

## Consultation response on the proposed British Sign Language (Scotland) Bill

January 2015

### Introduction

BSL was recognised as an official language by the UK in 2003 and by the Scottish Government in March 2011, yet progress in securing equal rights for Deaf people has been slow. I am therefore delighted to respond to the consultation on the British Sign Language Bill and commend Mark Griffin MSP and the Scottish Parliament for taking forward this extremely important piece of legislation. I was also pleased to hear Alastair Allan, MSP, Minister for Learning, Science and Scotland's Languages, endorse the Bill's General Principles in Kenneth Gibson MSP's recent debate on the educational achievement of deaf children<sup>1</sup>. This Bill has symbolic importance and practical benefits and will send out an important message to those who use BSL as their sole means of communication that their language is valued and their rights to linguistic access recognised.

### General comment

My response is informed by a rights based perspective. As Commissioner for Children and Young People, my main role is to promote and safeguard children's rights and to reinforce the commitment made to children and young people when the UK ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991. Two articles are particularly pertinent to this Bill:

**Article 29(a)** notes that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential as well as the development of respect for the child's parents, his or her own

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<sup>1</sup> 11<sup>th</sup> December 2014

cultural identity, language and values'. This article has implications for teaching children in their indigenous language and ensuring that children who use BSL as their main (and often sole) language can receive access to quality education from someone proficient in this language. Many children are failing to have this right met, as local authorities are not providing a curriculum accessible to them. Deaf children have the same capacity to learn as other children and should reach their full potential with the appropriate education. A failure to provide this is denying them a basic human right. **Article 30** echoes this and underlines the right to use one's language to participate fully in community life and stresses that... 'a child belonging to such a minority... shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

**The UN Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities**, adopted by the UN General Assembly in 1992 also underlines the existence of linguistic identity and the right for linguistic minorities to enjoy their own culture without discrimination and to have adequate opportunities to learn their mother tongue or have instruction in their mother tongue. This Bill is a small but important step in meeting this requirement.

## **General Approach**

**Question1: In the Policy Memorandum, Mark Griffin MSP says he considered a number of alternative approaches to achieve his intention of promoting BSL, for example, by establishing a voluntary code or adapting existing legislation, such as the Equality Act 2010. He concluded that introducing the BSL Bill was the best approach. Do you think we need to change the law to promote the use of BSL and, if so, why?**

Yes, I believe that legislation is essential. Deaf BSL users currently rely on disability discrimination legislation through the Equality Act 2010 to secure access to information

and services in their own language. I know that some organisations feel that the proposed legislation is not the most appropriate way to address this, as the public sector equality duties (general and specific) already require public bodies to have due regard to the need to eliminate discrimination and provide 'reasonable adjustments'. Whilst I appreciate these arguments, I feel that they fail to take account of the linguistic and cultural arguments presented by the Deaf community. It also begs the question as to why no other group of people have to declare themselves 'disabled' to access service provision or information when they should be able to do so through their rights to linguistic access. This Bill will help to raise and increase awareness of BSL across the wider hearing population, dispel long standing myths and preconceptions and lead to a better understanding and appreciation of this language. It is also evident that BSL is a language under threat and BSL can face social isolation as a consequence. In order to promote and preserve BSL, specific action is therefore needed. Frances Elton, Co-ordinator of Sign Language and Deaf Studies at University College London, notes that the variety and richness of BSL is already disappearing - English as a spoken language can be preserved more easily because it is spoken and not signed - the Bill will help to reverse this trend.

**Question 2: Mark Griffin MSP hopes that the obligations under the Bill will, in practice, "lead public authorities to increase the use they make of BSL and the extent to which they are in a position to respond to demand for services in BSL" (Financial Memorandum, paragraph 4). How realistic do you think this aim is and to what extent do you believe the Bill can achieve this objective?**

The Bill will not deal with the lack of service provision overnight and should not be seen as such. It is however an important first step. It is also not just about demands on resources, A heightened awareness through the development of action plans will make a huge difference and much of this will not require high levels of resources e.g. clearer signage in a doctor's surgery or a school; use of appropriate lighting; heightened sensitivity to the fact that the young person sitting in the train when the alarm has gone off might not have responded because (he) didn't hear it.

**Question 3: The Bill is solely about the use of BSL. Could there be unintended consequences for other languages or forms of communication used by the deaf community?**

It would be unusual for a speaker of a minority language not to have another spoken language - BSL users do not have access to a spoken language and are unlikely to. BSL is likely to be their sole language throughout their lives, with written English perhaps being their second one. Furthermore, most deaf/ Deaf children are born to hearing parents and are more dependent on formal education to develop their language – it would be unusual for a hearing parent to achieve BSL fluency if spoken English is their first language. Many Deaf adults recall their isolation as children, even within their own family, due to the lack of a common language. This calls for specific action to promote BSL as well as access to quality BSL in the early years for both parents and their Deaf children. I provide some examples to illustrate why this is needed:

- Children and young people have to rely on BSL level 2 teachers to access their education - this would not be accepted for any other group of children. Unless the pool of proficient teachers and interpreters increases, the situation will remain dire. These children often have a higher level of fluency than the teacher in the language they are being taught<sup>2</sup>. Furthermore, it is not unusual for teachers of specialist subjects relying on communication support workers to interpret a subject they have limited knowledge in;
- Young people often rely on family members to help out e.g. in doctor's surgeries, hospitals, job centres, due to the limited number of interpreters available. Such provision is a requirement under the Equality Act 2010, but as is often the case, with few interpreters available, this is sometimes not seen as a 'reasonable'

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<sup>2</sup> O'Neill et al (2014 ) Report from the Achievement and Opportunities for Deaf students in the United Kingdom from Research to Practice (Nuffield)

<http://www.nuffieldfoundation.org/sites/default/files/files/EDU%2037468%20-%20Nuffield%20Report%20MASTER%20v3.pdf>

adjustment. All these examples have implications for a young person's rights to privacy and confidentiality;

- I recently heard of a Deaf parent attending a parents' evening for the first time in 8 years, because no interpreter had been previously available and of parents having to organise charity runs to fund BSL classes – we expect children to be 'language – ready' for school – why should we expect less for Deaf children?

In terms of other forms of communication, I make the distinction between BSL as a language and communication methods such as Makaton, Palantype or lip reading. These should also be properly resourced, but this is a separate discussion.

## **Duties on the Scottish Ministers**

**Question 4: The Bill will require the Scottish Government to prepare and publish a BSL National Plan (Section 1) and a BSL Performance Review (Section 5) in each parliamentary session (that is, normally every four years). The Scottish Government will also be required to designate a Minister with lead responsibility for BSL (Section 2). What should this Minister do?**

It will be important for the Minister to build up and understanding of Deaf issues and to identify with the Deaf Community.

**Question 5: The BSL Performance Review provides the basis for the Parliament to hold the Scottish Ministers to account, and for Ministers to hold listed authorities to account. If listed authorities say they will do something relating to the promotion of BSL, will the Performance Review process ensure they are held to account?**

Whilst the Performance Review process does not provide a guarantee that the local authority will deliver, nor impose sanctions, it will nonetheless provide BSL users the opportunity to have some level of scrutiny and to raise questions if commitments are

not being met, particularly if other authorities provide examples of best practice. One positive aspect of this approach is that it will also allow authorities to try out new approaches without fear of having sanctions imposed on them if they fail to deliver – this could well lead to creative, innovative and ambitious activities, much of which might not happen if authorities feel a level of heavy scrutiny on them.

More information is however needed on the structure of the BSL Performance Review process in terms of how implementation of National and Authority plans will be monitored and how impact will be evaluated. There must also be an element of accountability and the Performance Review needs some teeth to be credible. Perhaps some consideration could be given to appointing an Advisory Board to undertake this function? The role of the Minister (and the contents of the National Action Plan the Government allocates to this) will also be important – no authority likes to be shamed for poor practice. Increased awareness about BSL will ultimately lead to changed attitudes and a willingness to deliver on promoting BSL. In this regard, training and Deaf awareness are essential.

**Question 6: The Bill requires listed authorities to prepare and publish BSL Authority Plans in each parliamentary session. The Bill sets out what a BSL Authority Plan should include Sections 3(3) and 3(4)). Do you have any comments on the proposed content of the Plans?**

I have no specific comments to make on the proposed content of the Plans, other than there should be some flexibility. I would like to see a commitment to BSL classes for parents, but appreciate that this has a financial component. I do not expect to see sudden improvements in terms of service provision, but awareness and understanding is an important first step, which will in time serve to plug such gaps. Again, the contents of the National Plan will be important and if the Government chooses to highlight BSL classes for parents in recognition of the importance of the Early Years and the need for early language acquisition, I would be delighted to support this.

**Question 7: The Policy Memorandum (see diagram on page 6) explains the timescales for publication of Authority Plans. Do you have any comments on these proposed timescales?**

I am aware that the Scottish Government have suggested that consideration should be given to extending the timescales. My view is that these are reasonable as regardless of the BSL authorities already have duties under the Equality Act.

**Question 8: In preparing its Authority Plan, a public authority must consult with those who are “likely to be directly affected by the Authority Plan or otherwise to have an interest in that Plan” (Section 3(6)) and must take into account any comments made to it during the consultation (Section 3(5)). What effect do you think these requirements will have on you or your organisation?**

Under Section 6 (3) of the Commissioner for Children and Young People (Scotland) Bill there is a requirement to ‘pay particular attention to groups of children and young people who do not have other adequate means by which they can make their views known’. This is a duty I take very seriously indeed - my office is fully committed to the needs of BSL users and always offers BSL interpretation at our events and if is requested for any of our reports. One of my senior officers is proficient in BSL, with another currently attending BSL classes and some staff have regular contact with the Deaf Community and/or those working to support them. It is my view that the Bill would help to promote the rights of Deaf children who use BSL and help to further the aims of my office.

Consideration needs to be given to the consultation framework. However, because of the limited support available to facilitate this (i.e. interpretation), it will be extremely challenging to undertake this in an appropriate and meaningful way – and particularly with Deaf children and young people. How will the public authority involve Deaf children and young people on the plan? I would be interested to hear what is envisaged to ensure that their article 12 rights are addressed.

**Question 9: The Bill (Schedule 2) lists 117 public authorities that will be required to publish Authority Plans. Would you suggest any changes to the list of public authorities?**

As noted in my earlier response, this is difficult to define at this stage. This will become apparent further down the process.

**Concluding remarks**

**Additional comments**

I see numerous benefits of the proposed Bill, many of which are interconnected

- providing Deaf children with improved educational provision will lead to improved educational attainment and more Deaf people attending further and higher education;
- better awareness of BSL may lead to more of the hearing population wishing to pursue a career as an interpreter or as a teacher of Deaf children, leading to more interpreters, improved information and better service provision;
- if BSL were part of the curriculum, this could promote awareness and lead to an interest in a career in this area. For Deaf BSL users in mainstream schools there should also be opportunities for other children to learn BSL, helping to provide a more inclusive environment.
- the status of BSL would be enhanced and help to dispel myths associated with the language – e.g. a collection of mimes; a language without structure. an awareness and better understanding of BSL will help to address ignorance and discrimination, helping to promote a human rights culture and reduce social isolation.

**What is not in the Bill and needs to be addressed?**

The earlier consultation contained proposals for free BSL classes for parents. As I noted, most deaf/ Deaf children are born to hearing parents and rely on professionals for advice in the early days. Parents are still told that bringing up their child with BSL as a



first language will impact on the child's spoken language and should be avoided. The importance of promoting BSL as a positive choice therefore is essential. Appropriate information and evidence in the early years will allow parents to make informed choices - supporting access to that choice, including BSL, is key as an effective mode of communication must be established as early as possible. If the choice is BSL, free language classes would help to create a rich, linguistic home environment.

If you have any questions or wish to discuss this response further, please do not hesitate to contact Máire McCormack ([maire.mccormack@sccyp.org.uk](mailto:maire.mccormack@sccyp.org.uk)) in the first instance.

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