



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

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. 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.

Translation and interpreting are unregulated professions in Ireland. As a result, anyone who speaks English and another language can call themselves a translator and/or and interpreter. There is no university accredited training programme for community interpreters in Ireland. Most interpreters are provided by translation companies. Some interpreters may be excellent, but given the current lack of training and testing, it is highly unlikely that all interpreters are competent. In addition to issues around accuracy of interpreting, there are issues relating to interpreters' level of English and their understanding of how to behave from an ethical point of view (e.g. confidentiality, impartiality). All of this creates very real problems for organisations like Tusla and the Courts Service.

Interpreting and the Child Care Act, 1991 - Observations

Under Part V of the 2020 Consultation Paper, 'PART V Jurisdiction and Procedure', a number of challenges are identified as impacting the operation of the courts and hearing of proceedings. It is notable that the language barrier faced by LEP (Limited English Proficiency) litigants and the use of interpreters in Child Care hearings does not feature on this list, however, in light of the translation and interpreting problems

that exist in Ireland, this should feature as a significant challenge to the operation of the Child Care Act, 1991 in the District Court jurisdiction.

Problems with interpreting can range from the appointment of a suitable interpreter to issues regarding the interpreter's overall professional comportment and awareness of ethical issues with regard to interpreting generally. The interpreter's behaviour is particularly important in the specialised context of the Family Court setting where the proceedings are often characterised by a vulnerability on the part of the respondents and far-reaching powers vested in the State as the applicant in the proceedings. Issues with interpreting and interpreters may potentially impact the outcome of Child Care legal proceedings for the families at the centre of the proceedings.

As highlighted by the Final Report of the Child Care Law Reporting Project (2015: 13), the children of ethnic minority families are over-represented in the Child Care system and parents who belong to ethnic minorities in Ireland account for 26.5% of the respondents in Child Care legal proceedings. LEP parent litigants appear frequently as a sub-category of this 26.5%. While children in the Child Care system are less likely to be LEP and require language assistance, some will require an interpreter during meetings with the Court-appointed Guardian *ad litem* and other quasi-judicial settings. Unaccompanied children seeking asylum and taken into care who meet with the Judge hearing their case will also require an interpreter.

Language for these LEP individuals, parents and children alike, becomes a source of vulnerability as they face engaging in what can only be described as a foreign legal system. LEP litigants are coming to the District Family Courts where they must appear in legal proceedings that are for all intents and purposes adversarial in nature, and much like a criminal law hearing, despite the borrowings from the more inquisitorial process from other jurisdictions. Unlike the jurisdiction of the District Criminal Courts where the cases heard on a daily basis may carry low stakes, the District Family Courts are characterised by potential outcomes of a different magnitude, and from one day to the next the entire future of the children at the centre of a case, and their family, may be dependent on the outcome of a legal hearing at District Court level. For a language barrier to block the participation of any party in such a hearing is therefore a very serious matter, and one which the Child Care legislation ought to legislate for.

Kate Waterhouse (2014) points to a number of styles of interpreting which she witnessed in the District Criminal Court during thousands of hearings attended over a seven-month period. The most frequent style she documents is that of the 'Silent Interpreter' or the 'Selective Interpreter', a problem that can occur in any court and one that can mean that the LEP party is totally excluded. If interpreters do not show up at Family Court sittings, an Interim Care Order may need to be extended without an interpreter being present for a LEP parent.

It is important that the interpreters assigned to work in the Family Courts are equipped with an appropriate skill set. They need to have the professional awareness to know their role as an interpreter and to know not to step outside their role as an interpreter into the territory of advocacy. When interpreting for children in the quasi-judicial and judicial settings of the Child Care legal process, they need to have a range of specialised skills that pertain to such work.

Review of the Child Care Act, 1991 – Recommendations

In response to the Department’s Consultation Paper as part of the Review of the Child Care Act, 1991, it is proposed that:

- The assistance of an interpreter at no cost to the litigant is provided for in the case of any parent or child appearing in Child Care proceedings who does not speak or understand the English language.
- The right to an interpreter should apply equally in the quasi-judicial and judicial elements of the legal process.
- The need to ensure minimum standards in regard to interpreter provision is expressly provided for in the revised legislation.
- The introduction of a section on training, professional certification and interpreting quality should be considered. This might focus in particular on the assigning of an appropriately qualified interpreter to the case and could go further to place an onus on the agencies with which Tusla and the Courts Services are contracting, to provide training on the *in camera* rule and other important information around child protection.

Conclusion

In summary, the inclusion of these additional provisions in Child Care legislation would provide clarity to the procedural rights of parents and children at the centre of Child Care cases. In the case of LEP parent litigants, the introduction of such provisions would help to ensure that the voice of these parents is heard in Child Care cases. In the case of the less frequent but possible scenario of LEP children coming into the Child Care system who may require an interpreter, the inclusion of these provisions would strengthen their rights to have their voices heard in the quasi-judicial and judicial elements of Child Care legal proceedings.

Acknowledgement

The ITIA would like to thank DCU PhD candidate Réidín Murphy Lynch for sharing her expertise in this submission.

Cited Works:

Child Care Law Reporting Project Final Report. https://www.childlawproject.ie/wp-content/uploads/2015/11/CCLRP-Full-final-report_FINAL2.pdf

Waterhouse, Kate. 2014. *Ireland's District Court: Language, Immigration and Consequences for Justice*. Manchester University Press, Manchester.