



IRISH TRANSLATORS' AND INTERPRETERS' ASSOCIATION  
CUMANN AISTRITHEOIRÍ AGUS TEANGAIRÍ NA HÉIREANN

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Submission of the Irish Translators' and  
Interpreters' Association on the  
Courts Service  
Statement of Strategy 2008-2011

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May 2008

## **The Irish Translators' and Interpreters' Association/Cumann Aistritheoirí agus Teangairí na hÉireann (ITIA)**

The ITIA 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.

The ITIA demands the highest professional and ethical standards of its members who are required to sign up and adhere to the ITIA 'Code of Professional Conduct'. From 2008, candidates wishing to be approved as 'Professional Members' of the ITIA, our highest category, are required to successfully sit an exam in addition to the criteria of qualifications and experience. The ITIA introduced a procedure in 2007 whereby our Professional Members can put themselves forward to be assessed for 'ITIA Certified Status'. The candidate who successfully passes this rigorous assessment is entitled to translate and certify documents that are required for example in a legal context or for Government bodies, e.g. birth certificates, company statutes. 2008 also sees the launch of our 'Continued Professional Development' programme with which both those starting out on their careers and more experienced translators and interpreters can ensure that they can continuously update their skills and knowledge in their respective areas. Our individual members hail from many countries and cultures, reflecting the multi-cultural nature of Ireland today and providing a wide range of language combinations to meet the exponential increase in the demand for translation and interpreting services.

In addition to providing guidance to our translator and interpreter members the ITIA acts in an advisory capacity to Government bodies, NGOs, the media and others involved in the provision of translation and interpreting services to the general public.

The ITIA would like to make the following submission which addresses primarily the provision of interpreters for the courts in Ireland.

### **The Right to an Interpreter**

The provision of interpreters in criminal cases is provided for in Article 6.3 Right to a Fair Trial, European Convention on Human Rights Act 2003:

Everyone charged with a criminal offence has the following minimum rights:

*a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

b to have adequate time and facilities for the preparation of his defence;

c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

*d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*  
*e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

A number of cases have been taken to the European Court of Human Rights on the issue of interpreters. In *Kamasinski v Austria* the court judgement included the following:

In view of the need for the right guaranteed by paragraph (3)(e) to be practical and effective, the obligation of the competent authorities is not limited to the appointment of the interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.

Some European governments took this judgement very seriously. For example, it led to immediate reform in the Netherlands and the introduction of university training and a certification procedure for court interpreters.

The Courts Service in Ireland fulfils its obligations under the Human Rights Act 2003 in that it provides interpreters as required. However, the ITIA believes that not enough has been done to ensure that all interpreters used in the Irish courts are qualified, adequately trained and competent. Court interpreting requires specialized training. The ability to speak two languages is no guarantee that a person will be able to interpret between the two languages. Court interpreting is particularly difficult because of legal terminology, legal processes and the need to convey the same register and nuance. In addition, court interpreters must be aware of ethical issues such as confidentiality and impartiality. Interpreters are provided to ensure that the defendant with limited English will be in the same position as an English speaking defendant. If an interpreter cannot interpret all the evidence, the defendant will be excluded from part of the proceedings. This is a breach of natural justice.

### **Inadequate Interpreting**

Fortunately, there is no evidence to date in this jurisdiction of a miscarriage of justice due to inadequate interpretation. This does not mean that such cases will not come to light in the future

The *Galway Advertiser* reported on 2<sup>nd</sup> May 2008 that:

Judge Fahy told the 28-years-old interpreter from Lionbridge, the language company employed by the Courts Service to provide interpreters for foreign people coming before the courts with poor English, that she would not certify her for payment as she felt she was

not translating everything that was being said for the benefit of the accused man.<sup>1</sup>

In other jurisdictions there have been reports of problems caused by inadequate interpreting, often because the interpreter and the defendant simply did not have a common language. This was the case in *R v Iqbal Begum* in 1991. BBC News reported on 10<sup>th</sup> November 2005 that:

The convictions of several Chinese defendants in South Wales were quashed by the Court of Appeal earlier this year after it emerged the interpreter had been using the wrong dialect, and had therefore misquoted them.<sup>2</sup>

For this reason it is vital that the interpreter has an opportunity before a case starts to establish that interpreter and defendant or witness actually share a common language.

The *Daily Telegraph* (27<sup>th</sup> August 2006) reported cases documented by Professor Guillermo Makin in the United Kingdom:

Among the cases highlighted in the report is that of a retired priest who translated for a Portuguese-speaking man from Guinea Bissau, in west Africa, accused at Norwich Crown Court of sexual offences. He struggled to communicate with the suspect because his knowledge of Portuguese was scant and he refused to translate sexual terms because it was against his beliefs.<sup>3</sup>

In October 2007 *The Scotsman* reported on serious problems with interpreting in an article entitled 'Translation errors may see criminals escape':

Zuzana Kadurova, a Slovakian interpreter, said: "During a case at Edinburgh Sheriff Court, an accused from Poland asked me what I was doing as I was interpreting. He said that every other time he had been in court, the interpreter would simply be giving him a summary and chatting to him about life in Scotland while the case was unfolding."

On another occasion, a Polish man told her how glad he was that a Slovakian was interpreting for her. "His previous Polish interpreters would tell him how he had brought shame on their country, and that they would interpret for him in

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<sup>1</sup> <http://www.galwayadvertiser.ie/content/index.php?aid=11322>

<sup>2</sup> [http://news.bbc.co.uk/2/hi/uk\\_news/4416984.stm](http://news.bbc.co.uk/2/hi/uk_news/4416984.stm)

<sup>3</sup> <http://www.telegraph.co.uk/news/1527360/'Unqualified-interpreters'-cause-chaos-in-courts.html>

such a way that he would get a bigger fine."

During a swoop in Glasgow, only one out of ten interpreters involved was qualified. Czech-speakers were used to interpret for Slovak Roma nationals, despite Czech being the third language of the accused. The Romas were charged with human trafficking and prostitution. There have also been anecdotal stories of interpreters offering accused legal advice<sup>4</sup>

More recently, in Canada, a \$35-million class action lawsuit launched in Brampton, Ontario in April 2008. According to *Law Times*:

The lawsuit alleges that the province used unaccredited interpreters without telling the court; that interpreters aren't sufficiently trained, tested, or monitored; and that the province failed to deal with the problems, even though it was aware of them.<sup>5</sup>

While the ITIA is aware that there are many competent interpreters providing a good service in the Irish courts and who constantly update terminology and strive to improve, we are also aware that justice is not always being done to defendants in this jurisdiction. There are far too many people working as interpreters in our courts who have no background in translation or interpreting, no knowledge of legal terminology or interpreting techniques and a doubtful knowledge of ethical issues. In too many cases, therefore, the right to an interpreter is a hollow one and defendants who do not speak English do not have equality before the law.

### **Courts Service Tender Process**

The Courts Service commenced a tender process for the provision of interpreting and translation services in May 2005. The tender process ended with the awarding of the contract to provide translation services to the company eTeams and the contract to provide interpreting services to Lionbridge.

Our Association was concerned from the outset at the low levels of competency required of translators and interpreters in the tender documents:

Level 1	The person can be shown to be competent in both English and the language concerned.
Level 2	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.

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<sup>4</sup> <http://www.scotsman.com/scotland/Translation-errors-may-see-criminals.3475462.jp>

<sup>5</sup> [http://www.lawtimesnews.com/index.php?option=com\\_content&task=view&id=4003](http://www.lawtimesnews.com/index.php?option=com_content&task=view&id=4003)

Level 3	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.
Level 4	The person has Level 3 qualifications plus qualifications specific to translating or interpreting.

The word 'competent' is open to interpretation. Only level 4 is adequate in a court situation and even this level has limitations. For example a person with a third level qualification in translation and interpreting would probably not have studied legal terminology and would not be aware of the ethical challenges that can arise in court. Untrained interpreters may be tempted to act as advocates, to give legal advice or to speak on behalf of a defendant or witness.

Interpreters need advanced linguistic skills that include legal terms, Latin expressions, idioms and slang. They need to actually be able to interpret simultaneously and consecutively. To do this they need to have a good memory and to have note taking skills. They may be asked to do sight translation of documents in court where they are given a document in a foreign language and asked to read it aloud in English. They also need to have the confidence and integrity to tell the court if they cannot hear what is being said or to ask for clarification if they have not grasped a particular concept. An understanding of court procedures is essential.

The ITIA is aware of the difficulty in accessing qualified and experienced interpreters given the exponential increase in the demand for interpreters in the Irish courts and the dearth of suitably qualified interpreters. The ITIA also understands why the Courts Service may at the time of the last tender have set the bar so low. However, we are of the opinion that it is now time to rectify this situation and begin to demand high standards and an adequate level of qualification of the interpreters used in our courts.

### **Lionbridge**

Lionbridge was awarded the contract to provide interpreting services to the Courts Service in May 2006. It commenced provision at the very competitive hourly rate of €46 in March 2007. Since then the company has introduced some worthwhile practices.

1. All prospective court interpreters are interviewed.
2. All court interpreters attend a one day course at Lionbridge head offices.

3. Lionbridge has provided interpreters and judges with a 26 page document *Interpreting for the Courts in Ireland – Overview, Policies and Guidelines*.
4. More recently Lionbridge introduced a buddy system where new recruits spend a morning in court with a more experienced interpreter.
5. Lionbridge has an efficient booking system which works well for the provision of interpreters.
6. For languages that are in high demand, Lionbridge schedules interpreters to work full time in certain district courts.

We welcome these innovations but we are still extremely concerned and alarmed about the low standard of interpreting in the courts. We are concerned that Lionbridge advertises for 'speakers of other languages' rather than for interpreters. We are concerned that there is no test to assess interpreting ability. One day's training is totally inadequate. Legal terminology, and in some case more basic vocabulary, remains a huge problem. Members of our association tell us that they have come across court interpreters who do not know the meaning of basic words such as 'guilty' or 'judge'. In another case we were told of an interpreter who assumed that 'a fine of €100 or one week in default' meant that the defendant had one week to pay the fine.

Another example provided by our members was an interpreter who did not understand what the judge meant when he said 'Let the case stand'. First the interpreter remained standing in court while the next case was called. Then the interpreter moved to the back of the courtroom and sat down beside the defendant. Then they both left the court. At the end of the day the judge called the case again. To his surprise, neither the defendant nor the interpreter was there.

Similarly, newspaper coverage (*Irish Examiner*, 12<sup>th</sup> October 2007) indicated that court interpreters in Cork could not explain the meaning of the word 'ambiguity'.

The issue arose shortly after a female interpreter was sworn in to provide Polish translation in a case in Courtroom Two at the courthouse on Anglesea Street, Cork. Judge O'Leary asked the interpreter to provide simultaneous translation or as close as possible to that. He then told her not to engage in conversation with the defendant except to clarify an ambiguity. She agreed. The judge then asked her to explain the word ambiguity and she could not define it.<sup>6</sup>

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<sup>6</sup> <http://archives.tcm.ie/irishexaminer/2007/10/12/story45152.asp>

## **Country wide Provision of Interpreters**

It is very difficult for one agency to provide interpreters to all the courts across the country. Interpreters tell us that they are being sent from Dublin to Galway, Cork, Kerry, Donegal. It is a waste of public money to send interpreters long distances if local interpreters are available.

Local translation agencies are regularly asked to provide interpreters at short notice to the courts. This is highly problematic with agencies desperately scrambling to find interpreters at very short notice.

## **Rates of Pay**

The monopoly situation where one company is providing interpreters to the courts has led to substantial reductions in the rate of pay for interpreters. Those who were recruited in or before March 2007 are paid €25 per hour. In June the rate for new interpreters went down to €20 per hour. More recently the rate has allegedly gone down to €17 per hour. As a result it is hardly surprising that there is a high rate of attrition among interpreters.

Travel rates are also an issue for interpreters who are paid either 25c or 20c per mile. This rate compares poorly to public service rates. There is a lack of clarity about travel rates within Dublin with some interpreters claiming public transport fares and others not unaware of this possibility.

Qualified interpreters are paid the same rate as unqualified interpreters. There is no acknowledgement in the system of the fact that some interpreters hold the Graduate Certificate in Community Interpreting from Dublin City University or the Diploma in Public Service Interpreting from the Chartered Institute of Linguists in London. Consequently there is no incentive for those interpreting in the courts to undergo training.

In other countries court interpreting is a recognised profession and interpreters are paid per half day or per full day.

Interpreters in the Republic of Ireland are freelance and have no guarantee of work. It is extremely difficult for interpreters to make a living by interpreting alone. As a result many interpreters are forced to take on other jobs where they know that there is some security and they will earn a fixed amount per month. There is, therefore, constant turnover among court interpreters who are often students or shift workers who are available by day, or people who simply take a day off work to go and interpret in the courts.

## **Working Environment for Interpreters**



Our members tell us that the working environment in the courthouses is not always satisfactory. It can be very difficult for interpreters to keep their distance from defendants. We believe that it is undesirable for interpreters to be left sitting beside defendants for long periods because there is a likelihood that the defendant will attempt to initiate conversation.

The acoustics in many courts, particularly the District Courts, are poor with a lot of background noise and it is very difficult and in some cases impossible for interpreters to hear what is being said. Many courts are well equipped with microphones but judges, members of the garda and solicitors display a universal reluctance to actually use this equipment. An interpreter who cannot hear cannot possibly interpret.

We understand that the Courts Service is planning to develop new buildings. We recommend that all new courtrooms have a designated place for interpreters. Ideally we would like to see the option of a separate booth with simultaneous interpreting equipment for interpreters. This could be very useful in cases where there are multiple defendants who could all listen to the same interpreter using headphones. A separate room where interpreters could wait or leave their belongings would also be very welcome.

### **Workload**

In serious cases lasting days or weeks the Courts Service appoints only one interpreter. Best practice in interpreting dictates that for any case expected to last more than two hours there should be two interpreters who would share the work. One interpreter interprets for twenty minutes and then takes a break for twenty minutes while the other interpreter works. Interpreters cannot be expected to interpret accurately for hours at a time. Interpreting is very complex; the interpreter listens to information in one language, processes the information and relays it accurately, in the appropriate register and nuance in the other language, all practically at the same time. This requires very high levels of concentration and is extremely tiring. Interpreter fatigue can lead to interpreting errors. Where two interpreters are appointed by the court the resting interpreter can also listen to and monitor the performance of the other interpreter, thus providing a level of quality control and in the final analysis cost-effective interpreting.

### **Provision of Information**

Information about cases is essential for interpreters to be able to prepare for an assignment. For example, if an interpreter knows in advance that a case is about assault or fraud or robbery then s/he can prepare a glossary of the

terms that are likely to be used in English and the foreign language. We advocate that interpreters be provided with a copy of the charge sheet and in cases heard in higher courts that they be provided with the book of evidence. They should also be provided with copies of maps and pictures that will be referred to in court.

Our members tell us that barristers sometimes read pages of dense legal text in court expecting the interpreter to interpret it as if it were the spoken language. This sort of language cannot possibly be interpreted sight unseen and at the same speed as the interpretation of spoken language. Any such documents should be made available to the interpreter well in advance so that s/he can prepare the translation.

### **Terminology**

Legal terminology presents huge challenges to court interpreters. Terms such as hearsay, remand, leading question, exhibit, caution, charge sheet, bail, summary offence, indictable offence are not part of everyday language. Interpreters need to understand these words and find equivalents in their own language. It is not always possible to find equivalents, particularly for legal concepts or terms which may not exist in the target language. In these cases the interpreter may need to paraphrase what is meant or ask the lawyers for an explanation of the term which can then be translated. It can be quite difficult, and indeed impossible in some languages, to obtain good legal dictionaries.

Titles of Acts can be very difficult to translate let alone to interpret. For example:

You, X, on the (date) at (place) in the (District) without lawful authority or reasonable excuse harassed Y by persistently communicating with her (or following, pestering, besetting, by any means, including the use of the telephone. Contrary to Section 10 of the Non-Fatal Offences Against the Person Act 1997

The underlined phrases and terms present real challenges to the interpreter who has no time or opportunity to consult dictionaries, the Internet or colleagues. Moreover, the interpreter has to remember details of names and places and interpret complex information accurately into another language simultaneously. Latin phrases also present challenges to interpreters who are not familiar with them.

It would be very helpful if Lionbridge could compile legal glossaries in different languages and make them available to court interpreters. They

could start with the most commonly used terms in the District Courts, make a glossary with definitions in English and then proceed to find the best possible equivalents in the target languages. This would help ensure consistency across interpreters in particular languages.

### **Training for Judges, lawyers and court registrars**

We believe that all court personnel should attend a short training course on the need for interpreting and how to work with interpreters. Our members have found that there is a lack of understanding among court personnel about how best to do this.

While some judges are very considerate of the needs of interpreters and ask everyone to speak slowly and clearly to allow the interpreter to do his or her job., a minority of judges do not understand the need for interpreters and on occasion have refused to certify for an interpreter for people who have been living in the jurisdiction for a number of years but have not learnt the language. For example in January 2007 the *Galway Advertiser* reported:

...it was "absolutely ridiculous" to think that anyone living in this country for five years could not speak the language. The judge said she had granted Free Legal Aid but she was not going to certify for an interpreter.<sup>7</sup>

The *Carlow People* reported on 12<sup>th</sup> December 2007 that:

Kleine said he did not understand what was going on in court, prompting the judge to ask him why he did not bring someone with him who could have assisted with translation. He accused the defendant of wasting his time 'I am not pleased,' he said, adjourning the case to January 8 in the hope that a professional interpreter would be available on that date.<sup>8</sup>

It appears from this report that the judge was not aware that it was the job of the Courts Service to provide an interpreter.

The *Wicklow People* reported on 7<sup>th</sup> June 2007 in a case of an uninsured driver:

Tarnogorski doesn't have strong English and no Polish interpreter was in court, however he does speak a little Russian and was assisted by

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<sup>7</sup> *Galway Advertiser*, 11<sup>th</sup> January 2007 (URL no longer available)

<sup>8</sup> <http://www.carlowpeople.ie/news/professional-interpreter-called-for-in-cases-concerning-polish-motorists-1247002.html>

another interpreter. The language barrier led to some problems, particularly when Judge Donnchadh O Buachalla attempted to find out how long the defendant had been driving the car. 'I think I now know what its like to be called a dentist,' commented Judge O Buachalla.<sup>9</sup>

In this case it is evident that the defendant's knowledge of Russian was not sufficient for effective communication to take place.

Our members have come across situations where there is for example no Russian interpreter in court. Rather than adjourn the case, the judge asks if anyone in the court speaks Russian. We understand that judges can be impatient with delays and adjournments but it is not good practice to ask for unqualified, untrained and inexperienced volunteers to stand in.

### **Translation**

The Courts Service homepage indicates that information is available in Irish, French, Spanish and Chinese. In fact, information has also been translated into Polish and Russian but this is not clear from the homepage. A small number of information leaflets have been translated; Small Claims Procedures, Bail Refunds and Cloverhill Prison. Some information about how the Courts System works and the fact that interpreters are provided to defendants and witnesses in criminal cases would also be of benefit.

### **Written Policy**

To the best of our knowledge the Courts Service does not have any written policy documents on interpreting. We would recommend that the Service consider drawing up such documents in consultation with judges, lawyers and language experts. A short booklet for judges would be very useful. There is a need for a policy document on the provision of interpreters for complainants and next of kin so they can understand what is being said in court. Issues may well arise where a jury member or a lawyer who speaks a foreign language objects to how an interpreter renders information. Proper policies would help ensure consistency across the country.

### **Interpreting for Solicitors/Garda etc**

When Lionbridge was awarded the contract for court interpreters the Courts Service made it clear that it would pay for the cost of interpreters for the prosecution only. This was made clear to interpreters by Lionbridge. However,

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<sup>9</sup> <http://www.wicklowpeople.ie/news/driver-wasnt-insured-699983.html>

in practice our members tell us that they are frequently approached by solicitors, barristers and members of the garda and asked to interpret information for the defendant. It is not realistic to expect solicitors or members of the garda to schedule their own interpreter for as short a time as five or ten minutes. On the other hand interpreters find themselves under severe pressure to interpret free of charge. We find this unacceptable. Given that ultimately the taxpayer will pick up the tab for all interpreting, we recommend that the Courts Service should reconsider this approach.

### **Research**

We believe that the Courts Service should encourage and indeed commission research into the quality of interpreting and the current provision of interpreters. Digital audio recording could provide a wonderful research resource.

### **Monitoring**

The Courts Service spent close to €3 million on interpreting in 2007. This is a considerable amount of money so it is surprising that there is no quality control and no monitoring of interpreters at present. We believe that there is a need for ongoing monitoring of interpreters by qualified, experienced interpreters who share their language. Interpreters would appreciate feedback and constructive criticism. This is something that would help to improve the overall quality and therefore cost-effectiveness of interpreting in the courts.

### **Statistics**

The Courts Service keeps figures on spending on interpreters and languages used. It would be very helpful if the Courts Service documented this information in the form of an annual report. This report could include a profile of the languages being used across the country. It would also be very helpful if Lionbridge could provide information on the qualifications and experience of active court interpreters.

### **Next Tender Process**

When the current contract for Interpreting Services ends we hope that the Courts Service will revisit the tender process and in particular consider alternative arrangements such as contracting different companies around the country. This has been done by the Garda in their recent tender process; the country has been divided into 6 regions and the Garda will work with up to 3 companies in each region. Another longer term option could be a

section of the Courts Service that would work from a Register of qualified interpreters.

We would also like to see a move towards setting proper standards for court interpreters. As outlined above, the current 4 levels are abysmally low. It is essential that the Courts Service should set standards for the future. Otherwise, the situation will never improve. For example, the Courts Service could decide that in the case of all languages of the European Union, interpreters must hold a degree or a postgraduate qualification in interpreting. As more students take the Graduate Certificate in Community Interpreting at Dublin City University, the Courts Service could include this qualification among the levels required. Such a move would encourage more people to obtain this qualification. The process of improving standards will take some time and the languages most in demand will have to be prioritised. In the long term we would like to see the introduction of a specific test for court interpreters.

We are more than aware of the difficulties involved in providing interpreters for the courts around the country and we very much appreciate the steps being taken by the Courts Service to consistently improve matters. As a professional body that promotes the highest standards in the provision of interpreting and translation services, we would be very happy to meet with the Courts Service to discuss the issues raised in this submission and to cooperate or provide advice on any new tender process.

Annette Schiller, Chairperson

Mary Phelan, PRO