Capita for a total of £7,229.

## **Additional costs to the Ministry**

**35** A variation to the contract was a pragmatic approach to improving the service provided. Of the estimated £2.8 million variation, the Ministry estimates that 86 per cent will be passed directly to interpreters. The Ministry now estimates that this contract will save £13 million in 2013-14. However, it does not quantify and take into account the opportunity costs of delayed court cases or additional work.

**36** In our September 2012 memorandum, we recommended that the Ministry and Capita think creatively about how to attract additional, adequately qualified interpreters to work under the contract. To improve the terms that Capita is able to offer, the Ministry and Capita agreed a variation to the contract in May 2013 which increased the Ministry's payments to Capita by an estimated £2.8 million a year. Of this sum, the Ministry estimates that 86 per cent (£2.4 million) will be passed on to interpreters. The additional benefits to interpreters include:

- Payments of £30 for late customer cancellations, of which £21 goes to the interpreter booked for the job.
- Rounding up minutes worked to 15-minute blocks. Interpreters were previously paid for the precise number of minutes worked.
- Increasing mileage allowances to include the first ten miles of any journey at 20p per mile.
- Payment for Tier 1 interpreters based on the tier of the interpreter rather than the tier of the job, so Tier 1 interpreters are paid at higher Tier 1 rates if they accept Tier 2 jobs.
- Payment of £7.50 to each interpreter per day for incidental expenses.
- Payment of a £5 charge when the Agency fails to close interpreters' timesheets after 72 hours and a further £2.50 for every subsequent 72 hours thereafter.

**37** Since the Ministry and Capita agreed the variation to contract, in May 2013, fulfilment rates have increased (Figures 1 and 2), but only back to the levels seen in 2012, before Capita reduced mileage payments to interpreters.

## **Lessons learned exercise**

**38** The Ministry has completed a lessons learned exercise and believes that steps it took to strengthen its systems, prior to reporting on the exercise in 2013, have adequately responded to the lessons learned from problems with this contract. The Ministry has strengthened its governance arrangements, including its approvals and assurance processes.

**39** In its response to the Committee's recommendations, the Ministry stated that it was reviewing the lessons learned from this contract to assure the Executive Management Committee of its Departmental Board that the lessons would be taken into account in future contracts. In particular, the Ministry stated that it would consider:

- the use of management information to inform procurement;
- the transition to, and implementation of, this contract; and
- the importance of improved cost and benefit information on new policies.

**40** The Ministry completed the lessons learned exercise and reported to the Executive Management Committee in March 2013. In summary, the report concluded that for new projects:

- there is a need to undertake full market analysis before commencing formal procurement;
- there should be proactive management of risk; and
- any pilots or phased roll-out should be fully evaluated.

**41** In response to a request from the Permanent Secretary, one of the Ministry's non-executive directors was asked to conduct a separate review of governance in the Ministry. This review led to the Ministry strengthening its governance, including its approvals and assurance processes. The Executive Committee now takes a stronger role in the management of the Transforming Justice Portfolio (which approves business cases for all programmes costing £30 million or more).



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