



IRISH TRANSLATORS' AND INTERPRETERS' ASSOCIATION
CUMANN AISTRITHEOIRÍ AGUS ATEANGAIRÍ NA hÉIREANN

ITIA Submission to the
Criminal Justice Strategic Committee
on a new
Criminal Justice Sectoral Strategy

August 2020

Irish Translators' and Interpreters' Association

The [Irish Translators' and Interpreters' Association](#) (ITIA) was founded in 1986 as a not-for-profit organisation. It is the only professional association in Ireland representing the interests of practising translators and interpreters and is a member of [EULITA](#), the European Legal Interpreters and Translators Association. 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 hold examinations for our top category of membership, professional membership. We also have a separate examination for professional members who wish to specialise in the translation of legal documents and become ITIA Certified Legal Translators. We provide regular continuing professional development (CPD) workshops and seminars. The ITIA is not a translation company and does not provide translation or interpreting services. We have no corporate members. We represent over 300 translators and interpreters who are bound by our codes of ethics.

Please note the difference between interpreters and translators: the former listen to what someone says in one language and interpret the information into another language while the latter read something written in one language and write a translation in another language.

In this submission we respond to the Department of Justice and Equality's public consultation process to inform the development of a joint strategy for the criminal justice system. For the record, the Criminal Justice Strategic Committee is chaired by the Department and made up of the heads of An Garda Síochána, Director of Public Prosecutions, the Courts Service, Irish Prison Service, Probation Service, Forensic Science Ireland, Legal Aid Board and the Policing Authority. Most of these bodies have a need for interpreting and translation. We very much welcome a joint strategy and strongly recommend that said strategy include strong measures to rectify the current problems posed by lack of standards in interpreting and translation.

Legislation

Interpreters are provided free of charge to defendants in criminal proceedings under the [European Convention on Human Rights Act 2003](#) and EU directive 2010/64/EU which was transposed into Irish law by two statutory instruments, [S.I. No. 564/2013](#) – European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013 and [S.I. No 565 of 2013](#)

European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013. Directive [2010/64/EU](#) recommends the establishment of a national register, something that has not happened in Ireland. It also addresses the issue of quality:

Article 5 Quality of the interpretation and translation

1. Member States shall take **concrete measures** to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

We have no evidence to date of any such concrete measures.

Directive [2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime was transposed into Irish law by the [Criminal Justice \(Victims of Crime\) Act 2017](#). The Act provides for interpreting and translation to be made available to victims of crime by the Garda, DPP, Courts Service, Irish Prison Service and the Ombudsman Commission. We have come across reports of interpreters not being provided at garda stations to victims of crime and wonder if all members of the Garda are aware of the law.

The issues

The State spends quite a lot of money on interpreter provision, and interpreters are generally made available in legal settings, but there are a number of urgent issues that must be rectified:

1. The sector is unregulated – anyone can call themselves an interpreter or a translator regardless of whether they possess qualifications or experience in these high-skill fields.
2. There is no properly accredited course to train legal interpreters how to interpret accurately and how to behave ethically (e.g. confidentiality, impartiality, conflict of interest).
3. There is no testing system to ensure that interpreters are competent.
4. As a result of outsourcing in recent years, current rates of pay are appallingly low for what is normally highly skilled work.
5. The current system of outsourcing does not provide value for money.
6. People who work with interpreters need training in how to do so effectively.

7. There is little or no independent quality control of interpreting and translation.
8. There has been very little research on the provision of translation and interpreting in Ireland to date.

These are significant issues not only for suspects, defendants and prisoners with limited English but also for the Garda, judges, solicitors, probation officers, prison officers and others who depend on interpreters in order to carry out their work.

Research

Two researchers have carried out research on interpreting in the District Courts. Caroline O’Nolan (2013) found that interpreters were rarely confident enough to interrupt proceedings and inform the court that they could not hear or that an interlocutor was speaking too fast; some stood in silence instead of interpreting; some behaved inappropriately.

In a similar study, Kate Waterhouse (2014) highlights the use of ‘insider language’ which presents challenges to interpreters who are unfamiliar with the typical jargon of the district court. Like O’Nolan, she found that silent interpreters were ‘a widespread phenomenon’ while some interpreters were ‘selective’ and interpreted only occasionally or provided a summary instead of interpreting everything that was said. Some had very poor English. For example, one interpreter did not know the meaning of the word ‘sentence’ in the legal context while others had difficulty speaking English correctly. Still others behaved unethically: they acted as advocates, engaged in discussion with and even advised defendants.

We are not aware of any research on interpreting in garda stations, prisons, probation service. Inexplicably, the Irish Prison Service declined to participate in Aída Martínez-Gómez’s (2014) international survey of interpreter provision in prisons.

New request for tender

Only one of the issues highlighted by O’Nolan and Waterhouse, English language competency, is addressed by the latest Office of Government Procurement framework request for tender (rft) for interpretation services (excluding Irish

language) issued in May 2020 and currently frozen due to legal proceedings.¹ The rft is divided into four lots, each of which is estimated as worth approximately €5m over four years:

- Lot 1 Courts Service
- Lot 2 Garda Síochána
- Lot 3 Department of Justice, Legal Aid Board etc
- Lot 4 Irish Prisons Service etc

This latest rft has introduced standards for the level of English of interpreters based on the Common European Framework of Reference for Languages (CEFR) where basic users are at levels A1 and A2, independent users at B1 and B2, and proficient users at C1 and C2. Under this new system, interpreters working in the ten most commonly needed languages in each setting will have to provide independent evidence that they have at least C1 level of proficiency while interpreters for other languages will be required to provide evidence that they have at least B2 level. We would argue that an interpreter with a B2 level of English is not competent to interpret in any setting.

While we accept that this is a definite improvement compared to previous rfts, it is far from ideal because there is still no training or testing of interpreters. It is a mistake to assume that anyone fluent in English and another language is a competent interpreter. Nor is there any guarantee that interpreters will behave ethically.

Translation

Books of evidence are translated from English into other languages for the benefit of defendants in serious cases who do not understand English. There are question marks about the quality of these translations. For example, issues related to the translation of a book of evidence from English to Polish formed the basis of Karolina Jarmolowska's [PhD thesis](#) (2012). Similar concerns apply to the translation of text messages and emails used as evidence in court and to the transcription and translation of phone tapped conversations.

When the Irish authorities issue European Arrest Warrants for suspects in other countries, the warrants are translated into the relevant foreign language. It is

1 Word Perfect Translation Services Ltd -v- Minister for Public Expenditure and Reform High Court Rec. No. 2020/432 JR

important that the information is translated accurately to ensure that it can be understood by all parties.

Where research is carried out by members of the Criminal Justice Strategic Committee, it is important to ensure that questionnaires are made available in languages other than English, and that responses are translated. In the case of interviews with people who are not fluent in English, it is essential to ensure that a professional interpreter is recruited.

Quality

As professionals, we fully understand that it will take time to create a better system. However, there is a window of opportunity over the next four years to research the competency of interpreters and translators who work for the Courts, Garda, Probation Service, Prison Service and Legal Aid Board. We recommend that that time be used to hire independent experts (or to facilitate PhD students) to go through samples of recordings of interpreters at work, to transcribe what is said in English and other languages, and to check the accuracy of the interpreting provided. Similarly, we recommend research be carried out on the accuracy of legal translations. This research should inform how interpreting and translation services will be provided after this four-year period.

Evidence-based research

Researchers in other jurisdictions have been facilitated by the authorities. For example, Yvonne Fowler (2013) carried out PhD research comparing face to face and online prison interpreting for magistrates courts in England. She was allowed make recordings and interview various parties. Emmanuelle Gallez, whose PhD (2014) focused on a case study of a trial held in Belgium, went on to study the situation in Flemish prisons. To do this, she interviewed prison directors, prison staff, social workers, and interpreters (2018).

We believe that evidence-based research needs to be facilitated in order to obtain up-to-date relevant empirical evidence regarding interpreting and translation throughout the legal system.

Working together

There has been very useful cooperation between academics, interpreters and police in other jurisdictions. For example, Isabelle Perez and Christine Wilson worked closely with the police in Scotland for a number of years. In Northern

Ireland, the PSNI welcomed advice from retired magistrate Joan Colin. Dirk Rombouts of Antwerp police worked closely with Lessius Hogeschool and EULITA. We would like to see similar cooperation between our association, academia, and the Garda, Courts Service, Prison Service, Probation Service and Legal Aid Board.

Looking ahead

The Courts Service, Garda, Probation Service, Prison Service and Legal Aid Board all need to examine their current system of interpreting and translation provision. Is it fit for purpose? Do they have a policy and is that policy available on their website?² Can people with limited English proficiency have confidence in the criminal justice system? While some individual interpreters and translators may well be doing sterling work, the available evidence suggests that the answer to these questions is a resounding “No”.

All staff who work with interpreters need training in how to work with them and in how to decide if an interpreter is needed. Similarly, interpreters need to understand police interviewing techniques (Mulayim et al. 2014) and the purpose of meetings in order to be able to carry out their work. They need to be briefed before assignments and to be given access to documents before trials.

If we are to have a joined-up criminal justice system that upholds human rights and builds public confidence and trust, we must have a university course or courses for interpreters and an independent testing system for interpreters. This will take time and there will need to be financial investment.

If we do not take steps to ensure that interpreter provision is the best possible, then we will never be able to treat people with limited English proficiency with the fairness, dignity and respect that they deserve.

The solutions

1. Regulation of translation and interpreting.
2. A properly accredited university course for legal interpreters. Over time, this must become a requirement for all legal interpreters working in Ireland.

² A *Guide for members of An Garda Síochána using Interpreters and Translation during Criminal Investigations* is quite a good document (although it doesn't seem to be applied) but the ITIA was refused access by the Garda and the Department of Justice. The District Court bench card for judges is fairly innocuous but it too is not made available to the public.

3. A testing system to ensure that interpreters and translators are competent.
4. A national register of professional, trained, qualified, competent interpreters.
5. Rates of pay that will attract well-trained and highly skilled interpreters and translators.
6. Training for members of staff who work with interpreters.
7. Independent quality control of interpreting and translation.
8. More evidence-based research in all sectors.

I and members of the ITIA executive committee are happy to appear before the Criminal Justice Strategic Committee and to meet with its constituent parties to discuss any of the issues outlined in this submission.

Mary Phelan, Chairperson

References

A Guide for members of An Garda Síochána using Interpreters and Translation during Criminal Investigations.

Fowler, Yvonne (2013) *Non-English-speaking defendants in the magistrates court: a comparative study of face-to-face and prison video link interpreter-mediated hearings in England.*

<http://publications.aston.ac.uk/id/eprint/19442/1/Studentthesis-2013.pdf>

Gallez, Emmanuelle (2018) 'Foreigners and Refugees Behind Bars: How Flemish Prisons Tackle Linguistic Barriers', *The European Legacy*, 23:7-8, 738-756, DOI: [10.1080/10848770.2018.1492809](https://doi.org/10.1080/10848770.2018.1492809)

Jarmolowska, Karolina (2012) *Translation of a Book of Evidence and its impact on a criminal trial – a case study.*

Martínez-Gómez, Aída (2014) 'Interpreting in prison settings: An international overview' in *Interpreting* 16 (2) pages 233-259.

Mulayim, Sedat; Lai, Miranda; Norma, Caroline (2014) *Police Investigative Interviews and Interpreting: Context, Challenges, and Strategies (Advances in Police Theory and Practice)* Routledge.

O’Nolan, Caroline (2013) *The Irish District Court: a Social Portrait* Cork University Press.

Perez, Isabelle I. and Wilson, Christine W.L. (2007) ‘Interpreter-mediated police interviews: working as a professional team’ in *Critical Link 4 Professionalisation of Interpreting in the Community* John Benjamins.

Rombouts, Dirk (2009) Interpreters and the Police. Do interpreters need to know interviewing techniques? <https://eulita.eu/wp-content/uploads/files/Interpreters%20and%20the%20police.pdf>

Rombouts, Dirk (2014) The police interview using videoconferencing with a legal interpreter: a critical view from the perspective of interview techniques http://www.videoconference-interpreting.net/wp-content/uploads/2014/04/08_Rombouts.pdf

Waterhouse, Kate (2014) *Ireland’s District Court – Language, immigration and consequences for justice* Manchester University Press.