

Submission of the Irish Translators' and
Interpreters' Association to the Courts Service
on the new tender for Interpreting and related
issues

March 2011

This submission was sent in hard copy to the following:

- ❖ The Hon. Mr. Justice John L. Murray, Chief Justice of Ireland, Courts Service Board Chairperson
- ❖ The President of the High Court, The Hon. Mr. Justice Nicholas Kearns
- ❖ The Hon. Mr. Justice Matthew Deery, President of the Circuit Court
- ❖ Her Honour Judge Miriam Malone, President of the District Court
- ❖ Mr Brendan Ryan, CEO, the Courts Service

Introduction

The Irish Translators' and Interpreters' Association was founded in 1986 and is a not-for-profit organisation. It is the only professional association in Ireland representing the interests of practising translators and interpreters. The ITIA aims to promote the highest standards within the profession and to foster an understanding among translator and interpreter clients of the highly-skilled and exacting nature of the profession. To this end we have introduced translation tests for professional membership and a separate test for professional members who wish to specialise in the translation of documents such as contracts and birth, marriage and death certificates.

Defendants in criminal proceedings have the right to the free assistance of an interpreter under the European Convention on Human Rights Act 2003 and an EU directive on legal interpretation and translation is due to come into effect in October 2013. According to Judge Len Roberts-Smith, Supreme Court of Western Australia:

Competent interpreting in court is fundamental to justice. The lack of competent interpreting in a criminal trial where an accused person does not speak any, or insufficient, English, may amount to denial of a fair trial and result in the quashing of a conviction. Where the inadequacy of the interpretation is not recognised, the result may be wrongful conviction or acquittal. Courts have the primary responsibility for ensuring the fairness of trials. (2009: 13)¹

While some interpreters in Ireland are very competent, there is still no test for interpreters and very few have been trained. From 2007-2011 training for court interpreters has consisted in a one-day training course provided by the contracted agency which is totally insufficient. In other countries where interpreters are tested, the failure rate tends to be high. For example, in Colorado, about 12% of candidates pass the English-Spanish State certification exam each year. The United States Federal Court Interpreter exam for the same language combination

¹Len Roberts-Smith 'Forensic Interpreting' in *The Critical Link 5 Quality in interpreting – a shared responsibility* edited by Sandra Hale, Uldis Ozolins and Ludmila Stern (2009) John Benjamins.

has a pass rate of around 5%. This shows what a demanding task court interpreting is. It is reasonable to assume that the results would be similar in Ireland if interpreters were tested.

This submission is divided into two parts. The first part is about the new Courts Service tender for interpreting services. The second relates to ongoing concerns expressed by our members who work in the courts.

Part I – the Tender

We have serious concerns about some aspects of the Courts Service tender for interpreting services and in particular are dismayed that instead of seeking to improve standards, the Courts Service is in fact lowering standards for the coming four years. Our concerns cover three main areas: interpreter competency requirements, no simultaneous interpreting and the new EU directive.

1. Interpreter Competency

Levels of competency are going down instead of up. Appendix E includes *three* levels of qualification for interpretation:

Level One	The person can be shown to be competent in both English and the language concerned.
Level Two	The person is a native speaker of the language concerned and can be shown to be competent in English or is a native speaker of English and can be shown to be competent in the language concerned.
Level Three	The person is a native speaker of English with a third level qualification in the language concerned or a native speaker of the language concerned with a third level qualification in English.

At the time of the last request for tender in 2006 there was a fourth level:

Level Four	The person has Level 3 qualifications plus qualifications specific to translating or interpreting
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In fact, newspaper reports in March 2007 highlighted that Lionbridge Ireland was awarded the contract because they had the highest number of level 4 interpreters. It is most unfortunate that the Courts Service has removed level four. It would have been preferable to remove level one where for example an interpreter can interpret between two languages, neither of which is their mother tongue, which is extremely difficult to do. There is no definition of competency in the tender documents and an ongoing assumption that anyone who speaks English and another language can interpret. We would have welcomed a fifth level, a specific

qualification in court or community interpreting such as the Graduate Certificate in Community Interpreting at Dublin City University. Tenderers are asked to provide details of interpreter training 'particularly in relation to professional standards and ethics'. It would appear that the Courts Service does not appreciate the level of skill required to actually interpret accurately from one language to another. Court interpreters also require an understanding of how the Irish courts work and of legal terminology in English and their other language.

Despite these extremely low levels of competency, the Courts Service say 'they will closely monitor the quality and efficiency of the services provided' and that:

The selected tenderer(s) will be responsible for ensuring the availability of interpreters as required and that they are sufficiently competent and proficient in both English and the language/dialect for which they are engaged to enable the selected tenderer(s) to properly discharge their duties under the contract.

There is a fundamental mismatch between the three levels of competency and the requirement for companies to ensure that interpreters are sufficiently competent to be able to 'properly discharge their duties'. The standards are so low that it is highly unlikely that interpreters who meet them will be able to discharge their duties.

2. No simultaneous interpreting

According to the tender documents:

Interpretation services are for Consecutive Interpretations only. That is, where the speaker states a few phrases and then pauses while the interpreter interprets. Consecutive interpretation is bidirectional. For this reason it is helpful to ask witnesses and all other parties addressing the Court to keep their statements as short and precise as possible. Simultaneous interpretation is, generally, not feasible in a courtroom for a variety of reasons including the need to install sound proof interpreters' booths. (Appendix A)

This is alarming because it means that interpreters do not have to interpret what the judges, lawyers and witnesses are saying apart from when they address the defendant directly in the form of questions. Anything said in court by judges, lawyers and witnesses must be interpreted in whispered simultaneous mode because there is no time for consecutive interpreting. This has always been the case. For example, in the District Court, the garda reads out the charge sheet and while he or she reads, the interpreter whispers (or should whisper) the interpretation of what is being said in the foreign language. Defendants have a right to a fair trial and this includes the right to understand the proceedings. They cannot understand the proceedings unless the interpreter provides whispered simultaneous. There is no need for sound proof interpreters' booths although infra red equipment could be very useful. Of course many interpreters currently working in the courts do not have the skill to be

able to provide whispered simultaneous interpreting which is why in some cases they stand there and say nothing or just provide a brief summary when the speaker has finished.

Consecutive interpreting is of course essential too, particularly when a defendant or a witness is being questioned or cross-examined. However, consecutive interpreting alone will not suffice. A combination of consecutive and whispered simultaneous interpreting is required.

Under the terms of the current request for tender, interpreters are not expected to interpret simultaneously what is said by the garda, judge and solicitor. This is totally contrary to the European Convention on Human Rights Act 2003. Inadequate or summarised interpretation could and should be grounds for a mistrial and/or an appeal. We believe that the courts are leaving themselves open to appeals on the grounds of incomplete interpreting and that defendants will win these appeals because the contract does not include whispered simultaneous interpreting.

3. New EU Directive

The Courts Service contract is for four years to March 2015. It takes no account of the EU Directive on the Right to Interpretation and Translation in Criminal Proceedings which is due to come into force on 27th October 2013 and which refers to quality of interpreting, a register of interpreters and training for judges. Apparently, this tender with its extremely low standards could continue in being for almost 17 months after October 2013 and possibly for longer.

Part II –Ongoing concerns

We would also like to take the opportunity to highlight ongoing concerns expressed by our members who work in the courts about interpreter provision in the courts.

1. Non-Provision of Interpreters

Some District Court judges, such as Judge Mongan in County Clare, take the time to schedule defendants who require an interpreter in a particular language, for the same day. This is good use of public money. Unfortunately, there are ongoing problems with scheduling interpreters and it is not unusual for a defendant to turn up in court and not be allocated an interpreter. Many judges adjourn these cases so an interpreter can be provided but some refuse an interpreter if the defendant has been living in Ireland for some time. This can even happen when an interpreter with the relevant language is sitting in court waiting for his/her scheduled case to be heard. This is clearly in breach of legislation but defendants who do not have legal representation are effectively powerless.

Judges need guidelines on how to assess a defendant's proficiency in English. The length of a person's stay in Ireland is not relevant if the person cannot understand the language of the court. We hope that in line with the EU directive, training will be provided to judges on how

long it takes to become proficient in a language, the need for competent interpreting and how to assess English language proficiency.

2. Rates of Pay

Apart from these issues we have been concerned for some time about the low rates of pay for court interpreters (now €18 per hour with 25% being deducted at source by Lionbridge, so a net amount of €13.50 per hour), the fact that interpreters cannot claim for travel time and expenses within County Dublin, the new measure whereby interpreters who use their cars will not be allowed mileage for the first 20 kilometres, the fact that interpreters cannot claim for parking expenses. Many interpreters working in court at present are undergraduate students who do not have the language competency or the interpreting skills to be able to do this work competently. Others work as security guards or bouncers at night time and interpret in court by day. The rates of pay are so low that it is surprising that any qualified interpreters are still willing to work in the courts.

3. Quality Control

Contracts for written translation usually specify that a percentage of output will be checked independently to ensure that quality standards are met. We urge the Courts Service to use the digital recordings that are currently made in certain courts, send them to outside experts, and actually check how much information is being interpreted, are interpreters summarising information, and how accurate is the interpretation. This would involve transcription of what is said in English, the interpretation in the foreign language, a translation of what was said in the foreign language and comparisons of all of these. We would be willing to provide our expertise in these matters. We predict that if you were to do this, you would be appalled at the low levels of competency across the country. The Courts Service is currently paying a lot of money for what is in effect a very poor service.

4. Working Conditions in New Court Buildings

A number of the more modern district courts as well as the newly constructed Criminal Courts of Justice present the interpreter with challenging audio conditions.

Cloverhill District Court, adjoining Cloverhill Prison, is a particularly difficult environment for interpreters. The majority of the defendants being processed are in custody and are brought to a side entrance to the court where they are placed in a rectangular enclosed area, separated from the court by a wall approximately two meters high, made up of wooden panels to about one meter in height and then a glass like material which has holes at various intervals through which the interpreter interprets by placing her mouth near to the opening and in order to hear what the defendant is saying has to put her ear to the opening. This prevents her from hearing what is being said in the court while she has either her ear or her mouth at the glass opening and therefore prevents simultaneous interpreting.

In the case of the new Criminal Courts of Justice complex the defendants, whether coming from custody or not, are also placed in a non-enclosed wood and glass area. The interpreter generally sits beside the defendant in this area and when he or she provides whispered simultaneous interpreting of what is being said in court, she cannot hear what is being said in court because the glass has the effect of muffling the sounds outside the box and while inside the box absorbing the sound. The end result is the interpreter cannot provide whispered simultaneous interpreting and is restricted to consecutive interpreting of sections of what he or she can hear.

It is disappointing that the needs of interpreters have not been catered for in the new courts. Infra red equipment could be helpful here.

Conclusion

We would be very happy to meet with you and/or with Courts Service officials to discuss these issues and we would urge the Service to reconsider the request for tender both in terms of the low standards contained therein and the four-year timeframe. We would like to see the Courts Service working towards a first class interpreter service to ensure that defendants' rights to a fair trial are met.

In the spirit of the new EU directive, we need proper accredited training for court interpreters, a testing system and a register of all interpreters.

On behalf of the Irish Translators' and Interpreters' Association executive committee.

Mary Phelan

Honorary Secretary