



Aequitas  
Access to Justice across  
Language and Culture  
in the EU

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The core contents of the report are the result of careful and systematic discussion among the project participants, with colleagues in their own and other countries and with representatives from the legal services. However, the chapters have been written by individual colleagues and intellectual property therefore rests with the authors of each chapter of these recommendations.

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# Preface

European and domestic legislative requirements for equality of access to justice and fair trial need to be protected at all costs but may be put at risk if quality legal interpreting or translation is not provided.

Reliable standards of communication across languages and cultures are, after all, an essential pre-requisite to deal effectively with the increasing number of occasions when individuals from different language and cultural backgrounds become involved in the legal system of a member state or when judicial co-operation is required between the legal systems of two or more countries.

The aim of EU **Grotius Project 98/GR/131**, which is presented in this report, is to encourage the establishment of internationally consistent best practice standards and equivalencies in legal interpreting and translation.

The report's recommendations on equivalencies for legal interpreters and translators in

- standards of selection, training and assessment
- standards of ethics, codes of conduct and good practice and
- inter-disciplinary working arrangements with the legal systems

are offered to our colleagues in member states of the European Union as well as candidate countries, as a contribution to the process of establishing equivalent standards in legal interpreting and translation, together with a professional context for practitioners.

It is hoped that these recommendations can be implemented, improved and developed through national and international collaboration.

There can be no European fundamental rights without security and justice, no freedom of movement or enlargement without security and justice. Justice needs to be protected and guaranteed at all costs and the growing realisation of the importance of language, not only as an inalienable human right but as a foundation stone of the European 'Area of Justice' is the very *raison d'être* of this project.

Justice, which safeguards the fundamental freedoms of individuals and states and which goes to the heart of the Europe of the new millennium as envisaged at the Tampere summit, deserves and should require the highest standards of service across languages and cultures.

***Erik Hertog***

## CHAPTER ONE

# Access to Justice across Language and Culture in the EU

*Erik Hertog and Yolanda Vanden Bosch*

### INTRODUCTION

Communication problems across languages and cultures are well known in all parts of the European Union.

As a result, whether in criminal or civil law, or in the case of asylum seekers or immigration, or indeed in the field of legal co-operation, there is an increasing number of occasions without a shared language or mutual understanding of the legal systems and processes involved.

The quality of decisions and actions taken in all these spheres of the legal system is to a large extent dependent on accurate communication. After all, non-professional interpreting or translation can lead to miscarriages of justice.

Throughout Europe, reliable specialist interpreters and translators are required in several hundred languages, including equally the languages of the EU countries as well as those of the immigrant groups. Without competent qualified and experienced legal translators and interpreters there cannot be an effective and fair legal process across languages and cultures.

At the same time it is equally important that those working in and responsible for the legal system, have or acquire the skills, the understanding and organisational framework to accommodate the contribution of the translators and interpreters.

The fundamental need that inspired this Grotius project is **the fundamental principle of equal access to justice across language and culture**.

The EU open border policy results in the greater exchange of goods and services as well as movement of EU citizens, all of which entail particular language requirements or problems.

There is freedom of movement of EU citizens all over the EU. All countries of the EU now receive significant incoming populations, such as workers, guests, tourists and business people.

Of course all EU countries are also confronted with other migrant populations such as asylum seekers, refugees as well as economic migrants. For example, even a relatively small EU member state like Belgium, received 42,193 asylum applications in the year 2000 and a geographically relatively peripheral member state, like Ireland, saw its applications go up from just 37 in 1992 to 10,938 in 2000. The reasons for individuals or groups migrating or seeking asylum lie outside the control of the host country and usually even outside the EU. They may arrive unexpectedly and each wave is likely to use different languages and thereby create new challenges to communication across languages and cultures. For these groups may then be deprived in a variety of contexts, including access to justice. Consequently, there is an urgent need to help restore confidence, self-respect and trust in these groups, by providing for them a qualified service of a high standard to ensure equal access to the public services.

Reliable standards of communication across languages are therefore an essential pre-requisite to deal effectively with this increasing number of occasions when there is no adequate shared language or mutual understanding of legal systems and processes:

- When **individuals** from different language and cultural backgrounds become involved in the legal system of a member state whether as defendants, witnesses or victims. Reliable communication is particularly important in these situations. The quality of linguistic-cultural help, among other things,

which defendants and victims should receive, must be established, their need to be heard and to receive information in their own language guaranteed.

- When the **legal systems** of two or more countries are involved and judicial co-operation between member states is required in civil law cases, for example those dealing with international contracts, family law, adoption, corporate law, responsibility and insurance; or in criminal law cases such as terrorism or drug trafficking and, obviously, in immigration, asylum or other refugee issues.
- When **legal practitioners** from different member states have to co-operate in joint actions over such matters.

It should also be noted that those working within the legal systems, such as policemen, judges or lawyers, also have the right to reliable legal interpreting and translation in order to carry out their tasks to the level required of them by law and by their own professional standards.

The European and domestic legislative requirements for equality of access to justice and fair trial need to be protected at all costs and may be put at risk if quality legal interpreting and translation are not provided. After all, justice and language are both inalienable human rights.

However, the current provision of legal interpreting and translation in member-states is often patchy and uneven. As a result, those working in the legal services are hampered in their efforts to provide the quality of service they would like - because they cannot always gain access to qualified legal interpreters or translators in the languages they need -, whereas the legal interpreters and translators themselves are not provided with the professional quality training they deserve to do a good job.

What often currently exists in member states is:

- an élite in each legal discipline who are often multi-lingual themselves and are used to working across specific languages and cultures in both national and international contexts
- a larger proportion of each legal discipline who may have varying amounts of expertise in working across languages and cultures, which has usually been acquired on the job but is not formally taught, recognised or structured
- legal interpreters and translators whose standards of training, qualifications, practice and working arrangements differ from member to member state, or even within member states
- insufficient legal interpreters and translators, either in terms of numbers or the wide range of languages required in member states
- lack of compatible national and internationally recognised central registers of legal interpreters and translators, which are easy to access on a 24-hour basis and are accompanied by an enforceable code of conduct
- and, a lack of clarity and consistency in the inter-disciplinary guidelines to good practice.

This uneven patchwork conspires to hinder legal co-operation and equal access to justice throughout the Union. It wastes existing and potential resources through a lack of a co-ordinated response and the necessary planning of incremental steps towards competence in dealing with the increasingly multi-lingual nature of work in the civil and criminal legal systems.

This need - the fundamental principle of equal access to justice across language - as set out here still exists in all EU countries, though to differing degrees, and it has been the purpose of this Grotius project to make a contribution to remedying that situation.

## **GROTIVS PROJECT 98/GR/131**

**The aim of this project is to encourage the establishment of internationally consistent best practice standards and equivalencies in legal interpreting and translation.**

The project's objectives toward fulfilling this aim are to set out core recommendations which:

- address each of the main necessary elements to be covered

- constitute minimum benchmarks of training and practice standards which, if followed by each member state, would provide a basis for equivalent standards throughout the EU
- can be used simply as a check list by those who already work to, or above, those minimum recommended standards
- can be used as a guide to those who are beginning, or are mid-way, in the process of establishing national systems for qualified legal interpreters and translators
- and provide a foundation for future development.

What is sought are equivalencies in standards and principles so that, for example:

- the standards of competence are the same but the type of competencies may differ where more translation than interpreting skills are required in an inquisitorial legal system than in an adversarial one
- core curricula are the same but contain additional variables to accommodate different starting points and national requirements
- overall course design is the same but training may be delivered through differing educational systems
- the principles of good practice are the same but are adapted to different national legal procedures, etc.

But, on the other hand, even while allowing for these national variables, there can be no doubt about the benefits of equivalencies in trying to secure better access to justice. The benefits of equivalencies would allow for:

- guarantees of, at least minimum standards and practice of legal interpreting and translation in member states
- the possibility of interpreters and translators working in both the countries of their language combination (e.g. Spanish and English) and thereby enhancing their professional expertise and career development
- the possibility of interpreters and translators working on the same case or project as it crosses national borders and thereby ensuring consistency
- the creation of a shared - and larger- resource of expertise in such matters as teaching materials and terminology and, last but not least,
- better co-operation between the legal systems of different EU member and candidate member states.

In other words, the intended practical outcomes are that there shall be:

- legal interpreters and translators, with equivalent adequate standards of training, assessment and practice throughout the EU
- guidelines on selection and assessment of legal interpreters and translators, providing recognised standardised benchmarks of basic professional competence
- outlines of the curricula in legal interpreting and translation with detailed recommendations on piloting and evaluating training courses for legal interpreters and translators and providing examples of teaching materials for such courses
- models of codes of conduct and good practice
- guidelines for working arrangements
- models of national registers
- guidelines for interdisciplinary co-operation between translators and interpreters and those working in the legal services.

These outcomes will enhance not only judicial co-operation, but equal access for everyone to the legal system and the quality of justice itself.

The project is a collaborative action between Belgium, Britain, Denmark and Spain, to take forward work in connection with agreed standards of legal interpreting and translation and seeks to establish equivalencies on the basis of inventories of:

- **Standards of selection, training and assessment**
- **Standards of ethics, codes of conduct and good practice**
- **Inter-disciplinary working arrangements between the LTIs and the legal systems**

The project brought together existing systems as a nucleus with a view to establishing internationally best practice and the approach taken to fulfil these objectives has comprised three phases.

### 1 The Preparatory Phase

**Interdisciplinary National Committees** were set up in the four countries with members from the judiciary as well as the legal interpreting and translation profession. Their task was to gather information. This information, such as materials and some analyses became a basis for discussion.

### 2 The Development Phase

There were three **meetings**, preparing two **seminars**.

There was a **first meeting in Cambridge**, England (19-21 February 1999), where it was agreed that it would be best to start by defining a profile of the legal interpreter and translator and to work back from that to the selection, training, assessment and continuing professional development required to reach and implement those qualifications.

The major topics of discussion were:

- the four broad levels of competence i.e.
  - an ‘urgency’ model to cope with unexpected and pressing demands such as e.g. the sudden influx of a new wave of immigrants or a major disaster
  - a Diploma or First Degree level programme providing the basic professional level guaranteeing quality in legal interpreting or translation
  - a postgraduate or MA level that would widen the range and proficiency in languages, improve and expand the cognitive and professional skills and wherein a Diploma or First Degree course could be accredited
  - and a Continuous Professional Development level of post-qualification training in areas of expertise which would enable legal interpreters and translators to specialise, develop new skills, keep up to date, etc.

and

- various assessment methods.

The **second meeting was held at the University of Malaga** (7-9 May 1999). This meeting included discussion and elaboration of:

- the curricula
- the selection criteria and training
- further analysis of assessment strategies
- training materials
- codes of conduct and good practice
- national registers
- working arrangements.

The **third meeting, at the Handelshoejskolen i Aarhus** (December 4, 1999) concerned

- the finalising of a system for assessment and codes of conduct and good practice.
- the circulation of relevant training materials and registers.

In addition, two **seminars** were organised:



The **first seminar for senior legal interpreters/translators and competent trainers (London, September 16-19, 1999)** was devoted to considering and evaluating the development of the joint standards of selection, training, assessment and practice of legal interpreters and translators.

The **second seminar was organised on legal translator and interpreter working arrangements with legal agencies (Brussels/Antwerp, March 16-18, 2000)**. It looked into the requirements that would allow:

- to be able to communicate effectively through and to work with legal interpreters and translators
- to meet the needs of people of different languages and cultures, i.e. the organisational framework needed, including an analysis of the legal provisions made for legal interpreting and translation in the laws of the EU member states and making recommendations on this
- to draw up models of interdisciplinary conventions which would recognise and support each other's role, expertise and professional code
- and to work out professional arrangements, particularly the status and deployment of TI within the judiciary.

The legal disciplines that need to be included in this process are the judiciary, the ministry, judges, courts, lawyers, prosecutors, solicitors, court administrators, appropriate civil servants and the police, probation, prison, arbitration and immigration services.

There was recognition, on the part of the legal services, of the need for qualified, reliable legal interpreters and translators coming up to equivalent standards in member states.

On the other hand, the legal services were also aware of the need to contribute to the training of legal interpreters and translators as well as to inter-disciplinary good practice and professional working arrangements.

### **3 The Dissemination Phase**

The project will make the outcomes and recommendations resulting from the meetings and seminars available in appropriate and diverse forms such as

- books, pamphlets, registers, disks, the internet etc. and also through the
- press and media (national as well as European)
- contacts with other institutions (public services providers, translation and interpreting training institutes, governments, European institutions, etc.)
- as well as in the form of conferences and events.

The reasons why quality legal interpreting and translation are important are clear enough. The reasons why the matter has not been addressed thoroughly or sufficiently enough in the EU, are no doubt complex and diverse.

But justice, which safeguards the fundamental freedoms of individuals and states and which goes to the heart of the Europe of the new millennium as envisaged at the Tampere summit, really should require the highest standards of service across languages and cultures.

There can be no European fundamental rights without security and justice, no freedom of movement or enlargement without security and justice. Justice needs to be protected and guaranteed at all costs and the growing realisation of the importance of language, not only as an inalienable human right but as a foundation stone of the European Area of Justice, is the very *raison d'être* of this project.

## **PARTNER COUNTRY PROFILES**

It is obviously impossible to discuss in any detail the legal situation and all relevant regulations in the different countries, but some general introductory remarks may be useful.

In the European Union, all Member States are required to make an interpreter available, free of charge, to persons who do not speak (or do not speak adequately) the language used by the police, the prosecution authorities, or the courts, under conditions which satisfy the requirements of the European Convention on Human Rights of 1950.

At all stages in the procedure the availability of an interpreter must be guaranteed. In some countries an interpreter is only provided at the request of the person suspected or accused.

The interpreter or translator does not have an official recognition, an official status. Most of them are working as 'sworn translators', 'court' or 'legal interpreters', 'certified' or 'authorised' translators or interpreters, but often without screening, training or professional quality assessment. The law does not always provide a definition of a 'court' or 'legal' interpreter or translator. As a matter of fact, it usually does not. And in all countries of the European Union there is a different system in place for the legal interpreters and translators, for their screening as well as for the monitoring of their minimum level of competence.

In most countries the call for admission into the profession, is for a university level degree and/or a minimum amount of practical experience. However, for a lot of languages a university level, or even initial professional level is impossible, e.g. some languages are not properly taught even in their own countries.

Nevertheless, in both legal and asylum proceedings, good legal interpreter and translators are needed, and sometimes very quickly, and yet often enough and unfortunately enough, these institutions have to rely on persons without any real professional training.

Only in some countries (Austria, Sweden, England) is a knowledge of the language and legal system of the country where the language is used, required, since very recently also in Belgium, in the judicial districts of Antwerp and Turnhout. In order to carry out their tasks reliably, legal interpreters and translators require sufficient knowledge of the legal systems involved, including a knowledge of the relevant structures, procedures and terminology.

In most countries there are 'lists' of legal interpreters and translators. They have been drawn up on different levels: national, regional or local. The lists have usually been drawn up by the courts (for example in Belgium by the different courts), sometimes by national associations or bodies under state supervision (Spain for example), or through agreements between the professional language bodies and the legal systems (England and Wales). In Denmark the National Commission of the Danish Police must approve all interpreters used by the police and courts. But it is clear that at the moment each European country should be interested in the registration of qualified legal interpreters and translators.

## **1 Belgium**

Belgium has three official languages and four language regions (Brussels being bilingual) and consequently Belgium has always been confronted with language problems in the courts.<sup>1</sup> But not only there. By the end of 1999, in the Antwerp prison, the prison authorities had to cope with some 45 different languages. In the Belgian asylum and immigration administration, requests are registered for people speaking 130 to 140 languages.

The Belgian Constitution states that in Belgium the use of language is free. It can only be regulated by law and only for acts of the public administration and in lawsuits. Concerning the use of language in judicial proceedings, there is the special 'language law' of 1935. The main principle is 'territoriality' as to the language used by the courts. But any citizen appearing before a court has the principle of freedom of choice of language. Official documents must state that the person concerned was given the choice of language, on pain of nullity.

A free interpreter must be made available at all stages in criminal proceedings (from first interrogation to appearance in court). In all interrogations during the preliminary investigations and the investigation itself, as well as before investigative and sentencing courts, the defendant has the right to use his or her language for all statements and depositions. The liable party in the criminal case has the same right, so do witnesses in court cases. Pleas are made in the language of the jurisprudence of the court; only in exceptional cases will the use of a different language be admitted.

In civil cases the plaintiff or the defendant must bear the costs for an interpreter or translation.

In all legal aid cases and not only in criminal cases as was the case in the past, lawyers and clients can ask for an interpreter for three hours paid for by the state, in order to prepare their defence (since 1998). This legislation applies also in most cases concerning refugee and immigration rights.

In Civil and Commerce Courts, the parties present in court can choose the language they prefer for questioning or argument, even if it is not one of the national languages. If the judge decides on the need for an interpreter, expenses are to be paid by the parties.

Lists of 'sworn interpreters' are usually kept by the Courts of First Instance. They are drawn up by the president of the court in consultation with the public prosecutor's office. Until now, only in a few cases have the qualifications of the candidates been really checked. There is as yet no national system of qualification or registration.

In each court the magistrates worked out their own system for recruitment and certification. There is no established procedure, so each court and police department have developed their own regulations procedures, though there are great similarities.

There is no national register of all interpreters or translators, let alone legal translators or interpreters. The title of 'translator' or 'interpreter' is not a legally protected title. There are, as yet, no guidelines concerning working conditions either. There is no law or official statute for the interpreter or translator. There are only semi-official local lists in the different courts and the asylum administration services.

So far the law in Belgium sets no 'quality' requirements. Therefore, for the candidates, it usually boils down to an investigation into their 'morality' (i.e. good behaviour and having no criminal record). They also have to submit degrees or certificates testifying to their language(s) proficiency but most courts do not systematically examine or test the language proficiency (native and/or foreign languages) of the candidates. Knowledge of the legal system is not required. In quite exceptional cases, a written test is organised (usually a translation only). For well-known, common languages, the court will prefer to use graduates with higher or university degrees, for the more 'exotic' languages that will often be impossible and therefore one has often no clue whatsoever about the quality and reliability of the interpreter or translator.

The interpreter is required to take the oath before the court each time at the beginning of the proceedings of a new case. Before the 'Hof van Assisen' – 'Court d'Assises', the interpreter has to be 21 years old.

In the future one must hope there will be an official national register. At the Grotius project meeting in Antwerp in September 2000, the start of two pilot projects (a Dutch- and a French-language project) was announced to arrive at professional and better qualified legal interpreters and translators. Both pilot projects, the result of this Grotius project and of a King Baudouin project, have been organised with the support of the Ministry of Justice.

From 2001 on, before the Antwerp Court, every candidate's language proficiency is now being screened in both Dutch and the foreign language(s) before they are admitted to the course, which consists of judicial procedures and structures, police structures and interrogation techniques, Dutch and foreign language proficiency, legal translation and/or interpretation, code of conduct and professional good practice, all this leading up to a final test before the candidates can become a 'certified' or 'sworn' legal interpreter or translator.

In asylum procedures, the Commissioner-General for Refugees and Displaced Persons, the Administration of Alien Affairs and the Permanent Appeal Commission for Refugees, all use many interpreters on a daily basis. They each dispose of their own 'pool' of interpreters, who work on a freelance basis. The administration is in the process of drawing up its own Code of Conduct. At the moment there are no clear-cut requirements regarding training, professional conduct, quality assessment, etc.

## 2 Spain

The Spanish Constitution, the law regulating the judicial system, the code of criminal procedure and case law of the Constitutional Court, all have procedures for the provision of free interpretation in the different

stages of proceedings for those facing criminal charges and who do not understand the language normally used in the judicial process. Also Spanish citizens themselves have the right to be assisted by an interpreter when they speak one of Spain's other official languages.

There are different initiatives to assess and accredit interpreters and translators working in the courts.

In the larger cities, many courts have their own staff of in-house interpreters who cover a few languages. They are employees.

The Minister of Justice is responsible, according to the law, for the provision of interpreters and the translation of all documents needed at all relevant stages of the procedure.

In principle the Ministry of Foreign Affairs is responsible for setting the standard of interpreting through its accreditation of the 'intérprete' or 'traductor jurado'.<sup>2</sup> For staff interpreters in the courts, the Ministry of Justice sets two translation papers and a general knowledge paper on aspects of Spanish law. But there is no oral test. In some cities, as in Madrid, there is an exam for sworn interpreters, consisting of written translations (including a legal paper) and an oral test.

In Catalonia the testing of legal interpreters and translators is the responsibility of the Direcció General de Política Lingüística, part of the Generalitat de Catalunya. Both the Generalitat de Catalunya and the Office of Interpretation and Languages at the Ministerio de Asuntos Exteriores accredit sworn interpreters.

Interpreters and translators are enrolled on the Ministry's and the Generalitat's Register, where they can be contacted, or they can be contacted from lists kept in the local law society directories.

There is a National Association of Sworn Interpreters, with local branches, which is a semi-public association. It is not necessary to hold formal qualifications to be admitted as a member.

### **3 Denmark**

The language used in the courtroom in Denmark is Danish. It is Section 149 of the Danish Administration of Justice Act which regulates the Appointment of Interpreters.<sup>3</sup>

According to subsection 1: 'The questioning of persons who do not master the Danish language must, as far as possible, take place with the assistance of an authorised interpreter. In civil cases, an interpreter need not be appointed, if none of the parties demands it and the court believes that it has sufficient knowledge of the foreign language. The same aforementioned exception applies to criminal cases with the exception of those heard by the High Courts'.

The appointment of an interpreter is thus not always obligatory, but it is normally requested in criminal cases at all levels. Also the police normally call for an interpreter in interrogation situations. In criminal cases, the Danish court arranges and pays for interpreting services as well as for the translation of documents submitted as evidence which the judge deems relevant to the case. In civil cases, the plaintiff or the defendant must bear these costs.

Citizens of the Nordic countries have specific rights with respect to interpreting and translation services. These rights are specified in subsections 3 and 4 of Section 149 and in the Nordic Language Convention (Den Nordiske Sprogkonvention, 1981). A booklet published by the Ministry of Justice entitled *How to use an Interpreter in Denmark* (At bruge tolk i Danmark) provides guidelines on the application of the Convention. It deals with the required qualifications of the interpreters and the correct way to use the interpreters.

In addition, ethical issues are addressed both by a list of rules that accompanies a Proclamation (Kundgoerelse I, No. 11, January 12, 1994), which lays down the overall procedure for the recruitment of interpreters and the administration of their services, as well as by a set of Instructions for Interpreters (Instruks for Tolke, 1994). The Instructions are addressed to the interpreters, whereas the rules are intended for police and other judicial officials who work with interpreters.

The issues discussed in these materials, including in *How to use an Interpreter*, are accuracy and completeness, impartiality, confidentiality and conflict of interest.

As stipulated above, in Section 149 of the Danish Administration of Justice Act, interpreters used in the courts should be 'authorised'. The requirements for 'authorisation' are: Danish nationality, Danish residence, twenty-five years of age or older, one's estate may not be under the care of legal guardians and passing the 'authorisation' examination. Training and examination take place at the Danish Schools of Business (languages: English, Spanish, French, German and Italian). The actual 'authorisation' i.e. 'State-Authorised Translator and Interpreter', is awarded by the Danish Commerce and Companies Agency, which is part of the Ministry of Industry. For the other languages, the Danish police and the judicial system have to use interpreters who are not authorised.

The above mentioned *Proclamation* states that all interpreters used by the police and the courts must be approved by the National Commission of the Danish Police, which keep an official list of interpreters. 'Authorised' interpreters are automatically admitted on to the list whereas all other interpreters must pass an oral test assessing their knowledge of Danish before they are allowed on to the list.

All interpreters are employed on a freelance basis only.

There are two separate pay scales for interpreters in Denmark:

- the highest pay is reserved for the authorised interpreters as well as for those who possess a university degree in a foreign language or equivalent educational background
- the lower pay scale applies to all other interpreters who appear on the official list and the rate is approximately half of that of the highest pay.

#### **4 The United Kingdom**

An arrested person is informed of his rights by a written document (available in some different languages) and, if necessary, an interpreter in the language in question is also appointed in accordance with the Police and Criminal Evidence Act 1984 and art. 5 ECHR.

In 1981 the Institute of Linguists (IOL), a non-profit making language professional body and examinations trust, was approached by a number of people concerned at the lack of provision of suitable interpreters and translators in the public services. Between 1983 and 1990, the IOL was granted funding by the Nuffield Foundation to develop a model, which the Nuffield then promoted on a national basis between 1991-96. In 1994 the IOL won the tender to set up and administer the National Register of Public Service Interpreters (NRPSI), henceforth referred to as the National Register.

Following concern that the variety of procedures in existence for arranging interpreters was causing confusion, the Witness Care Sub-Group of the inter-agency Trials Issues Group (TIG) approved in 1997 a National Agreement for England and Wales on the arrangements for the attendance of interpreters in investigations and proceedings within the criminal justice system. The TIG includes membership of representatives from the Association of Chief Police Officers, Bar Council, Crown Prosecution Service, Court Service, HM Customs and Excise, Home Office, Judiciary, Justices' Clerks' Society, Law Society, Lord Chancellor's Department, Magistrates' Association, Victim Support and the Association of Chief Officers of Probation.

The aim was to introduce these arrangements in all criminal investigations and proceedings in England and Wales from 1 April 1998 and thereby provide necessary standardised procedures. Provision of a standardised procedure for arranging interpreters for investigations into alleged offences and for defendants and witnesses appearing in criminal proceedings in England and Wales is required.

The principles of the Agreement are as follows:

- The police or other appropriate investigating agency will arrange interpreters for any part of an investigation and for the requirements of the suspects or persons charged, whilst they are in police custody.

- It is the responsibility of the Court to arrange the interpreter for the defendant at court, except where the defendant appears in court up to two working days after being charged, when it is for the police or other investigating agency to make the necessary arrangements. In normal circumstances a separate interpreter should be arranged for each defendant. The interpreter must be available to interpret for the benefit of the defendant at court throughout the day's court proceedings and not only, for example, when the defendant is giving evidence.
- It is the responsibility of the prosecution and defence to arrange interpreters for their own witnesses in court.
- It is important to check an interpreter's experience of police and court procedures before engaging their services.
- It is the aim that by the end of 2001, every interpreter working in courts and police stations should be selected from the National Register (NRPSI), or the Council for the Advancement and Communication with Deaf People (CACDP) National Directory of Sign Language Interpreters. In the meantime, the selection of interpreters from the National Register or the CACDP Directory is strongly encouraged as they offer a minimum and measurable standard of training and quality. Although the aim is for the National Register to meet the entire national need for interpreters in all languages, this may take some time.
- If it is not possible to select an interpreter from the National Register or CACDP Directory (for example where the language is rare) the interpreter may be chosen from some other list. However it is essential that any interpreter selected from another list should meet standards at least equal to those required for entry on the Register, in terms of academic qualifications or proven experience of interpreting within the criminal justice system.
- Wherever possible, parties to proceedings should employ the services of different interpreters. It is important that an interpreter used at a police station or in the course of investigations by other prosecuting agencies, is not engaged to interpret in the courtroom, though an interpreter used by the defence when taking instructions may be used by the court to interpret for the defendant in the courtroom at the discretion of the judge or magistrate.
- The Agreement does not affect the existing arrangements which have been set up to address the obligations of the courts to provide Welsh language interpreters in courts in Wales.

The National Register also contains a Code of Conduct.<sup>4</sup>

## **LEGAL REQUIREMENTS**

The principles governing equal access to justice, irrespective of language and culture, are recognised within EU-member states. They apply to both the criminal and civil legal systems.

The legal basis for the need or even the obligation for national authorities in the EU to provide legal translators and interpreters is to be found in the European Convention on Human Rights of 1950, which is itself based on the Universal Declaration of Human Rights. ECHR has been incorporated into most legal systems of the European Union.

### **1 The Universal Declaration of Human Rights of the United Nations**

**The Charter of the United Nations** (June 26<sup>th</sup>, 1945, San Francisco Conference) explicitly calls for 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'

**The Universal Declaration of Human Rights of the United Nations** (December 10<sup>th</sup>, 1948, Resolution 217 1 (III) General Assembly of the United Nations) includes the right to a fair trial and public hearing by an independent and impartial tribunal. However, this Declaration is only a recommendation.

Further steps to translate these rights into legally binding commitments and to set up bodies to monitor the compliance of state-parties, were therefore necessary. This was achieved in the form of two International Covenants, one on Civil and Political Rights and the other on Economic, Social and Cultural Rights (December 19<sup>th</sup>, 1966) as well as, for example, in the European Convention on Human Rights.

## ***2 The European Convention on Human Rights***

The Council of Europe signed the European Convention on Human Rights (ECHR) on November 4<sup>th</sup>, 1950 and it came into force on September 3<sup>rd</sup>, 1953. Twelve protocols have since been added to the Convention.

In the past, the European Court of Human Rights (Strasbourg) worked on a non-permanent basis, but since November 1<sup>st</sup>, 1998, there has been a full-time European Court of Human Rights. This international Court operates in two official languages: English and French.

Art. 5. par. 2 and art. 6. par. 3e of the European Convention on Human Rights clearly set out the requirements for interpreting and translation in (all) legal cases in order to arrive at a 'fair trial'. The Court of Human Rights ruled on the application and interpretation of these articles in several landmark decisions.

### *art. 5 ECHR*

*[Right to liberty and security]*

*'1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in the accordance with a procedure prescribed by law:*

*(a)...*

*2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.'*

### *ART. 6 ECHR*

*[Right to fair trial]*

*'1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*

*...*

*3. 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;*

*...*

*(e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.'*

In 1978 the European Court of Human Rights (ECHR) decided in the case of *Luedicke, Belkacem and Koc v. Germany*<sup>5</sup> that the right to the free assistance of an interpreter denoted 'neither a conditional remission, nor a temporary exemption nor an suspension but a once and for all exemption or exoneration.'

The Court further said that the right protected by article 6 par. 3e entails for those who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter without subsequently having payment of the costs thereby incurred claimed back from him.

And in par. 48, the Court concluded, in the context of the right to a fair trial guaranteed by this art. 6 par. 3e, that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all documents or statements in the proceedings against him which are necessary for him to understand in order to have the benefit of a fair trial.

In the case of *Öztürk v. the Federal Rep. of Germany*<sup>6</sup> in 1984, the Court decided that for the purposes in art. 6 par. 3e it is sufficient to show that an offence is criminal in nature even if, in the State concerned, the offence is considered only to be a regulatory offence.

In the case *Brozicek v. Italy*<sup>7</sup> in 1989, the Court stated that the information referred to in art. 6 par. 3a should cover both the actual facts with which the accused is charged and their legal classification. Finally, as art. 6 par. 3a ECHR explicitly mentions, this information must be given in a language which the accused understands.

Concerning the right to interpretation under this art. 6 par. 3e ECHR, there is the very important 1989 case of *Kamasinski v. Austria*.<sup>8</sup>

In this case the Court held that the right to the free assistance of an interpreter not only applies to oral statements made at the trial hearing, but also to the translation of documentary material and interpretation during the pre-trial proceedings where it is necessary for the person charged to understand everything in order to have the benefit of a fair trial.

The Court decided that art. 6 par. 3e ECHR does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. However, the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself by being able to put before the court his version of the events.

In view of the need for the right guaranteed by art. 6 par. 3e to be practical and effective, the Court also held that the obligation of the competent authorities is not limited to the appointment of an interpreter but, if given notice in certain circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.

The European Convention also provides in art. 6 the right to a fair hearing for the determination of civil rights and obligations as well as in the case of any criminal charge. In accordance with this article it is obligatory on pain of nullity, to call for an interpreter only during the criminal trial. This article applies only to the trial itself. In the pre-trial stages, police officers and investigative magistrates have to ensure appropriate interpreting.

The courts or competent authorities have an obligation to ensure, in certain circumstances, the adequacy of the interpreting provided. The courts have the obligation to ascertain whether interpreters are duly qualified.

In this case, the Court explicitly stated in par. 74:

*'The right, stated in par. 3(e) of Article 6, to the free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. Par. 3(e) signifies that a person 'charged with a criminal offence' who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial.*

*However, par. 3(e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events.*

*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 an 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.'*

### **3 Council of Europe Recommendations**

**Resolution (78)8 of the Committee of Ministers of the Council of Europe** recommends in Art. 3 on legal aid and advice, that legal aid should provide for all the costs necessarily incurred by the assisted person defending his legal rights, and in particular lawyer's fees, expert's fees, witnesses and translations.



**Recommendation N° R(81)7** on measures facilitating access to justice of the **Committee of Ministers of the Council of Europe**, applies to civil, commercial, administrative, social and fiscal matters. In the light of this Recommendation, states should pay particular attention to the problems of interpretation and translation and ensure that persons in an economically weak position are not disadvantaged in relation to access to the court or in the course of any proceedings by their inability to speak or understand the language of the court.

**The European Agreement of the Transmission of Applications for Legal Aid**, opened to signature by the member states of the **Council of Europe** on January 27th, 1977, concerns the applications for legal aid in civil, commercial or administrative matters made by persons who are habitually resident in another state.

The explanatory memorandum to the Recommendation states: 'A failure to understand the language used by the court is a serious obstacle to access to justice. The state should therefore take measures to remedy this situation.'

Provision should be made not only for assistance by interpreters during the hearings but also for information to be given to the person concerned on how to obtain translations of documents.

Officials responsible for giving this information should, as far as possible, be assisted by interpreters when dealing with persons who do not have a sufficient understanding of the language of the court and who are not accompanied by another person who knows both languages.

It would also be helpful to prepare foreign-language translations of documents giving procedural information.

The principle does not stipulate who shall ultimately bear the cost of interpretation or translation. Even so, any risk of incurring such costs and so deterring anyone from asserting or defending his rights before the courts, should be avoided as much as possible. In this context it should be recalled that Resolution (78)8 on legal aid and advice, adopted by the Committee of Ministers on March 2<sup>nd</sup>, 1978 recommends in particular that legal aid should provide for the cost of translation.

**Recommendation N°R(97)6 of the Council of Europe**, aiming at improving the practical application of this agreement, invites the member states to provide, whenever possible, a lawyer who speaks a language which the applicant understands.

**The Ministerial Conference on Human Rights (Council of Europe)**, Rome, 3-4 November 2000 on the occasion of the 50th Anniversary of the ECHR, adopted two Resolutions.

**Resolution I** stresses the need to improve the implementation of the Convention in member States, whereas art. 14 iii requires the member states to ensure that the text of the ECHR is translated and widely disseminated among their national authorities, notably the courts, and that developments in the case-law of the Court are sufficiently accessible in the language(s) of the country.

**Resolution II** sets out concrete measures for improving the efficiency of the Council of Europe's response to serious mass violations of Human Rights such as torture, systematic rape and extra-judicial executions. The Resolution deplores the recurrent instances of discrimination against migrants, refugees, stateless persons and asylum seekers on grounds of their national, ethnic or cultural origin, their language, or religion, whether they belong to national minorities or not.

#### **4 The European Council of the European Union, Tampere, October 15-16th, 1999**

Legal interpreting and translation have acquired an additional salience in all areas of the judiciary - in civil, commercial and administrative as well as criminal law, in refugee and asylum procedures- in view of the various mandates arising from the resolutions of the European Council meeting at Tampere on 15-16th October 1999.

This meeting took upon itself the ambitious task to start implementing the principles of 'freedom, security and justice' inscribed in the Treaty of Amsterdam (1997) which set out to create, after an economic and social Europe, a 'European Area of Justice'.

To take the example of the co-operation envisaged in the sphere of criminal justice: in the conclusions of the Summit three main areas were singled out:

- **Access to justice.** This would include defendant's rights - to provide those accused of a crime with correct and precise information as to the charges against them- and victim's support, but also measures for those involved in the legal system to be heard and to receive information in their own language.
- **Mutual recognition** of judiciary decisions, during the investigation and pre-trial stages as well as in final decisions, in rogatory commissions, extraditions etc. Obviously, such recognition can only be achieved if there is complete mutual confidence in the way procedures are conducted in other member states, which includes guarantees concerning the quality of the interpretation or translation.
- **Co-ordination**, if possible centralisation of information, legal proceedings and of police and judicial authorities, including the harmonisation of definitions and regulations.

In all these issues and areas, legal interpreting and translation become essential pre-requisites because, after all, how can one effectively co-operate if one does not understand one another.

### ***5 The EU Charter of Fundamental Rights***

The above priorities are further strengthened by the EU Charter of Fundamental Rights. Launched by the German Presidency of the EU IGC in 1999 and proclaimed by the Council in December 2000 at the Nice summit, this Charter addresses the current weaknesses of the Maastricht Treaty, in which the principles of EU Citizenship are still fairly weak and vague.

EU citizenship is obviously an issue of concern as such within the EU, but the principles of democracy, civil freedoms and justice become particularly salient in the light of the pending enlargement of the Union.

The new Charter, in 7 chapters and 54 articles, is the instrument to 'charter' and verify the respect for fundamental rights by the EU member states where they act under EU law.<sup>9</sup>

For our purposes the relevant articles are Article 20 (Everyone is equal before the law); Article 21 (Any discrimination based on any ground such as...language...shall be prohibited); Article 22 (The Union shall respect cultural, religious and linguistic diversity) and the encompassing Article 47 on the right to a fair trial.

Similar to the ECHR, the Charter will have fundamental consequences for the judiciaries of the member states in all aspects covered by the ECHR and aspired to at the Tampere Summit.

In a way, one could argue that via the Charter, the ECHR will be incorporated into EU law, thus introducing greater consistency and overcoming the uncertain relationship between the EU and the ECHR, and implicitly between the ECHR in Strasbourg and the ECJ in Luxembourg. As a matter of fact, it must be clear that upon acceptance of the Charter, the obligation of compliance with fundamental rights devolves upon the EU and no longer or not only upon the member states and their own national legal systems. Therefore, if and when the Charter is fully accepted as a Protocol to the European Treaties, it will be another key-document laying down the principle of equal access to justice, including the right to be informed in and to be able to use a language one understands.

## 6 Other international documents

Also other international documents refer to legal interpreting and translation.

### **The International Covenant on Civil and Political Rights (United Nations), December 19<sup>th</sup> 1966.**

Article 14 of this Covenant states that

*'1. All persons shall be equal before the courts and tribunals.*

...

*3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*

...

*(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court...'*

### **The Convention on the Rights of the Child (United Nations), November 20<sup>th</sup> 1989.**

This Convention states in art. 40

*'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

...

*2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*

- (a) ...*
- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

...

*(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used.'*

### **Resolution of the General Assembly of the United Nations on the Principles for the protection of all persons under any form of detention or imprisonment (1998).**

Principle 12 of this resolution sets out detailed requirements for recording the circumstances of an arrest and consequent detention and the duty to communicate these records in writing to the arrested citizen and his legal representative.

#### **Body of Principles for the Protection of All Persons under any form of detention or imprisonment.**

Principle No 14 and pertinent principles **UN General Assembly** - 1988- 43/173 state that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment, is entitled to receive promptly in a language which he understands the information referred to in principles N° 10, 11/2, 12/1 and 13, and to have the assistance free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

#### NOTES

- <sup>1</sup> See Vanden Bosch, Yolanda, 1997 and 1999; Hertog, E. and Y. Vanden Bosch, 2000; also F. Voets, 'Gerechtstolken krijgen eindelijk erkenning', in De Juristenkrant, 2000, nr.6, p.1-8 and JK, 'Zoektocht naar een kwalitatieve gerechtstolk/-vertaler', De Juristenkrant, 1999, nr.7, p.8.
- <sup>2</sup> See for more details: Disposiciones generales, Ministerio de Asuntos Exteriores, Viernes 23 febrero 1996, BOE num.47, 6875, and Miércoles 2 abril 1997, BOE num.79,10517.
- <sup>3</sup> For further information see Schweda-Nicholson and Martinsen 1997; also Jacobsen 1998.
- <sup>4</sup> For this and further information see Trials Issues Group - Witness Care Sub-Group on [www.criminal-justice-system.gov.uk/inter1.pdf](http://www.criminal-justice-system.gov.uk/inter1.pdf). The website reference may change as the Witness Care Sub-Group has been dissolved as its task has been completed. The Trials Issues Group will, however, still be a valid website reference.
- <sup>5</sup> E.C.H.R., November 28<sup>th</sup>, 1978, A 29, par. 40.
- <sup>6</sup> E.C.H.R., February 21<sup>st</sup>, 1984, A 73.
- <sup>7</sup> E.C.H.R., December 19<sup>th</sup>, 1989, A 167.
- <sup>8</sup> E.C.H.R., December 19<sup>th</sup>, 1989, A 168.
- <sup>9</sup> For the Charter of fundamental rights of the European Union, see [europa.eu.int/comm/justice\\_home/unit/charte/en/welcome.html](http://europa.eu.int/comm/justice_home/unit/charte/en/welcome.html) or [www.consilium.eu.int](http://www.consilium.eu.int)

## CHAPTER 2

# Linguistic standards for legal interpreters and translators at Diploma or First Degree level and at MA level

*Edda Ostarhild*

### 1 LINGUISTIC STANDARDS FOR INTERPRETERS AND TRANSLATORS: AN OVERVIEW

The notion, still widespread today, that anyone who knows two languages is able to translate and interpret is not only false, it is highly dangerous. This is particularly so in the context of legal interpreting and translation, for example in cases of security, life and death, drugs trafficking, international crime and family law. Competent legal interpreting and translation make important contributions to the legal process and to the quality of administration in the multicultural society of the European Union.

Levels of linguistic competence which legal interpreters and translators require for their professional activities are not at present standardised amongst the member states of the European Union. Such standards are not even mutually recognised by all member states, nor does each country have its own mandatory or recommended standards for all their legal interpreters and translators. As a result, recommendations for the necessary standards of legal interpreting and translation in the EU, if they are to have any practical application, need to be descriptive and detailed. As some of these activities are similar, though not identical, their performance criteria may differ only slightly but possibly in important aspects. A degree of repetition is, therefore, unavoidable.

A high level of linguistic competence is a basic requirement for legal interpreters and translators who must be reliable and accurate in every detail at all times. The standard of linguistic competence for legal interpreters and translators described in this chapter is based on this requirement. The aim is to encourage in EU member and candidate member states the creation of training schemes and qualifications for legal interpreters and translators who are fully functional in their respective roles in the legal systems in EU member states across languages, countries and cultures in which they work.

The basic functional standard is currently perceived to be at university First Degree or BA level though not necessarily as broad based. In some countries the latter is known as diploma, for example the Diploma in Public Service Interpreting (DPSI) in Britain. Reducing it to a lower level would amount to a dangerous compromise. There is no room for semi-qualified legal interpreters and translators as they are required to play a vital role in the legal process in and between EU member states.

Even fully qualified interpreters and translators cannot be experts in every field of law. They need to be aware if an assignment takes them into areas in which they are not sufficiently experienced to provide a reliable and accurate service. In such situations, legal interpreters and translators are bound by the recommended code of conduct to withdraw from the assignment. Legal agencies should be familiar with this code of conduct. If they are, they will appreciate the conscientious adherence to the code rather than regard such withdrawal as a sign of incompetence. (See chapter 7)

#### Some introductory points

- This chapter attempts to define linguistic standards for the main types of task which legal interpreters and translators may be required to perform. However, practice differs between legal agencies within a country and from country to country within the EU. For this reason, you need to select from the details here below the sections that are relevant to your requirements.
- The linguistic standards necessary for the following legal interpreters and translators tasks are covered:

- **one- and two-way interpreting:** simultaneous interpreting (conference and chuchotage), consecutive interpreting and dialogue or liaison interpreting
  - **sight translation** into both languages used by the interpreter
  - **interpreters basic written translation** as sometimes required in some legal systems
  - and professional **legal translation**.
- A clear distinction is made between legal interpreters' basic translation and the standard required for professional legal translators who need to qualify as such in order to produce legal translations. This chapter deals with these skills in the same order as they are listed here.
  - A clear distinction is made throughout between the (general) high level language skills of speaking and listening and (specialised) interpreting skills. Likewise, a clear distinction is made between the (general) high level language skills of reading comprehension and writing and (specialised) legal translation skills. A high degree of competence in these four general language skills is a prerequisite for legal interpreting and translation skills.
  - Some educational terms are used without further definition on the assumption that they are universally understood, for example 'knowledge of the world'.
  - Interpreters and translators are sometimes referred to as 'practitioners' and listening comprehension is sometimes referred to by the simpler term 'understanding'.
  - Some performance criteria, assessment and other details are similar for speaking and listening skills as well as interpreting and sight translation skills. The same applies to reading comprehension, writing and translation skills. It is, therefore, not possible to avoid any overlap or repetition as the aim is to provide full details for each of the skills covered in particular sections and thus make these sections more or less independent. It is nonetheless recommended that you peruse these linguistic recommendations as a whole to obtain full insight into the various functions and practices of legal interpreters and translators.
  - The term 'section' as used here below refers not to individual paragraphs but to parts of the chapter which have separate headings.

### **The role of the four language skills in interpreting and translation**

Interpreters and translators, who work as professional practitioners, do not only have to be in full command of the four language skills of speaking, listening comprehension, reading comprehension and writing, they also have to have particular interpreting and translation skills respectively. They all need knowledge of the countries and awareness of the cultures in which they work.

In the case of interpreters, speaking and listening comprehension skills are of particular importance and for translators reading comprehension and writing skills. However, it should not be assumed that interpreters only need oral skills and translators only written skills.

In both professions there is a need for full command of all four skills in both languages. Interpreters who can only speak the two languages in which they work but are not able to read in one or both languages, are likely to be less well informed, in particular about the societies and cultures in whose languages they work. Likewise, translators who are able to speak the languages in which they work are more likely to be up to date and better informed about everyday aspects of the particular society and culture as they would be able to have everyday contact with speakers of the language.

Candidates for training and assessment as legal interpreters need to be aware that the ability to read and write in both languages is a sine qua non for their profession (for example to obtain information in preparation of an assignment). This is important for certain languages for which a sizeable pool of fully qualified legal interpreters still needs to be built up.

A good command of all four skills in both languages is also important for potential trainee legal interpreters and translators whose competence in their original mother tongue has been overtaken by the language of their new host country where they may have attended school and been educated generally. As a result, they may well be able to speak their original mother tongue fluently as it is perhaps still spoken in their homes,

but they may not be fully able to read and write in that language. Such second generation speakers need to be encouraged from an early time to attend mother tongue maintenance tuition to safeguard their cultural heritage and to enable them subsequently to qualify and function, if required, as qualified legal interpreters in cases involving individuals from their own cultural and linguistic background.

In addition to broad based general knowledge and vocabulary, legal interpreters and translators require specialist subject knowledge covering legal terminology and legal procedures specific to the particular legal agency for which they may have an assignment. The former is a linguistic matter, the latter is part of the framework in which legal interpreting and translation take place. In addition, the language used in any assignment may be complex or simple, formal or colloquial. The practitioner needs to be able to cope with all of them, be it in the spoken or written form.

### **Initial thoughts on linguistic assessment**

As a **guide to assessment** use the relevant sections on essential performance criteria. For interpreting and translation skills the best format for the assessment is as a rule taken from the practice in which legal interpreters and translators, once qualified, will find themselves. Assessments are, therefore, likely to include role plays to simulate dialogue or liaison interpreting assignments and sight translation tests for legal interpreters and a variety of graded legal texts within a realistic time-frame based on real life practice for legal translators. The precise format of assessment is left open because practice may vary from country to country but using more than one role play and at least one text for sight translation into each of the interpreter's two languages is recommended.

The **standard of assessment**, as described in this chapter, is determined by the fact that in legal assignments only fully competent, accurate and reliable legal interpreters and translators can fulfil the required tasks. Even if a national legal interpreting and translation service is only just being developed and fully competent interpreters and translators are still in the process of being trained, the aim must always be to produce fully competent practitioners. The assessments leading to a legal interpreter or translator qualification should, therefore, maintain the necessary standard that would enable practitioners to fulfil this task. One example is the legal option of the UK Diploma in Public Service Interpreting.

The **content and legal language of the assessments** are determined by the context of the assignments. As type and content of legal cases may vary considerably, it cannot be emphasised enough that a wide general knowledge is essential. In addition, legal interpreters and translators require

- a sound knowledge of the legal system or systems in which their assignments take place
- to be fully familiar with the legal system(s), procedures and conventions that apply to the various courts, police stations and other legal agencies for which they may work
- complete understanding of and familiarity with the legal terminology used in these contexts
- and in addition, translators also require familiarity with conventions of style and form of legal documents.

The assessments should be as authentic as possible and incorporate, wherever possible, details of legal systems, procedures and conventions using authentic terminology and materials. The tests should enable the candidate to display a sound knowledge in all these aspects using the appropriate legal language and conventions of style and form. The active participation or advice of legal personnel from the various legal agencies to which assessments relate, will ensure a high degree of authenticity.

When setting assessment tests for legal interpreting and translation and the other activities set out here below, you may wish to refer to this section to ensure that the full range of legal language and other contextual details are taken account of (see performance criteria for each activity). In this way, candidates are given an opportunity to display the necessary specialist knowledge in a particular field.

Some assessment details are given below in outline. You may wish to consult them in conjunction with any of the sections on **Assessment guidance**.

## **Assessment guidance: Some outline suggestions for all tasks**

There may be good reasons for differences in assessment methods depending on established practice, but the level of the assessments should remain constant.

To keep the assessment evaluation or marking standardised for groups of candidates, you may wish to establish to what extent each candidate has fulfilled each of the performance criteria. A point scale from 1 – 10 or similar, indicating different levels of competence, could be used. Alternatively, a percentage scale taking 100 percent as the perfect fulfilment of each criterion (as a rule only rarely achieved) might be helpful. If you decide to use such scales you also need descriptors for the various levels of competence for each criterion, also highlighting the cut-off point between task fulfilment and failure.

Before using such a point scale with descriptors you need to establish which of the performance criteria, listed below for each activity, are actually being tested in any assessment. This requires careful analysis of the test piece by the assessor against the performance criteria as set out for each task. The analysis will familiarise the assessor in detail with the particular test which is essential for the assessor's function. This outline does not take account of refinements, as for example weighting of performance criteria.

It is well worth giving some thought to assessment methods, preferably in consultation with colleagues, to establish a fair and equitable evaluation or marking system.

## **2 LEGAL INTERPRETING AT DIPLOMA OR FIRST DEGREE/BA LEVEL**

To understand fully the range and level of linguistic competencies required of legal interpreters, we must understand that

- speaking two languages is not the same as interpreting
- speaking one of the two languages only with difficulty, unreliably or at times unintelligibly is even less adequate
- being unable to read and write in one or both languages can be highly detrimental to reliable interpreting.

It follows that before we establish what interpreting skills are, we have to agree that all legal interpreters need to have a high level of competence in the four language skills of speaking, listening, reading and writing in both languages. Of these, speaking and listening are of particular importance for interpreters as set out in the sections immediately below.

### ***2.1 Interpreters' essential speaking and listening skills***

Legal interpreters should be able to handle all general legal issues in the two languages in which they work. This requires a high level of linguistic competence in both languages which the interpreter uses. Speaking and listening skills are only part of the range of skills required. In the main, they underpin the all-important interpreting skills. For this reason, high level speaking and listening skills are prerequisites and need to be assessed accordingly before training in interpreting skills can begin. (See below sections on **Assessment Guidance** for speaking and listening skills.)

#### ***2.1.1 Performance criteria for essential speaking skills for legal interpreters***

Before specialist training in interpreting skills can begin, prospective or trainee interpreters should meet the performance criteria for essential speaking skills. They should be able to

- produce and know how to use legal terminology in both languages required by the legal agencies for which they may be working (see below section on **Specialist terminology**)
- operate in both languages and function in their cultures at a level required for living and working permanently at an appropriate level in that particular linguistic and cultural environment
- speak the two languages without serious errors
- use with confidence a range of idiom, register and a variety of expressions as required by a particular occasion



- speak with a fluency which approaches that of a native speaker
- speak without accent that may be difficult to understand
- adapt to varying levels of formality as required by the occasion
- apply a significant range of language strategies selected from an extensive repertoire to meet changing requirements
- speak effectively in response to regional accents and possibly dialects which a native speaker of the language would be expected to understand (but see below **Language varieties, dialects and accents** under **Assessment Guidance**)
- adapt own use of spoken language so as to respond to changes in the subject matter, the direction of the argument and the positions taken up by the participants.

The above standards need to be underpinned by

- specialist vocabulary and legal terminology as customarily used by the different legal agencies
- full command of grammar and syntax beyond basic levels
- a wide range of idiom and registers.

This can be achieved by

- self-assessment to identify needs to strengthen own performance and take appropriate action
- practice in speaking aloud (mini speeches)
- continuously updating specialist vocabulary and legal terminology using dictionaries, specialist publications and other relevant sources of information
- constantly monitoring and updating changes in language use, colloquialisms, idiom and local, regional or subject specific expressions
- creating glossaries as required
- seeking any other forms of performance improvement deemed necessary or desirable. (See chapter 5)

### **2.1.2 Assessment guidance for essential legal interpreters' speaking skills**

When designing or commissioning tests for the assessment of interpreters' essential speaking skills, the assessments should be structured in such a way that, if at all possible, all of the above performance criteria are incorporated in the tests.

While assessing how each performance criterion is being met, do not lose sight of the overall performance:

- Would the candidate be able to use legal language effectively?
- Was the candidate lucid and intelligible overall?
- Were there any shortcomings, including general demeanour and body language?
- Did the candidate show the necessary sensitivity?
- Was the performance of consistent quality?
- What was particularly positive about the candidate's performance?

#### **Other assessment guidance details**

- Assessors need to be aware that any test of speaking skills also draws on the candidate's listening skills but these are not being assessed here.
- Details of the above speaking skills have been limited to those which are relevant to interpreting, other general speaking skills have been omitted here and need not be assessed.
- When setting assessments for interpreters' speaking skills, as many of the above criteria as possible should be tested. It is advisable that these criteria are fully integrated into the assessment thereby providing as much insight into the candidates' all round capabilities as possible.

- For a marking-scheme outline, see **Assessment guidance - some outline suggestions for all tasks** at the end of part 1.
- **Varieties of language, dialects and accents:** as these vary enormously in number and degree for most languages, no hard and fast rules can be applied. It is, however, usually accepted that any native or near native speaker would be able to cope with certain known varieties and accents, even in some cases dialects. If practising interpreters find that they cannot cope with a particular language variety, dialect or accent they should be bound by their code of conduct to withdraw from the assignment. To avoid the ensuing disruption of legal proceedings, any such difficulties should best be resolved before the assignment starts. Though not easy to assess, it would be helpful - to ensure that this matter is fully understood by candidates- if a test case of this kind could be included in the assessment.

### **2.1.3 Performance criteria for essential listening skills of interpreters**

Before specialist training in interpreting skills can begin, prospective or trainee interpreters should meet the following performance criteria for essential listening skills by being able to

- identify and understand in both languages the legal terminology required by the legal agencies for which they may be working (see below section on **Specialist terminology**)
- understand the two languages and their cultures at a level required for living and working permanently at an appropriate level in those particular linguistic and cultural environments
- understand any communication, except the most specialised, in the two languages without serious listening comprehension errors
- recognise and understand idiom, registers and a variety of expressions
- identify and understand the significance of varying levels of formality as required by the occasion
- understand a significant range of language strategies used by any speaker
- understand regional accents and possibly dialects which a native speaker of the language would be expected to understand (also see above details on **Language varieties, dialects and accents**)
- identify and understand the significance of changes in perception of the subject matter, the direction of the argument and the position taken up by the participants
- recognise underlying feelings and attitudes of others even when they communicate these indirectly or with subtlety.

The above standards need to be underpinned by

- knowledge of specialised vocabulary and legal terminology as customarily used by the different legal agencies
- understanding the importance of grammar and syntax in identifying precise meaning
- constant awareness of changes in the language, usage and relevant terminology and readiness to update own knowledge accordingly.

This can be achieved by

- training (see other chapters) and practice
- self-assessment to identify needs to widen own listening comprehension ability (see **self-assessment** in chapter 5)
- willingness to constantly monitor and update changes in language use, colloquialisms and idiom including local, regional and subject specific terms, and widen own range of listening comprehension accordingly
- willingness to seek any other forms of improving own listening comprehension. (See chapter 5)

### **2.1.4 Assessment guidance for essential interpreters listening skills**

When designing or commissioning tests for the assessment of legal interpreters' listening comprehension skills, the assessments should be structured in such a way that, if at all possible, all of the above criteria are incorporated in the tests.

While assessing to what extent each performance criterion is being met, do not lose sight of the overall performance as far as listening skills are concerned:

- Would a candidate's listening skills be sufficient to fully understand a sustained presentation using legal language?
- Did the candidate's responses indicate full comprehension?
- Was the candidate able to understand particular subtleties?
- What was particularly positive about the performance?

#### **Other assessment guidance details**

- Assessors need to be aware that any test of interpreters' listening skills may also draw on the candidate's speaking skills but these are not being assessed here.
- Details of the above listening comprehension skills have been limited to those that are relevant to interpreting.
- When setting assessment tests for interpreters' essential listening comprehension skills, they should, as far as possible, be based on all of the above criteria. Ensure that all or most of them are incorporated into the assessment and thereby provide full insight into the candidates' listening comprehension capabilities in a legal context at an appropriate level.
- For possible marking schemes see **Assessment guidance - some outline suggestions for all tasks** at the end of part 1.
- **Varieties of language, dialects and accents** play a role both in speaking and listening. For further details see above under **Speaking skills**.
- To assess a candidate's performance against the full range of performance criteria, assessors may wish to use a number of assessment strategies. For example, the assessor may devise a task or stage an intervention which provides the candidate with an opportunity to display the ability to meet the criteria.

#### **Concluding comment on interpreters' essential speaking and listening skills**

The assessment of legal interpreters' speaking and listening comprehension skills may appear to be a disproportionately lengthy process. However, trainers and course providers may wish to remind themselves that once speaking and listening skills are fully developed, it will be relatively less difficult and less time-consuming to develop on their basis the interpreting skills at the level which is essential for the performance of any legal interpreter. Without that basis, prospective legal interpreters may not be able to reach their full potential which is necessary for them to function in real life legal assignments.

### **2.2 Interpreting skills for legal interpreters**

#### **Are interpreters born or bred?**

Experts, course providers and practitioners agree to a large extent that interpreting and translation are related activities but interpreters need to have certain characteristics to be effective. The assumption that everyone with a high level of speaking and listening skills in two languages, as set out above, can be trained to become a good professional interpreter is not necessarily correct. Neither is it always the case that a good translator is also a good interpreter and vice versa. These points need to be taken into account when prospective interpreters are being selected for training. (See chapter 3)

It is sometimes said that interpreters - unlike translators - are born not bred and much has been written about the interpreter's personality, which is frequently described as extrovert though the job of interpreting requires a performance without bias or indication of personal preference of any kind. This applies in particular to legal interpreting where the interpreter, although part of the legal team, does not enter into any negotiation or proceedings and does not ever indicate his or her own opinions.

Interpreting means transferring the meaning of a message from speakers of one language to those of another language and vice versa when the parties involved do not know each other's language. The principle frequently applied to translation, namely to translate 'as closely to the original as possible and as freely as necessary for complete understanding' is not directly relevant to interpreting. This is so because interpreting is not concerned with specific linguistic features, as is the case with written or printed texts and their translations. For interpreting, the overriding criterion is the meaning of the message which must be conveyed accurately and fully as well as truthfully, omitting or adding nothing that was not contained in the original message.

The interpreted message must be spoken fluently, clearly, coherently and audibly, must be presented with confidence and at a native or near native speaker level of linguistic competence including speed of delivery. The interpreter also has to be aware if the subject matter is of a sensitive nature and has to convey this fact appropriately in the other language.

### **Interpreting and summarising are not the same**

Interpreters are bound by their recommended code of conduct to remain impartial at all times. They must interpret everything that is being said with no additions or omissions. Both these requirements rule out summarising because summarising means that certain details would be given priority by the interpreter and others would be shortened or omitted. Deciding on the relative importance of certain details is not part of the interpreter's function.

If interpreters are asked to summarise in exceptional circumstances, this should only be done with the consent of all the parties.

### **Interpreters must remain neutral at all times**

Interpreters must not introduce any bias of their own in terms of choice of language, emphasis, intonation or body language. Interpreters must be impartial at all times though there are two schools of thought on presentation. The traditional view has been that the interpreter must perform in a neutral tone at all times whereas today it is also acknowledged that there are instances when total neutrality is difficult to maintain and may lack credibility. For example if there is a heated or hostile response from one party to a particular message, the interpreter would, according to this latter school of thought, lose credibility if he or she were to continue to speak in an entirely neutral tone. It could be argued, therefore, that best practice would indicate here that interpreters need to convey such strong feelings but without raising their own voice to similarly confrontational levels.

### **Interpreters require high level of concentration**

The task of interpreting requires a high level of concentration as the interpreter must be able to retain in essence everything that has been said. There is, as a rule, neither time nor opportunity to check out details or take extensive notes (see section on Note taking below). Interpreters need to grasp the meaning of what is said in one language and retain it while transferring that meaning into the other language without summarising, omitting or adding anything or changing the emphasis or tone. The linguistic means, including syntax and grammar, with which interpreters convey this meaning in the required form is their choice although these linguistic means must always reflect faithfully the meaning, intention and tone of any speaker for whom the interpreting service is provided.

### **Types of interpreting**

A distinction is usually made between interpreting one-way and interpreting two-ways depending on whether one speaker talks at some length or whether there is a continuous dialogue between two or more individuals who do not speak each other's language.

- **Interpreting one-way: Simultaneous (conference) interpreting and chuchotage**

Interpreting one-way could be in the form of simultaneous conference interpreting where the participants use headphones to listen to the interpreter (as yet not widely used in legal interpreting in many EU member states). Or, if there are just one or two individuals who cannot follow what is being said to a larger group, whispering interpreting or chuchotage is being used. The main linguistic challenge in simultaneous interpreting lies in the fact that the interpreter speaks (and listens) at the same time as the speaker presents a speech or commentary for some length of time and without speakers of another language participating, hence the interpreting is one-way.

It requires of the interpreter the ability to grasp the essentials in one language, based on quick and accurate listening comprehension skills. It also requires the ability to manipulate the spoken language so as to produce at speed coherent utterances in the other language which convey the meaning of what was said. Anticipation of what the speaker is likely to say next plays an important part in providing a good simultaneous interpreting service. This in turn requires of the interpreters an excellent command of all four language skills and that they are well informed about legal and other aspects of the case acquired through research, possibly based on writing skills (asking for information) and reading skills.

- **Interpreting two-ways: Dialogue or liaison interpreting**

Two-way interpreting is used for dialogues between speakers who do not understand each other's language. It is the most frequently used form of interpreting in a legal context. The interpreter listens to what is said in one language and transfers it quickly, completely, accurately and intelligibly into the other language. This requires a high level of concentration, a good memory, quick comprehension and ease of production in the other language, always grasping the essential meaning and conveying it in the other language.

When the other participant(s) in the dialogue respond in their language, the interpreting process is reversed from one language to the other and so on, usually on a continuous basis for the duration of a legal assignment. However, because of the high level of concentration required of interpreters, good practice requires adequate breaks or the services of a second interpreter to ensure a reliable interpreting service. (See chapter 7)

- **Interpreting one- and two-ways: Consecutive interpreting**

Consecutive interpreting can be used one-way or two ways, though the former is more frequently used. It takes the form of a speaker talking continuously for about 10 – 20 minutes, followed by the interpreter who transfers the meaning of the whole into the other language. For interpreting two-ways the process is then reversed. Note taking is essential if the interpreted message is to be accurate and complete with nothing added or omitted.

- **Simultaneous interpreting two-ways**

This form of interpreting is sometimes used in court proceedings where the venue and number of individuals involved is too large for dialogue interpreting which is face to face and does not require headphones. For interpreting skills required, see above '**simultaneous interpreting one-way**' though the two-way version is yet more taxing.

**All forms of interpreting** require of the interpreter high levels of competence in speaking, listening comprehension and interpreting skills in both languages. At the same time, the interpreter must be aware of and know how to deal with sensitive subjects, cultural differences and inferences or reticence on the part of a speaker to reveal certain details. The interpreter must also be able to deal with possible outbreaks of anger, hostility or grief whilst remaining competent in the task of interpreting and acting with the utmost impartiality and sensitivity at all times. And while interpreters may draw attention to a missed cultural inference, they are not culture brokers per se as they do not enter into the dialogue which they interpret.

### 2.2.1 *Performance criteria for legal interpreting skills*

Although the techniques for one-way interpreting (simultaneous interpreting and chuchotage) and two way interpreting are different, the performance criteria are on the whole comparable because the expected outcomes of the various interpreting methods are in the main the same. However, in one-way interpreting the interpreter's ability to change frequently between the two languages so as to convey meaning both ways is not tested. Therefore, despite considerable overlap, performance criteria are listed separately for one- and two-way interpreting.

#### • **Performance criteria for interpreting one-way**

When you interpret one-way, you must transfer the meaning of the message whether this is short or extended into the other language by

- interpreting accurately and fully, including factual information, concepts and opinions, adding or omitting nothing
- using standard or complex language, legal terminology, jargon and any regional or national dialects you could be expected to be able to handle
- speaking with confidence, fluently, clearly, audibly, at an appropriate speed of delivery and without an accent that could hamper understanding
- reflecting accurately the speaker's level of linguistic sophistication and intellectual content, tone and, if possible, speed of production
- also reflecting the speaker's attitude, irony, sarcasm and innuendo
- reflecting, as far as possible, non-verbal communication
- conveying social and cultural norms
- dealing with a range of registers, formal, informal, colloquial and delicate or intimate as required, also conveying sensitive or emotional aspects appropriately
- paraphrasing the meaning of complex phrases and terminology if equivalents in the target language are not readily available
- dealing effectively with some specialist subjects within the legal domain
- taking notes as required (see section on **Note taking** below)
- sustaining these performance criteria throughout the assignment
- acting at all times in accordance with the proposed code of professional conduct (including retiring from an assignment if, as it unfolds, it becomes clear to the interpreter that its demands exceed the practitioner's capabilities)
- displaying hands-on experience in the use of specialist equipment if required.

#### • **Performance criteria for interpreting two-way**

When you interpret two-way, you must transfer the meaning of the message whether this is short or extended into the other language by

- decoding in full detail everything the parties are saying, taking account equally of the messages in both languages expressed by the parties engaged in a dialogue using two languages
- interpreting into both languages accurately and fully, including factual information, concepts and opinions, adding or omitting nothing
- using standard and complex language, legal terminology, jargon and any regional or national dialects you could be expected to be able to handle
- speaking in both languages with confidence, fluently, clearly, audibly and without an accent which could hamper understanding
- taking action if the flow of communication between the parties breaks down
- alerting the parties to any missed cultural inference without acting as a culture broker
- using accurately a range of registers, formal, informal, colloquial and delicate or intimate, also dealing effectively with sensitive and emotional aspects
- reflecting, as far as possible, the levels of linguistic sophistication and intellectual content, tone and speed of production of the parties involved
- also reflecting any of the speakers' attitudes, irony, sarcasm and innuendo
- reflecting, as far as possible, non-verbal communication
- conveying social and cultural norms of both parties

- being able to handle certain specialist subjects within the legal domain
- paraphrasing the meaning of complex phrases and terminology if there are no readily available equivalents in the language into which the practitioner interprets
- taking notes as necessary (see section on **Note taking** below)
- sustaining these performance criteria throughout the assignment
- acting at all times in accordance with the code of professional conduct (including retiring from an assignment if, as it unfolds, it becomes clear to the interpreter that its demands exceed his or her capabilities)
- displaying hands-on experience in the use of specialist equipment if required.

### **2.2.2 Assessment guidance for legal interpreting skills**

When designing or commissioning tests for the assessment of legal interpreting skills, the assessments should be designed in such a way that, if at all possible, all of the above performance criteria listed for a particular type of interpreting are incorporated in the tests. It is helpful to compile a list of the criteria that are being included in the tests.

While assessing to what extent each performance criterion is being met in a candidate's assessed performance, do not lose sight of the overall performance and interpreting task fulfilment:

- Would a candidate's legal interpreting skills be sufficient to cope with any of the envisaged legal assignments?
- Did the candidate's utterances and responses indicate competence sustained over time?
- Were there any non-linguistic shortcomings, including general demeanour and body language?
- Was the candidate able to convey particular subtleties?
- Was there consistency in the candidate's performance?
- What was particularly positive about the performance?

#### **Other assessment guidance details**

- Assessors need to be aware that any test of interpreting skills also draws on the candidate's speaking and listening skills. These provide the basis for interpreting but are not assessed separately here.
- Assessors need to be well aware of the different interpreting performance criteria which apply specifically to one- or two-way interpreting, the former including the different requirements for simultaneous (conference) interpreting and chuchotage.
- When setting assessments for legal interpreting, ensure that all criteria relevant to the type of interpreting that is being assessed are included in the tests, or at least as many as possible. Such comprehensive tests provide full insight into the candidates' capabilities and understanding of their function as legal interpreters.
- Assessment by role-play: for a comprehensive assessment it is advisable to use more than one role-play for each candidate.
- Where more than one candidate is being tested, it is particularly important to use a range of role-plays in changing succession.
- To assess candidates' performances against the full range of performance criteria, assessors may wish to use a number of assessment strategies.

- The assessors may devise a task or stage various interventions which provides the candidate with opportunities to display the ability to meet all essential criteria or at least a substantial number of them, including difficulties of poor communication or unfamiliar words.
- **Varieties of language, dialects and accents:** for details see the same heading under **Speaking skills**.

Remember that a good translator is not necessarily also a good interpreter and vice versa.

### **Note-taking for legal interpreters**

In the context of interpreting, note-taking is simply an aid to assist interpreters in their task which is oral communication in more than one language. In practice, note-taking takes on somewhat different functions depending on the type of interpreting.

- **Note-taking for dialogue or liaison interpreting**

This is a continuous fluent exchange of spoken messages in two languages, usually in dialogue form. Note-taking is not used frequently. Indeed, there could be legal interpreting assignments where the interpreter does not take any notes because note-taking is simply not required. There are a number of reasons: interpreters need to be trained in identifying rapidly the essence of the message, storing it momentarily in their memory and conveying it almost immediately in the other language. Note-taking would disrupt this concentrated activity, slow the interpreting process down and may result in gaps in the message which arise because the interpreter needs to concentrate on taking notes rather than on what has been said and needs to be interpreted.

However, some details which are difficult to retain, even for a short time, may be best noted down, such as figures, percentages, names of individuals if more than one or two, details of locations, times and dates, weights and measures, etc.

It is up to the interpreter to decide when to take notes if at all and what to jot down to assist memory. It is also the interpreter's task to recognise early when note-taking may become essential. Once a number of such details have occurred in the dialogue it will be difficult for the interpreter to recall all of them, note them down and not lose track of the line of argument.

- **Note taking for consecutive interpreting**

This form of one-way interpreting is less frequently used in legal cases because of the nature of most assignments which are based on exchange of details in dialogue form. Where consecutive interpreting is used it entails more consistent note-taking because the speaker may be speaking continuously for 10 – 20 minutes. It is not as a rule possible for the interpreter to retain all essential details during that period of time without the aid of notes. While there is general agreement on the need for note-taking, views on the practice differ widely. There are also various well known publications on note-taking systems. However, views differ widely as to the usefulness of teaching a complete set of symbols to individuals who each may have different strategies for the retention and retrieval of information from written notes and hence may prefer to develop their own technique or system.

- **Note taking for simultaneous (conference) interpreting and chuchotage**

Simultaneous interpreting requires the highest degree of concentration on the part of the interpreters. Interpreters cannot influence the speaker's speed of delivery. Neither would they be able to wait for coherent sections of the speech to be completed so that they can convey the meaning as a whole because the interpreter speaks at the same time as the speaker. Following just a few words behind the speaker and usually not knowing how the sentence they are interpreting is actually going to end, virtually rules out any note-taking. Where necessary, it may just be possible for a symbol or word to be jotted down, though no more than that.



### ***2.3 Sight translation skills for legal interpreters***

Sight translation skills are usually regarded as part of an interpreter's skills package. Like interpreting it requires a native or near native command of two languages. Sight translation may be required both ways, from one of the interpreter's languages into the other and vice versa. Legal sight translation is as a rule required when in the course of an interpreting assignment the interpreter is required to convey the meaning of a written text by speaking in the other language. It means the interpreter interprets at sight from the text, usually short documents, letters or similar. Sight translation requires of the interpreter a quick grasp of the meaning of the written text and a high degree of linguistic flexibility to produce almost immediately an accurate lucid and fluently spoken version, translated at sight from the text.

Sight translation is not an easy skill to acquire. It requires training, practice and knowledge of the process of producing sight translations from written texts. Knowledge is also required of the two cultures, the conventions and formats used for oral and written communication and their relevance to sight translation. To access written texts quickly, knowledge of the structures and syntax of the two languages is essential. These points are vital for legal sight translation because in legal assignments the interpreter is usually given only a few minutes preparation time to look at the text before sight translating it.

If at the (short) preparatory stage or during the sight translation itself the interpreter encounters seemingly insurmountable difficulties, usually due to unfamiliar specialised terminology, the interpreter must disclose this fact immediately and usually withdraws from this part of the assignment. (See chapter 7)

#### ***2.3.1 Performance criteria for sight translation***

Having been given a short preparation time (usually not exceeding five minutes) the interpreter must be able to

- give an accurate sight translation of the document conveying the meaning of the source text in the other language completely and precisely without adding or withholding anything
- produce a sight translation which is fluent, clearly audible, presented at a pace acceptable for spoken language and spoken without an accent that might hinder understanding
- reflect accurately in the sight translation the choice of language, register and tone of the document
- convey concepts and opinions as accurately as factual information
- if necessary, paraphrase the meaning of complex terminology and phrases if there are no precise equivalents in the other language
- clarify any cultural inference that might lead to misunderstandings and ensure that the parties to the assignment are aware that the clarification is not part of the document
- indicate and, if possible, clarify in the course of the assignment any area of uncertainty
- withdraw from the assignment if such clarification proves impossible.

#### ***2.3.2 Assessment guidance for sight translation***

Sight translations in legal assignments tend to be relatively short. For more substantial documents a written translation is likely to be required. Also, sight translation is a high concentration task and cannot, as a rule, be sustained over prolonged periods. The choice of appropriate texts for assessment purposes is, therefore, particularly important. Texts should not be too difficult as most of the performance criteria apply throughout the sight translation test and can, therefore, be assessed from the beginning of the candidate's test performance. If at all possible, assessment texts should enable candidates to indicate their skills in all the above performance criteria. The last two performance criteria should only be included if the candidates are well aware that the text may have in-built problems. Otherwise candidates' confidence and concentration may be affected and the entire performance may suffer.

While assessing each performance criterion according to your scale and descriptors (see **Assessment Guidance** at the end of part 1), do not lose sight of the overall performance:

- Would this performance fulfil the sight translation task in a legal assignment?

- To what extent was the candidate able to indicate an overall understanding of the document used for the test?
- Did the candidate perform with confidence which is so important for interpreters in legal assignments?
- What was particularly positive about the performance?

#### ***2.4 Basic translation skills to support interpreting***

In some member states of the European Union, interpreters are sometimes expected to produce written translations to support the interpreting assignment. Interpreters are not expected to produce translations to publication standard or to observe any particular conventions of style. Neither would they be expected to satisfy all the legal translation conventions which professional legal translators would observe but interpreters' translations need to be clear in meaning and accurate and reliable in every detail. To achieve this level of competence, legal interpreters require knowledge of the language concepts commonly used in the two languages and, where they differ, their effect on the process of producing written translations. The practitioner also needs to be familiar with the cultures of the two languages which may result in different conventions and formats used for written communication and their implications for written translations.

As a rule, relatively short documents are required for translation in support of an interpreting assignment. It should, therefore, be possible to produce such translations with a minimum of preparation and within one hour. If longer and more complex documents require translation, they would normally be handled by professional legal translators. As translations in support of interpreting assignments may be required in either or both of the interpreter's languages, adequate competence in reading and writing skills is required in both languages.

The importance of all four language skills for legal interpreting and translation has been emphasised throughout this chapter. Sight translation requires reading ability in two languages and translation is based on reading comprehension and writing skills. Therefore, candidates for training and assessment as legal interpreters need to be aware that the ability to read and write in both languages is a sine qua non for this profession.

##### ***2.4.1 Performance criteria for written translations to support legal interpreting***

The assessment should include translations from and into the interpreter's two languages, each not exceeding about one hour in length. As interpreters are expected to be more or less equally competent in both languages, the texts should be comparable in the demand they make on the interpreter's language and translation skills.

In the assessment of written translation in support of interpreting, candidates must be able to function without taking extensive recourse to dictionaries and other reference material. They must be able to

- use the given time effectively and apply basic principles of time management to complete the work as required
- produce an accurate translation of the test document conveying the meaning of the source document fully, clearly and accurately
- translate concepts and opinions as well as factual information
- reflect accurately register and tone of the original document
- where necessary paraphrase the meaning of complex phrases and specialist terminology if there is no direct equivalent in the target language
- if necessary draw attention to any inconsistency or lack of clarity in the source text and, if possible, suggest how this matter might be resolved.

##### ***2.4.2 Assessment guidance for translation to support legal interpreting***

While assessing to what extent the performance criteria are being met (see **Assessment Guidance** at the end of part 1), do not lose sight of the overall performance of the candidate in these translation tests:

- Is the translation overall conveying all essential details of the source text without major misleading errors?
- Is the language used in the translation tests overall coherent and lucid?
- Have subtleties, tone and idiom been adequately identified and translated?
- Would the translation overall fulfil its function?
- Are there any particularly positive aspects to the translation?

#### **Other assessment guidance details**

- When setting translation assessment tests for legal interpreters you may wish to ensure that legal language and details of legal systems and procedures are incorporated in the texts wherever possible.
- Although legal interpreters at this level are not expected to translate complex texts, bear in mind that nonetheless candidates need to be given the opportunity to display their competence in producing basic written translations in a legal context.

### **3 LEGAL TRANSLATION AT DIPLOMA OR FIRST DEGREE/BA LEVEL**

If you are seeking information only on **legal translation** and have therefore not looked at parts 1 and 2, you are nonetheless advised to read first all sections at the beginning of part 1 up to and including **Assessment guidance - some outline suggestions for all tasks**.

Translation transfers the meaning of a written text in writing from the source language into the target language thereby creating an equivalent text or document in another language. If the two languages use a different script, as for example Arabic or Chinese compared with Latin script, certain conventions come into play. This includes the transfer of proper names.

#### **Skills and knowledge required for legal translation**

Legal translation covers all kinds of legal documents, including forms, certificates, contracts, wills, insurance policies, trust documents, affidavits, or directives of varying lengths. For such documents to be fully understood, legal translators require detailed knowledge of the legal system or systems with which they deal, legal structures, procedures and terminology. Legal translators also require the necessary knowledge, writing and reading comprehension skills to produce the kind of legal language required by particular documents in the language into which they translate.

While the misconception may still persist in some countries and some legal agencies that if you speak two languages you can also interpret, it has always been more widely recognised that translation requires quite specific skills. They include a high level of **reading comprehension** to access documents that are to be translated. They may present a number of linguistic difficulties and require specialised knowledge. The language of such documents may be complex in terms of syntax, for example long and involved sentence structures. Also, the legal context may be unfamiliar and may require particular knowledge to ensure the correct choice of legal terminology and specialist vocabulary.

The translation of legal documents should be free from orthographic and typing errors and inadequate punctuation, as these would undermine confidence in the accuracy of the document. This is particularly vital in a legal context. It is not enough to rely entirely on computer software spelling checks as they are not entirely reliable. The meticulous transfer of figures and names is equally important.

In particular, legal translators must have **good writing skills** and the flexibility to produce different documents in different registers so as to reflect accurately not only the content but also the manner in which a document conveys that content. Legal translators must also be fully conversant with the conventions of

style and register that need to be observed in the target language for particular types of document and in any particular context.

Because of the high level of written skills required for translation, one school of thought still maintains that translations of any import, including legal translation, must always be produced into the translator's mother tongue to ensure absolute accuracy. There are a number of good reasons as to why the current trend is moving away from this requirement. In today's multicultural and multilingual societies, there are second generation immigrants who have a native or near native speaker command of their host country's language.

Equally important is the fact that language combinations may be required for legal translation for which the mother tongue rule could only be applied with difficulty if at all, for example if translation is required from Yoruba into any of the languages of the European Union. However, whether legal translations are produced by native speakers or others, the standard must always be such that absolute accuracy is assured and all other linguistic requirements as set out in this chapter are met.

Legal translators, who need to translate from and into both their languages, should be assessed in both languages in all aspects set out below.

Register or style may be categorised as frozen (formulaic), formal, informal (in varying degrees), colloquial (including local usage) and delicate or intimate. Like other professional translators, legal translators must be able to identify what sources of information they may require to resolve particular translation difficulties and use **simple research methods** to locate such sources both, hard copy and electronic. They need to know how to access such sources, including specialised dictionaries, terminology banks and consultation with legal experts and colleagues who are specialists in a particular field. Selecting wrongly or inappropriately from alternatives given in a dictionary, is a well-known source of mistakes being introduced by the translator.

Finally, the translator must have access to up to date electronic equipment and the skills to use it fully for keying-in and printing of hard copy translations or for electronic transfer or transfer onto floppy disk. Proof reading is required to check the final version of the translated document.

### **3.1 Performance criteria for essential reading comprehension skills for legal translators**

Before specialist training in legal translation skills can begin, prospective or trainee translators should be able to meet the following performance criteria for essential reading comprehension skills:

- understand fully facts and data even if presented in complex legal language
- identify the social and cultural references in the text and their implications for full understanding
- identify the level of formality of the text and its implications for full understanding
- identify different registers and their *raison d'être* in the document
- understand fully abstract ideas and theoretical details even if presented in complex legal language
- identify key points in legal texts
- identify differences and similarities between opposing ideas and theories
- identify tone, significance and apparent implied meanings of the text
- identify and seek to clarify any apparent ambiguities in the text, whether intentional or not and if necessary seek advice through consultation or research or, under test conditions, indicate that this would need to be done in real life translation assignments.

The above standards need to be underpinned by

- extensive general and specialised vocabulary as may be required in legal contexts
- full command of grammar and syntax of the two languages to ensure accurate comprehension even of texts which use complex structures
- knowledge of a wide range of idiom and register.

This can be achieved by

- continuously updating general vocabulary
- extending specialist knowledge of terminology using dictionaries, specialist publications, terminology banks and other sources of information
- monitoring constantly for changes in language use including colloquialisms, idiom and local, regional or subject specific expressions
- creating specialised glossaries as required.

### **3.2 Assessment guidance for essential legal translators' reading comprehension skills**

Wherever possible, choose authentic texts from those legal fields for which candidates have been prepared. Devise a strategy whereby reading skills at the required level can be tested orally or in writing. Reading comprehension skills are required to assist the translator in decoding legal texts before encoding the meaning in the target language. Assessors need to determine the amount of testing required to establish whether candidates have the necessary reading comprehension skills.

Some of the above assessment criteria may best be tested by requiring the candidates to comment, orally or in writing, on particular aspects of the test papers, for example to identify and seek to clarify any apparent ambiguities.

One determining factor is the level of specialisation of the legal translator qualification to be awarded to successful candidates. The ultimate aim must always be that legal translators when qualified are fully functioning in their particular field. Reading comprehension makes a major contribution here.

The assessment should include as many of the above performance criteria as possible or as are relevant in a particular context. To ensure that the assessment evaluation is standardised, you may wish to determine for each of the above performance criteria the extent to which they have been fulfilled by a candidate, taking also account of other aspects of the assessment guidance. In this way, you will be able to establish the extent to which each assessed candidate has met each performance criterion.

Standardising the evaluation of assessment tests would depend on the nature of such tests. The tests are likely to include a direct evaluation of reading comprehension, for example by a series of oral or written test questions to elicit specific meaning. They may also include a commentary on specific comprehension difficulties in the text(s). What weighting would best be given respectively to such different assessment strategies depends on the nature of the whole test and the objectives on whose basis candidates have been prepared, for example, whether broad based and more general or more focused and specialised.

When determining the extent to which the assessment criteria have been met by a candidate, do not lose sight of the overall competence in reading comprehension:

- Does the candidate have a sufficiently wide knowledge of specialised vocabulary?
- Is the candidate capable of identifying his or her own limitations in resolving particular textual difficulties?
- Is the candidate sufficiently aware of the availability of sources of information appropriate for understanding legal texts?
- What was particularly positive about the performance?

### **3.3 Performance criteria for essential writing skills for legal translators**

Before specialist training in translation skills can begin, prospective or trainee legal translators should be able to meet the following performance criteria for essential writing skills which enable legal translators to produce specialised texts in the target language. They need to be able to

- use language strategies most likely to achieve the purpose of the communication
- use language, including idiom and register, and nuances to communicate information in ways that are appropriate to the topic, the context and the intended purpose and take account of cultural requirements
- use language to convey ideas, theories and opinions

- express all meaning clearly and without ambiguity
- use specialised and complex terms appropriately in a legal context
- identify and use, where possible, reference sources as necessary and indicate them accordingly.

To establish what underpinning may be necessary to achieve these standards of writing in a legal context, please refer to the bullet points at the end of the section above on **Legal interpreters' essential reading skills**.

### ***3.4 Assessment guidance for legal translators' essential writing skills***

Good writing skills in the target language are a prerequisite for good translation. To test translators' writing skills does not mean that they have to produce legal texts - they are not lawyers! However, writing tasks set to assess legal translators should have a legal context and require candidates as far as possible to use appropriate vocabulary and legal terminology and write in the appropriate style.

To a large extent, good writing skills can be acquired through learning and practice. Nonetheless, inherent writing ability including style play an important role here. If trainers are sufficiently aware of a candidate's difficulties in this regard, they could monitor and advise trainee translators accordingly. If this is done, assessors will be less likely to encounter candidates at the stage of their (final) assessment who have not mastered essential elements of writing skills and are in all probability not able to acquire them at a later stage.

To standardise the assessment evaluation, you may wish to design a point scale with which to assess the level of task fulfilment for each criterion and determine the cut-off point between task fulfilment and failure.

### ***3.5 Performance criteria for legal translation skills***

Legal translators are usually well aware of the important role which translated documents may play in any legal case, not least because, as a rule, they will be available in hard copy and could be archived as such for future reference. Legal translators, therefore, take on a high degree of responsibility within the legal process.

Legal translation skills may be assessed by a translation project which candidates prepare and produce in their own time or alternatively under controlled conditions in a specified time, with or without the aid of dictionaries and other sources of information. In the main, the performance criteria remain the same except that time management is of considerable importance under controlled conditions. For translation projects, preparation, research and the location and use of sources of information are particularly important.

Based on their high level reading comprehension and writing skills which are a sine qua non for legal translation assessment, legal translators should be able to

- translate factual information, concepts and opinions
- translate standard language and any regional or national dialects they would normally be expected to be able to deal with
- translate general and specialised legal texts reflecting the meaning of the source texts accurately
- handle effectively and accurately complex language, specialist vocabulary, legal terminology and jargon
- maintain a consistent quality throughout the translation
- reflect register and tone of the source text faithfully and differentiate appropriately between formal, informal, colloquial and delicate or intimate registers
- where applicable, reflect attitude and style of the author of the source text
- take account of cultural differences between the two languages
- explain cultural inferences that could be misunderstood or overlooked, if necessary by footnote or other means outside the text
- find suitable equivalent expressions of complex terminology and phrases for which there are no direct equivalents in the target language
- identify and seek to clarify any ambiguities in the source text
- use format, presentation and conventions appropriate to the intended purpose

- where applicable, select vocabulary, format, style and presentation as they are used in the target language in particular legal texts.

The above standards need to be underpinned by

- active knowledge of legal structures and procedures
- a wide range of specialised vocabulary and legal terminology
- ability to use appropriate legal language for a variety of purposes.

This can be achieved by

- self-assessment to identify own strengths and weaknesses
- willingness to continuously monitor changes in legal procedures and terminology and their possible effects on legal translation
- willingness to constantly update specialised vocabulary and legal terminology using all available sources of information, both hard copy and electronic
- willingness to constantly monitor and update changes in language use, colloquialisms, idiom and local, regional or subject specific expressions as far as they may have a bearing on legal translation
- awareness of differences in legal style between different legal documents and, where appropriate, between the legal systems in which the translator works
- practice in different legal styles customarily used in different legal contexts
- willingness to consult with other professionals in the field, including senior translators and appropriate legal personnel
- commitment to any other form of performance improvement as required. (See chapter 5)

### **3.6 Assessment guidance for legal translation skills**

The overall standard for legal translation skills must be such that successful candidates are fully functioning as professional practitioners though the degree of specialisation may vary. Therefore, assessment tests for legal translation skills need to ensure that successful candidates have reached that standard, usually within specific areas of the law. Assessment tests may, therefore, vary depending on the type of training course because courses may aim at a broad-based grounding in legal translation or they may be more focused and specialised. The objectives of the course and type of training are likely to be reflected in the assessment tests, in particular the number of texts to be translated and the overall length of the test(s) while the standard of competence must remain unchanged.

When assessing each performance criterion for each candidate or using other detailed assessment methodologies, do not lose sight of the overall performance:

- Do the test results indicate that the candidate is fully capable of translating legal texts in a professional context bearing in mind the grave consequences that could result from individual mistakes or overall weaknesses?
- Does the candidate have sufficient awareness of possible translation problems that could arise in a professional context to enable him or her to withdraw from an assignment if necessary?
- Is there sufficient evidence that the candidate is capable of using different styles appropriate to different legal texts?
- What features of a candidate's assessed work are particularly positive and relevant to professional legal translation?

### **Concluding thoughts on linguistic standards for legal translation**

Professional translation, not least legal translation, requires knowledge and skills of the highest order. They have to be acquired if candidates are to enter the profession as fully competent legal translators. Therefore, there can be no compromise regarding the standard required to enable candidates to fulfil their function appropriately. However, the law is a very wide field and no legal translator can command complete

knowledge and competence as translator in all areas of the law. Curriculum design and assessment need to take account of this fact either by providing more general, broad-based assessment tests or limiting the field of knowledge required by making the tests more specialised. In all cases, the overriding aim must be a standard that enables the legal translator to be fully functional at a given degree of specialisation.

### **Thoughts on quality assurance in the assessment of legal interpreters and translators**

The involvement of experienced internal and external assessors would appear to be a prerequisite for any area of assessment and qualification. How else could the necessary level of competence of trainees in any field be assessed and verified? In relatively new areas of professional activity, such as legal interpreting and translation, the external quality assurance function is frequently carried out by senior members of the profession. They may or may not have specific teaching or training qualifications, let alone a qualification in assessing budding professionals. Neither do they necessarily have any particular knowledge and skills in assessing trainees but they know the standard that is required of fully functional professionals and they have the necessary practical experience of that standard.

In the UK, in addition to the practice of deploying external examiners, qualifications for internal and external assessors are offered by the National Standards of Training and Development. One of their purposes is to provide internal and external quality assurance for vocational standards. These include national standards for legal interpreting and translation.

These qualifications, known as units D33 and D34 provide a guide for the training and qualification of assessors including those for legal interpreters and translators. Providers of assessment and qualifications for legal interpreters and translators may wish to consult these units as a source of information on the vital topic of quality assurance in this field. (See **Notes** at the end of this chapter).

## **4 LEGAL INTERPRETING AND TRANSLATION AT MA LEVEL**

It is understood that with one or two exceptions, including the Diploma in Public Service Interpreting, there are few if any Diploma or First Degree/BA level courses for legal interpreters and translators for the many African, Asian and European languages now spoken in EU member states. On the other hand, a number of MA courses cater for legal interpreters and translators and interest in the creation of a European MA in this field is growing. What follows here are, therefore, some ideas about possible components or modules of a professional MA course in this field and the standard expected.

It is also generally understood, though there may be exceptions, that course providers in any professional field need the experience of a well established Diploma or First Degree course before they can offer with confidence a course in the same area at the higher level of MA. Knowledge and expertise of curriculum design, resources for learning, teaching and training and in particular a body of qualified staff including practitioners experienced in all aspects of practice and theory, training, research and publications in their particular field are vital prerequisites. Institutions with experience in First Degree level work would be expected to be aware of the required level at which final assessments need to be pitched. That level represents one criterion or starting point for selection to a professional MA course.

The training of legal interpreters and translators is no exception. Because it is a relatively new field, such Diploma and First Degree/BA courses are as yet not sufficiently developed at the required level, especially where they need to cater for the range of languages used today for legal interpreting and translation in the multicultural societies of EU member states. In these countries, institutions which intend to offer professional MA courses in legal interpreting or translation may, therefore, wish to consider the planning of such courses as a medium or longer-term goal, rather than an immediate task. This applies in particular to some of the non-European languages required today.

This means that institutions wishing to plan for an MA course in legal interpreting or translation require experience in the linguistic standard at Diploma and First Degree level. Legal interpreters and translators at that level should be fully functioning in the particular legal fields for which they have been trained. That standard is recommended as prerequisite and starting point for a professional MA course in this field. Details are set out in parts 1, 2 and 3 of this chapter.



## **What could MA courses offer to lift the level yet higher and provide further vital dimensions of competence in this field?**

Legal interpreting and translation studies at MA level might concentrate on

- improvement of legal interpreting and translation skills
- translators text revision
- deepening, widening and updating of legal subject knowledge
- developing specialisms
- underpinning competence by interpreting and translation theory
- developing skills for training the trainers
- developing subject related research methodologies and skills
- carrying out research projects
- research publications
- underpinning by selected areas of applied linguistics
- management skills for legal interpreters and translators.

### **Improvement of legal interpreting and translation skills**

You may wish to refer to the performance criteria described in the earlier parts of this chapter. Using them as a starting level for practice sessions, interpreters may improve their presentation, speed of delivery, fluency, pronunciation and flexibility in dealing with complex language.

Translators may achieve improved writing skills through practice and guidance (including spelling!) and dealing through footnotes and other means with particular translation difficulties.

Use practice and feedback from staff, peers and the trainee cohort, always aiming at an improved performance level which may be assessed formally and informally by staff and students, individually and in groups.

### **Translators text revision**

Vetting, checking or revising of translations by other translators is a practice which also applies in the legal field. It can be practised in pairs or groups and familiarises future legal translators with errors and inaccuracies that may occur in assignments, though revising of translations does not only cover the accuracy of meaning. It also seeks to improve expression and style at sentence and text level. Training would concentrate on practising analytical skills and fostering the ability to revise systematically. Assessment depends on the type and quality of texts used to practise. Assessment criteria would need to include consistency of revision, accuracy and meticulousness of approach, underpinned by knowledge of terminology and style conventions generally applicable in the legal field.

### **Developing specialisms**

In view of the wide variety of legal specialisms this is an important aspect of study at MA level. Students may work and research to some extent independently in a specialist field of their choice. The creation and application of data banks, glossaries and retrieval systems together with improved interpreting and translation performance should be specific outcomes. They could be assessed as such, though the creation of test material for interpreters based on a specific range of students' specialisms might prove difficult and labour intensive. Specialisms may be of particular vocational importance in future employment.

Evaluation of candidates' work depends on breadth and depth and choice of the area investigated and the individual's involvement. No hard and fast rules apply though criteria for an expected minimum standard could be identified depending on the importance that is attributed to this course component.

### **Deepening, widening and updating of legal subject knowledge**

Interpreters should have an opportunity to consolidate their subject knowledge. This is vital, as there is virtually no opportunity to correct or check any details during the interpreting process. In addition, subject

knowledge helps interpreters to anticipate certain details in simultaneous interpreting including chuchotage and thereby perform more reliably.

Sound subject knowledge is vital for legal translators. It will enable translators to produce more translations more reliably and at an improved pace, enhanced not least by a reduced need to take recourse to dictionaries and other sources of information.

Use lectures and published material and reinforce with practice and feedback, always seeking an improved performance level. The involvement of legal personnel and authentic material is particularly important.

### **Underpinning knowledge by interpreting and translation theory**

Interpreters benefit from a wider view beyond the immediate task of making sense of words and sentences. The contextualisation of their function highlights the effect the interpreter has on the legal assignment, the parties involved and the legal process as a whole. It assists interpreters in optimising that effect and sensitising themselves to the underlying relationships between the parties involved.

Use essential publications in this field as well as video case studies and discussion on how performance could be improved further.

Translators need to be aware of the relationship between the texts or documents, the parties involved, the outside world including cultural differences and inferences and the translator's function. The effects of 'lost in translation' can be extremely serious.

Interpreters and translators need to be aware and capable of dealing with issues arising from communication across languages and cultures. Assessment could be by essay and report writing though more innovative testing methods may be used including demonstration using actual or simulated examples.

### **Developing skills for training the trainers**

Training the trainers is a vital task, especially in this area where this function is as yet not fully developed, for example in comparison with the teaching profession where teacher training at all levels is fully established and the need for it is fully understood. Using untrained teachers and unqualified teacher trainers would be unthinkable. The same cannot be said as yet for all legal interpreter and translator training.

An MA qualification with one or more modules for training the trainers would go some way towards filling this gap. It has also vocational implications for future employment.

Some aspects of teacher training and people management are required. Practice could be provided by pairing candidates - one performing, the other assessing the performance and providing support for improvement. This practice combines people management with initial training in assessment methodologies. Assessment schemes may be introduced. Presentation of such twinned performances for peer group evaluation would result in group involvement and assessment.

Translators would benefit in a similar way by working in pairs learning in the process ways of assessing written translations, including the value and application of assessment criteria and schemes, and improving legal subject knowledge in the process.

Assessment could include simulated training sessions conducted by trainees with feedback. Performance criteria could be developed and tested in group-sessions. They could include listening and presentation skills, projection, voice production, the ability to explain techniques and procedures against a broad based knowledge background to encourage others and provide guidance and feedback in practice sessions.

### **Developing subject related research methodologies and skills**

Research methodologies can represent a very wide subject area also requiring statistical application and may, therefore, occupy a large part of the MA course. Such courses may produce excellent future researchers who will contribute to the body of knowledge in this field. However, if the purpose of the MA

course is more in the direction of improved practical interpreting and translation skills, refined research methodologies are unlikely to be included in the course. Nonetheless, successful candidates of any MA in legal interpreting and translation should be familiar with some research methods relevant to their field of studies which could be used for their own research dissertations and future research projects.

Assessment may be combined with assessing projects or dissertations arising from the course. Criteria and standard of performance depend on the extent to which this component is covered in the course.

### **Carrying out research projects or dissertations**

This part of the MA course requires independent thought, study and research though guidance is usually required in identifying suitable research subjects and preventing individual students from attempting to tackle vast subject areas which they could only examine superficially. Curiosity reflected in the search for knowledge as well as the desire to test newly acquired research methodologies are put to good use in the MA course and frequently lead to a commitment to further research in the future.

Assessment would be based on the care and skill with which established as well as innovative methodologies are being used, the quality of the hypotheses to be tested, as well as the depth and meticulousness of the research, its findings and presentation. Some observational research in interpreting using control groups can be demanding as well as informative.

### **Research publications**

Learning to research for publication provides incentives for serious research in the future. It also enables MA students to acquire presentation skills and improve writing skills still further.

Assessment of such work takes into account the relevance of the topic, the extent to which the project is based on innovative thinking and original research and how appropriate research methods have been applied. The presentation of the findings and the contribution a piece of research may make to the existing body of knowledge, are further important criteria. Technical keyboard skills, proof reading and desktop publishing are useful support skills in this context.

### **Underpinning by selected areas of Applied Linguistics**

Applied Linguistics is a very wide field from which some areas of particular relevance to interpreters and translators may be selected (in addition to interpreting and translation theory). The more practitioners know about the structure of languages, their syntax, grammar and sound systems, the greater their confidence will be in using their languages in a professional context. The selection of topics or subject areas from the field of Applied Linguistics depends on the aims of the course, the course design and available teaching expertise. Knowledge of the relevant meta-language and its concepts would provide an abstract knowledge base for language practitioners enabling them to speak a 'common language' when discussing particular linguistic problems arising from their work. It is also a useful tool for interpreters and translators when supervising and assessing the work of their peers (see above).

### **Management skills for legal interpreters and translators**

Practitioners require management skills for a very wide range of professional activities in particular for

- time management for their own assignments and the allocation of work to colleagues or supervised trainees
- managing languages including knowledge of how to identify other languages and find practitioners experienced in their use
- securing language services and practitioners as required
- negotiating own fees and fees for colleagues
- contributing to ongoing debates on rates of pay and conditions of work
- assisting newcomers as professional mentors
- contributing to training the trainers

- ensuring that special cultural or religious requirements are taken account of and consulting specialists as necessary
- the application of the codes of conduct and good practice including disciplinary procedures
- negotiating skills in the context of own assignments and the work of others
- providing initial support for colleagues and junior interpreters' post traumatic stress
- knowledge of the regulations covering the employment of free lance practitioners
- knowledge on how to secure careers guidance for recent graduates in the field.

The selection of management principles for inclusion in an MA course for interpreters and translators, depends on the direction of the course and the time allocated within the course structure. The involvement of practitioners and legal personnel would be highly desirable. Other details could be included here depending on the aims of the course, which may vary considerably. It is, therefore, not possible to standardise the level required for assessment. Assessment could be based on simulated cases though designing such tests may be difficult and time consuming. A major assessment criterion would be whether and how candidates' knowledge would stand up to being applied in real life cases.

### **Guidance for the assessment of MA students**

No detailed performance criteria have been provided. For basic competence see the **performance criteria** and **assessment guidance** set out in parts 1, 2 and 3 of this chapter. One of the aims of MA courses in legal interpreting and translation must be to improve on all relevant performance criteria. But MA courses in this field may vary considerably in their module composition and the relative weighting of any of the constituent parts, ruling out an attempt at standardising any part of the assessment. Furthermore, most of the sections listed above cannot adequately be assessed merely by the practical performance criteria set out for legal interpreting and translation at Diploma or First Degree/BA level. One reason here is the fact that intellectual capacity, innovation and independent thinking as well as the quality of the research project and methodologies come into play at MA level. They cannot easily be matched by a set of performance and assessment criteria.

### **IN CONCLUSION**

As far as the development of courses for legal interpreters and translators at MA level is concerned, much will depend on the progress that may be made in the creation of a European MA in legal interpreting and translation. This in turn will depend on the speed with which First Degree and Diploma courses within the EU may be put in place, as well as the extent to which they are likely to cover the much needed languages from outside Europe at the required level, rather than the traditional range of major western European languages.

#### ACKNOWLEDGEMENTS

Our thanks are due to the **Languages National Training Organisation (LNTO)** in the UK for allowing us access to the *National Language Standards for Interpreting and Translating* at Level 5. Since 1991 this government agency and its predecessors have been involved in defining language standards, in particular in a vocational context, from post beginners to professional levels (levels 1 – 5).

They include detailed and comprehensive standards for legal interpreters and translators and this Grotius project has been fortunate in having had full access to them in the creation of its own recommended standards. It saved us a time consuming and arduous task. In the consultative process with members of the international **Grotius** team, the *National Language Standards for Interpreting and Translating* at level 5 have been much appreciated for their comprehensive approach, meticulous attention to detail, especially in their description of performance criteria, assessment, essential skills and underlying knowledge. Their latest revised versions of August and November 2000 are readily accessible and user-friendly.

As former director of the Institute of Linguists I was extensively involved in the consultative process for the creation of the National Language Standards. It is, therefore, particularly pleasing to return to them now in the wider context of application within the European Union. (For details of how to obtain copies of the Standards see below)

Our thanks are also due to the Nuffield Foundation without whose generous support during my time at the Institute of Linguists and before, it would not have been possible at that time to develop legal and other forms of public service interpreting in the UK. It gave us a head start for the current European project within the **Grotius** programme.

#### Edda Ostarhild

#### NOTES

At the editor's request, a bibliography on linguistic standards has not been provided for this chapter as there is a wealth of publications in this field. Most cover interpreting and translation in general and some deal with what is sometimes called community interpreting. For specific aspects of legal interpreting and translation consult the **Bibliography** at the end of this volume.

The internal and external assessors training modules D33 and D34 can be found in the 'Assessment and Verification Units' of the National Standards of Training and Development, 1995, Crown Copyright, pp 23 – 43.

The linguistic standards and their performance criteria recommended here for legal interpreters and translators, have in some important respects been calibrated against the UK National Language Standards for Interpreting and Translating at level 5 of LNTO (The Languages National Training Organisation), NLS for Translating August 2000 and NLS for Interpreting November 2000.

**The Languages National Training Organisation (LNTO)** is a body set up by the UK Government in 1998 with a brief to promote the use of language skills in business. It is the successor organisation to the Languages Lead Body, which was established in 1991 with the same overall aim.

A major part of the LNTO's remit has been to devise standards to describe levels of language competence which can be understood and used by the specialist and non-specialist alike. Although the standards were originally intended for use in a business context, it is clear that a more general use is possible simply by transferring the context in which assessment of performance takes place.

Three sets of standards have been produced:

- the 'Generic' Standards run from post beginners (level 1) to near native speaker competence (level 5) in each of the four skills of Listening, Reading, Writing and Speaking and cover, as the name implies, use of language skills across the whole spectrum of business activity;
- the Interpreting and
- the Translating Standards were written specifically for those working in or planning to enter the interpreting or translating professions.

Copies of the Standards for the generic version and for the interpreting or translating versions can be obtained from

The Languages NTO  
20 Bedfordbury  
Covent Garden  
London WC2N 4LB  
Tel (0)207 379 5082  
Email: [info@languagesnto.org.uk](mailto:info@languagesnto.org.uk)

Copyright of the standards rests with the LNTO. Examining and Awarding Bodies in the UK are allowed free use of the standards. Outside the UK, the LNTO is happy to negotiate licences for use of the standards in examination or assessment schemes.

The LNTO website [www.languagesnto.org.uk](http://www.languagesnto.org.uk) includes a search engine listing language service providers wishing to discuss matters of current interest or concern on-line.

## CHAPTER THREE

### Selection of Students for Training

#### AT FIRST DEGREE AND INITIAL PROFESSIONAL LEVEL:

*Ann Corsellis and Edda Ostarhild*

#### AT PROFESSIONAL POSTGRADUATE MA LEVEL:

*María Gracia Torres Díaz with Doris Grollmann and Hugo Marquant*

#### AT FIRST DEGREE AND INITIAL PROFESSIONAL LEVEL

Students should be selected, not only for their potential ability to pass the qualifying examination, but primarily on the grounds of their suitability to join the profession. Legal service interpreters and translators bear grave professional responsibilities. The quality of people's lives, and at times even their life or liberty, may rest upon the quality of interpreting and translation.

Care has to be taken, therefore, on selecting students. There is growing pressure to meet the communication needs arising out of a rapidly increasing movement of people between countries. Limited time and resources should not be taken up in training students who are unlikely to enter the profession.

The first generation of students, who qualify at the initial professional level, are going to have to deal with demanding assignments straightaway in situations where members of other disciplines, such as lawyers and police officers, may not yet be proficient in working with interpreters and translators or across cultures. Therefore these first students need to have a solid professional base and, most importantly, the professional insights to know when they don't know and the professionalism to admit it.

Selection of students in these circumstances therefore has to be done on the basis of as much objective evidence as is possible. Candidates for training who come from abroad may have the necessary potential but, for a variety of reasons, not have formal qualifications or may have qualifications about which not enough is known. On the other hand, academic qualifications alone, from any country, do not necessarily provide sufficient evidence for the range of skills, abilities and all round sound general educational background and life experience required to work as an interpreter or translator in the public services.

It is unfair to take up students' time and resources by accepting them for courses for which they are unsuited, particularly if they are newly arrived. Courses are intensive and demanding. Inappropriate students may hold back their fellow students, take the place of a better-suited student and take up more than their share of tutors' time. It is also frustrating for examiners to be continuously failing candidates who were patently unsuitable at onset.

Selectors should bear in mind that students, especially those who have recently arrived in a country, should have a reasonable chance, although no guarantee, of employment once qualified. There should therefore be some sort of match with work likely to be available.

What follows are suggestions on selection criteria and processes, which have been tried out and found to be useful.

#### 1 Selection criteria

##### **Determined by the needs of the clients**

It is recommended that students be selected according to:

- **Language combinations** needed in the work place and in the local area. In the absence of reliable and relevant statistics, these can probably best be identified by legal services and speakers of other languages.

- **Dialects and range of registers** required in the work place. Where applicable, legal interpreters and translators should be able to accommodate a reasonable range of the dialects and regional variations of their standard languages; and a range of informal and formal registers in both languages.
- **Language priorities**, so that the first courses deal with the language combinations most needed.
- **Regional and national language spread**, so that the less commonly needed language combinations are catered for nationally by agreement with tutor colleagues in other areas.
- **The needs of transient, as well as resident, people:** ports, airports, major train stations, major sports stadiums, tourist centres, commercial fairs and conventions centres all attract speakers of a wide range of languages.
- **Long-term planning**, so that, over a period of five to ten years, the range of languages likely to be needed within a country will be covered where they can be predicted.
- **Male/female balance**, so that there will be qualified male and female interpreters in each of the language groups to accommodate different situations. For example, most victims of rape would prefer an interpreter of their own sex.
- **Availability**, so that, once qualified, interpreters are in a position to accept work assignments for a reasonable number of hours per week. Their availability hours may complement each other, for example, the woman who can interpret when her children are at school during the day and a colleague in the same language group who can interpret in the evenings.
- **Assignment demand**, which may vary in number and geographical location. In truth this is often difficult to predict but a rough starting estimate can often be adjusted to a better match of supply and demand in subsequent courses.
- **Suitability** to work in the legal services. There can be a requirement in some countries that all those, including interpreters and translators, who work in the legal services should not possess a significant criminal record. In these cases, the individual will be required to produce appropriate evidence before being employed. In certain legal matters, higher levels of security vetting will be required.

#### **Selection criteria determined by the skills and qualities required**

The level of existing skills and qualities sought in applicants for a course are obviously dependent upon the course's length and content. For example, there may or may not be time to bring on the student who is weak in an aspect of their existing skills. It is also likely that many students will have had some previous work experience in the field, albeit in an unqualified capacity, and their level of skills cannot be assumed. Experienced tutors are adept at assessing what is possible.

Whatever the course length, the selection criteria headings remain the same and it is recommended that all students are selected according to:

- **Competence in the official language of the country or region.** This must include written and spoken skills. There is often a debate as to whether written skills are needed for interpreting but in most countries it is unlikely that there will be no written texts involved in interpreting assignments. Equally it may also be said that, where there is a written form of a language, adequate linguistic development and general knowledge cannot be attained or maintained without access to the literature and contemporary writing and journalism in that language.

The ability to accommodate the range of dialects and regional variations, and the informal and formal registers, of the language should also be taken into account. This is one of the aspects of public service interpreting, which differs from normal conference interpreting. Legal interpreters may find themselves, for example, interpreting for sailors with a strong accent from Hamburg or Glasgow. The range of registers used can vary from street slang and jargon to the formal language of the court.

- **Competence in their other language** as above.

- **Interpreting potential** is essential. There are individuals who are fully fluent in two languages but have difficulty in switching between those languages. The potential facility to 'bridge' languages and their implicit cultural underpinning is required, as well as a good short-term memory.
- **Translation potential**, which also concerns transfer skills but, arising from the written form, there are differences in the skills needed for such matters of matching style, presentation, choice of phrase and words.
- **Inter-personal skills and maturity** are important to linguists working in the legal services, as they are in all public services. They have to deal with a variety of people who may be distressed, anxious, busy, angry, drunk but, more usually, people who are simply disturbed and frustrated by the bilingual nature of the situation. It is often interpreters who, without overstepping their role, provide the still focus and absorb the negativity to allow matters to proceed.

### **Selection criteria determined by course needs**

The teaching and learning processes within a course are supported by the make up of the student group. The following have been found helpful:

- **Language groupings** of a minimum of four or five per language combination allow students to:
  - discuss and debate aspects of their own language
  - practice interpreting for each other
  - discuss and compare texts for analysis and translation
  - provide mutual support and help.
- **Number and type of language groups** depend upon the educational conventions and structures involved. Part-time courses have been found to prefer around 12-16 students to a class, divided into three or four language groups. This overall number is a good size of class to teach and keep together. The different language groups give students access to third and fourth languages and thereby allow them, without their necessarily understanding the other languages, to take an objective view on certain linguistic and cultural factors of interest when, for example, speakers of European languages consider with their fellow students what is needed to transfer meaning in Asian or African languages.
- **Group dynamics** can be usefully considered because what is sought is a group of individuals who will complement one another and give each other mutual support, not only during training, but also in the demanding professional work environment once they are qualified.

For example:

- A mix of ages and gender in a language group allows students to consider the different ways languages are used by different generations and sexes, for they will have to replicate those when interpreting for different individuals.
- A mix of students according to life experience. Language shifts and mixes according to where the speaker has lived or is living. For example, the Gujarati language spoken in Gujerat state by the Gujaratis who have lived in East Africa for a generation and by those who have lived in the UK for varying periods of time, may differ in degrees. The Arabic spoken in different African and Middle Eastern countries also differ. These variations have to be accommodated by the working interpreter and translator.
- A mix of general backgrounds such as science, mechanics, accountancy and parenthood, brings insights to the class in terms of both terminology and approach.
- Students with previous interpreting and translation experience require sensitive handling. There are many people working in this field who are unqualified, through no fault of their own. They may be excellent. Alternatively, they may have acquired, often unwittingly, some bad practices that they are anxious to defend but which are difficult to repair.



## 2 Selection methods

The selection process often takes place in circumstances where potentially good applicants, in some of the language combinations required, may not be fully familiar with the education systems and procedures of the country. The selectors have to recognise this situation, where it exists, and accommodate it without in any way diminishing the underlying principles.

- **Advertise the course** well in advance, to allow proper time for the selection process and any remedial work that needs to be done. Information about the course should be accessible by the best potential students. The usual university or college methods of reaching students may not produce the optimum results. Talks and discussions with specific language community groups may prove more fruitful. Extra information about the training may have to be given for those not used to the education system of the country.
- **Inform the language communities** about the course and its purpose and listen to the reactions. Larger groups of speakers of other languages have their own social and cultural infrastructures. They are in a position to give valuable support and collaboration to this exercise - or not. They may be ambivalent at the outset. On the one hand they will recognise the need to communicate with the legal systems. On the other hand they may be anxious about the results and their trust has to be earned. Explanations are necessary, for example, about the code of conduct and the need for the best possible standards.
- **Locate and time-table selection assessments with care:**
  - locate sessions for small groups at venues familiar to the applicants, which may attract more of them to attend
  - recognise acceptable welcome and departure conventions
  - provide light refreshments, remembering cultural traditions
  - gather and store securely contact details of candidate students
  - be clear about time-tabling and arrangements; who is to be where and when
  - allow time to give information and answer questions
  - clarify to the potential students the course and assessment costs and commitments
  - avoid religious holidays of a particular language group.
- **Assessment formats** found to be useful include a combination of all or some of the following:
  - short interpreted role-play on non-specialist topic (into both languages)
  - short written translation exercise on a non-specialist topic (into both languages)
  - short sight translation exercise on a non-specialist topic (into both languages). While this exercise gives a good indication of potential transfer skills, it is a very demanding one and only simple texts should be used
  - short written text (approximately 150-200 words) in both languages on a simple specified subject e.g. 'Why I would like to be a Legal Interpreter and Translator.' It demonstrates not only language competence but also structure of thought processes and presentation skills
  - self-assessment through completion of questionnaire
  - interviews by native speakers in both languages to determine spoken fluency, register range, diction and voice quality, inter-personal skills and personality.

## 3 Selection assessors

The key to implementing the correct principles of selection is the choice of selection assessors and how they carry out their task. Particularly in a multi-cultural context where there may also be anxieties, it is clearly important that there should be a transparent and ordered approach. The following points have been found helpful:

- **Experienced qualified legal interpreters and translators** are usually the best people to help select their future colleagues, for they know what the professional demands are.

- **Course tutors** should be involved because they are going to be responsible for developing the students they select.
- **Graduate native speakers** of the languages must be involved in order to obtain a sound assessment of the candidates' linguistic competencies and the cultural underpinning. It may be sensible to use native speakers not known to the candidates, to avoid any allegations of partiality.
- **Combination panels** of the above three categories have been found to be best. It may be considered sensible to identify stand-by assessors where, for example, practitioners are likely to be needed elsewhere on the day.
- **Clarify assessment objectives** in advance so that, for example, practitioners remember they are looking for potential, not existing, skills and qualities.
- **Confirm assessors' code of conduct** in writing in terms of such matters as objective approach, strict confidentiality, impartiality, punctuality and consistency.
- **Agree texts, assessment procedures and marking systems** in advance.
- **Circulate assessment location and timetable of procedures** in advance.
- **Agree results**, in order of preference and why, on the same day. Consistency has to be observed where more than one location, or day, is used. In such cases there may need to be a further meeting of assessors to finalise the list. A contingency list of students who have the appropriate skills, but were not among the first selected, might be kept in case any of those selected drop out.
- **Disseminate results to successful potential students** as soon as possible, along with the necessary practical information about the course, and request their written confirmation of their attendance by a certain date.

#### **4 Dealing with those who do not pass the assessment**

It is important that those who have not passed this assessment do not go away with a sense of failure. Particularly where they are senior members of their language communities or are newly arrived in the country, they need to be encouraged, if they wish, to engage in some other activity where their skills lie. Apart from being of assistance to the individuals concerned, such an approach preserves and respects the dignity and cohesion of the language community whose members have had the courage to submit themselves to assessment.

- **Inadequate level of language skills** in one or more aspect may be remedied by access to tuition e.g. enhancement of writing skills. Such applicants may, with help, become excellent prospects for a future year.
- **Unsuitability for other reasons** may mean that the candidate student would not be a good interpreter or translator but may be good at something else. For example, the assessment tests may indicate that the candidate is fluent in both languages but does not appear to have a facility for transfer, or that the candidate does not appear to have the right personality and/or approach for the task. Such individuals could be encouraged to train as a valuable bilingual professional in an aspect of the public services which interests them. This could comprise a range of activities including law, community work or administration.
- **Give information** wherever possible about such alternatives when sending out results to those who have not passed, even just a general brochure of suitable courses or where proper career guidance can be obtained.

#### **AT PROFESSIONAL POSTGRADUATE MA LEVEL**

The concept of professional MAs is becoming more common. Their purpose is to improve the professional practice and development of individual practitioners, give time and support for methodical reflection on practice and, through research, to enrich the professional body of knowledge as a whole.

The principles, underlying the selection of students for post-graduate level courses in legal interpreting and translation, are the same as those for selection at the lower level in that the criteria are based upon what will be needed for professional practice, such as:

- proficiency in both languages
- interpreting and translation skills
- professional suitability.

The approach to selection should be thorough and rigorous, in order to ensure that the right number, the right calibre and the right mix of students is brought together in class to accelerate learning. The optimum number of students is about twelve.

### 1 Selection criteria

The criteria, additional to those required at the lower level, include the potential for:

- study at a higher level
- responsibility for autonomous learning at this level
- commitment to the subject
- the ability to conduct and record objective research
- intellectual curiosity.

Universities usually have, for all their post-graduate courses, their own general selection criteria and requirements for evidence of earlier achievements, with additional specific requirements for particular subjects.

As there are not many existing courses, at First Degree level or the equivalent, it may take two or three years for there to be enough students applying for courses in legal interpreting and translation with qualifications and experience in the field. Once, however, the courses at initial professional level become more widespread, there should be an increase in the number of students applying with directly relevant skills and expertise. Equally importantly those students are likely to be proficient in the language combinations needed, which may include a wide range of Asian, African and West and East European languages.

It is said that academic study is intended to make sense of reality. Students are, therefore, more likely to benefit from post-graduate study if they have some prior solid professional experience as a background on which to base their work. It may not have been at the same level of skills and expertise they will achieve by the end of the course but it provides an informed basis from which to develop.

Universities may therefore care to consider the following sources of evidence, among others, for the selection of students for such a course:

- Curriculum vitae.
- A good level qualification at First Degree, or equivalent, in a relevant subject, preferably in legal interpreting and translation and in the relevant language combination. This will provide evidence, at that level, of
  - competence in the written and spoken forms of both languages
  - interpreting techniques and translation skills
  - background knowledge of some public services
  - understanding of codes of conduct and guides to good practice.
- Relevant work experience. Evidence of this can be provided through appropriate references, which confirm proven satisfactory professional experience in legal interpreting and translation, and suitability for further study, from those who are equipped to make objective and informed judgements on the matter. These may include senior colleagues and previous tutors.
- Evidence of some time spent abroad in the country of the applicant's foreign language(s).

## 2 Selection methods

### • Interviews

Classes should ideally be defined by diversity at MA level, as prospective candidates from relatively disparate backgrounds and experiences come together to teach and learn from one another. Working in such an environment offers the students the unique opportunity for accelerated learning and personal growth, which in turn should have positive repercussions on the profession and the body of knowledge as a whole. Therefore during the interview candidates should be able to show, among other things, evidence of commitment, intellectual rigour and curiosity, a potential to grow personally and professionally and the ability to work in a team. Proof of these could be sought in a candidate's involvement in research projects and interest in the profession as a whole.

### • Aptitude Tests

The reasons for carrying out such tests arise from the research, conducted by specialists on interpreting, which show evidence to support the idea that candidates need to demonstrate that they possess key aptitudes if they want to complete an interpreting or translation course at MA level. Assessors need to gauge the performance of the candidate and use it as one of a number of indicators to determine whether the candidate might possess the skills to address the demands of a more rigorous course of study than that offered by a BA programme.

The main aptitudes to be identified are:

- excellent knowledge of first and second languages (A and B languages)
- transfer strategies
- knowledge and understanding of the legal systems involved
- good memory
- speaking skills relevant to interpreting, i.e. sensitivity to the content of an utterance and the ability to convey it thoroughly and effectively or, as Longley (1989) states: 'A "natural propensity" to listen, to understand and to convey an original message translingually'.

The type of aptitude tests suggested are:

#### • A memory test in both A and B languages

- A-B test: A text (2-3 minutes based on a legal matter) is presented orally (only once) to the candidate in the A language, the candidate listens without taking notes and once the test finishes he or she repeats it in the B language.
- A-B test: A text (2-3 minutes based on a legal matter) is presented orally (once only) to the candidate in the B language, the candidate listens without taking notes and once it finishes he or she repeats it in the A language.
- Assessment of the test: Assessed according to how well the candidate conveys the meaning, content and expression.

The purpose of this test is not only to confirm that a candidate has good memory skills but also to test listening and speaking abilities. In addition to this, evidence should be sought to convince the assessors that the candidate has the necessary speaking skills and understands regional accents or dialects and that he or she can reproduce the information at the fluency of an educated native speaker in either language.

#### • A test on the knowledge of the legal system of the country where the MA is taught

This could take the format of multiple choice questions or 'assertion reason' type questions.

The purpose of this test is to prove that the candidates have legal subject knowledge, that they are familiar with the legal system procedures and specific legal terminology, and that they are well informed about the societies and cultures of the languages they work with.

- **A shadowing test from B-B**

While a text in the B language of about 7-10 minutes on a legal matter is produced, the candidates repeat the information they are listening to, parrot-style into the same language.

The purpose of this test is to confirm that the candidate can speak and listen at the same time. As has been proved by prominent researchers, candidates can only repeat information that they understand, which is why a shadowing exercise from B to B should be chosen. This test would show not only the candidate's ability to listen and speak simultaneously, but also the ability to combine listening and speaking abilities with the candidate's understanding of the legal subject matter.

- **A sight translation exercise (A-B, B-A)**

The analysis of the results of these tests provide a good indication as to whether the candidates' skills are sufficient for them to be able to cope with the course and whether, and which linguistic or non-linguistic shortcomings appear to exist.

## CHAPTER FOUR

# Training

### AT FIRST DEGREE AND INITIAL PROFESSIONAL LEVEL:

*Ann Corsellis and Edda Ostarhild*

### AT PROFESSIONAL POSTGRADUATE MA LEVEL:

*María Gracia Torres Díaz with Doris Grollmann and Hugo Marquant*

Perhaps the first thing to say is that training is required. It is not acceptable for family and friends (and especially not fellow prison inmates) to interpret and translate. Indeed, highly qualified interpreters and translators, who practice in other fields, often decline to work in the legal field without any prior preparation for that context for good reasons, which include:

- The public services, including the legal system, are specialised fields which require prior knowledge to apply good practice.
- There is often little advance warning of the need for an interpreter or translator. Therefore there is little time for advance research.
- The training process is not just about the provision of information but also an education in the professional skills required and, equally importantly, professional codes, good practice and inter-disciplinary conventions.
- The visits during training to future places of work, such as courts, police stations and prisons constitute a necessary, practical orientation.

It is recognised that experienced trainers are already aware of what is needed. For them, these recommendations may constitute no more than a simple checklist to affirm their existing good practice which forms the basis of their courses. Increasing need for this training does mean, however, that tutors who have never run such courses are being asked to do so. It is hoped that the recommendations offered will also be helpful to them in a different way.

It is not suggested that every course should be exactly the same. Every student has different needs, every tutor has a different style of teaching and every member state has different educational structures and conventions. What is being suggested is that there should be a core held in common for the following reasons:

- **Consistency of core content** of courses ensures that legal interpreters and translators within the EU are prepared to deal with the same range of assignments. This should include not only the courts but also the other main agencies of the civil and criminal justice systems, such as police, probation, court welfare, immigration, customs and excise.
- **Consistency in standards of practice** is inculcated during training. Even the best designed professional examination or assessment only tests a percentage of the practitioner's skills.
- **Equivalencies** are being sought in member states. An agreed consistency of core training among member states will promote this and lead to the potential for legal interpreters and translators being able to work in other member states.
- **Transferable credits** can allow students to change courses if, for example
  - they move house during training
  - they wish to take some course modules in the country of one of their languages.

- **Efficiency** to maximise resources and effort, which could be shared through:
  - shared teaching materials
  - exchange of trainers: language and legal specialists
  - shared terminology resources
  - access to a wider common body of knowledge and expertise.

## **TRAINING AT FIRST DEGREE AND INITIAL PROFESSIONAL LEVEL**

The aim of the course is to prepare students to begin practising as legal interpreters and translators at an initial professional level (Diploma, First Degree or BA) in a responsible way. It is intended as a first step, on which knowledge and expertise can be improved through supported experience and further study. It is a realistic response to the practical need for significant numbers of legal interpreters and translators, based in a wide number of locations and in an increasing range of West and East European, Asian and African language combinations. When a police officer needs an interpreter at 2 o'clock on a Saturday morning in a provincial town or a court needs an interpreter or translator for a drink-driving offence the next day, it is not yet always practicable to expect there to be an experienced post-graduate legal interpreter or translator immediately available in the language combination required. Courses at this level also provide the stepping stone to professional post-graduate courses.

The level of skills is described in professional or vocational terms in Chapter 2, although the courses are usually taught in academic establishments and the academic equivalent of the language skills sought is approximately that at First Degree or BA in level but not in breadth. This combined professional-vocational and academic approach is also followed by such professions as doctors and lawyers, who have both academic degree equivalents and professional training assessment.

The length of course depends, to some extent, upon the existing levels of skills of the students and the existing educational conventions. Experience has shown that, if the selection criteria described in Chapter 3 are followed and existing language skills in both languages are at a good level, the following components are required. These are best organised to fit into the Bologna Agreement on credit transfer systems:

- classroom contact time, which includes adequate interpreting practice
- 12-15 hours observation visits
- home study time.

The format of the course again depends upon practicalities. The courses described above are offered part-time, over an academic year, for students with good language skills and some work experience. This was found practical where, as is usually the case, many of the students are mature people with existing professional or domestic commitments. Some of these courses include one or two week-ends of intensive tuition. Home study and observation visits are additional.

Course objectives are to give students sufficient knowledge and expertise for their tasks in the following:

- Knowledge of the criminal and civil legal systems: structures, procedures, processes and personnel.
- Written and spoken competence in both languages; the formal terminology and informal vocabulary and the range of registers most commonly used in the legal context.
- Transfer skills (one and two ways): short consecutive and whispered simultaneous interpreting skills and translation skills.
- Code of conduct and guides to good practice: the understanding and the ability to follow these, which includes the ability and skills to resolve professional problems and to recognise and admit to professional limitations. (See chapter 7)

- Continuous professional and personal development; the ability to take control, and be responsible for their own development through objective reflection and learning and to contribute to the profession as a whole. (See chapter 5)
- Professional practice

Students should also be introduced to the practical requirements of the work of legal interpreters and translators, which include:

- how to accept and prepare for assignments
- time, diary and financial management
- record keeping
- contracts and letters of agreement (See chapter 8)
- health and safety, such as how to ensure their own physical protection, not put themselves or colleagues at risk and take care of their own physical and mental well-being.

### **1. Programme and timetable**

The syllabus for each course varies somewhat according to the student profiles identified during the selection procedures. (See chapter 3) It has been found useful to deal with the main course objectives, described above, in the following way:

#### **Introduction phase**

The students are likely to be different from the usual group of undergraduates. They will come from diverse backgrounds, have different life experiences, be from a range of age groups and traditions of learning. They bring to the course a wealth of experience and insights. Their very diversity, however, has to be co-ordinated during a carefully planned introduction phase to ensure that individually, and as a group, they can move forward successfully through the training process.

Two main components should be considered in the introductory phase:

#### **Information sharing**

- About the course: programmes and time tables should be circulated early in the course, so that students are clear about the course content, when and how it will be taught and what is expected of them. As this is a professional training, some courses insist upon a continuous assessment requirement before examinations can be taken.
- About the tutors: it is reasonable for students to know the qualifications of their tutors.
- About each other: without being unduly intrusive, students need to be able to get to know one another fairly quickly. Various exercises and social events help this along and establish a good group dynamic.
- About the college: students may be unfamiliar with the educational establishments of the country. They need to be shown its geography, its conventions and its procedures e.g. how to use the library as well as the normal health and safety procedures, such as fire precautions.

#### **Learning strategies**

Individuals have different ways of learning. In addition, some students will come from very different learning traditions, for example, where rote learning is much used. Some may not have had recent opportunities to participate in education or training courses. What is important is that they have control of their own learning in an appropriate way. It has been found useful to encourage students to:

- complete a profile of the target skills they think they should have in order to be competent interpreters and translators. They may change their minds about what is required as the course progresses, but it focuses their attention



- complete a profile of what skills they already possess e.g. listening comprehension, speaking, reading, writing in both languages
- reflect on what the best methods would be for them, to cover the distance between existing and target skills - and how they will participate in classroom activities and conduct their home study
- construct an organisational framework for their own studies, including setting up a study diary, filing system and glossary bank
- be objective about their skills. Language skills can be a sensitive matter because they are so closely associated with identity. Students need to recognise overtly, that any criticism of their language skills does not imply criticism of them as people
- support one another and the course as a whole. Some successful courses have found a class contract to be a useful tool in reaching an inter-culturally comfortable consensus of approach. The contract is discussed, agreed upon and circulated. This may include such basic items as punctuality and handing in of work for marking but also the negotiation of how criticism, say of other students' interpreting role-plays, may be done positively
- recognise in good time when they need additional support and know where, when and how they might find it.

### **Course Units relating to working contexts**

Courses are generally taught through units of context. That is each unit of the legal system is addressed in turn, for example; police, courts, probation, prison. Within each unit of context the five interdependent fundamental skills elements, summarised above, and professional practice are addressed. As the course progresses, through the legal contexts, these skills are improved and polished.

It has been found helpful to organise this in the following way:

- **Knowledge of the legal system:** its structures, procedures, processes and personnel.

Many of the students may not know a great deal about the legal system of the country they are living in; or may have acquired misinformation. Legal interpreters and translators have to have sufficient knowledge of the relevant legal systems in order to do their jobs properly. The temptation to turn them into lawyers or police officers during a professional course for legal interpreters and translators has to be resisted. It is more important at this stage to ensure an understanding of basic frameworks and principles and the ability to retrieve additional information at short notice.

Often the best people to teach students about the legal system are the people who work in it every day and know how to impart their knowledge. These may come from a range of backgrounds and include serving police officers, probation officers, judges, magistrates, coroners, defence advocates, prosecutors and prison, immigration and customs & excise officers. Many legal services have developed good programmes, about their familiar day-to-day procedures and the language used within them, for teaching interpreter and translation students.

These are augmented by observation visits to courts, police stations, prisons and other places where the qualified legal interpreter or translator is likely to work so as to familiarise students with the reality of each situation. It has been found helpful to brief students before visits and to provide them with structured questionnaires to complete so as to make the best of the exercise. Subsequent classroom discussion is necessary to respond to any queries.

These visits have the additional function of introducing those who work in the legal services to the students, as potential future colleagues.

- **Written and spoken competence in both languages**

This accommodates the use of formal and informal language and terminology. The language usage in the legal system ranges from the jargon of the street: through the informality of language used in neighbourhood and domestic disputes; to the formal and specialised language used in court.

The interpreter - and the translator- has to be able to convey each fact accurately, reflect each nuance sensitively and not lose a significant detail in the process of transferring into a another language. In order to

do that they must be able to comprehend fully what they are being asked to transfer - whether in spoken or written form. Then they must be able to express the meaning or the message appropriately in the other language coherently, accurately and as smoothly as possible.

Language teachers, preferably graduate native speakers, work with students on their language skills using a range of teaching methods. These include exercises, which are based on realia from the legal context. The material used reflects the context on which the exercise is based, such as, criminal courts or family law. The exercises are graded in difficulty and type according to the stage of the course and the learning needs of the student. They are carried out in both of the students' languages in:

- listening comprehension
  - reading comprehension
  - writing
  - speaking
- **Transfer skills**

One and two-ways dialogue or liaison, sometimes known as short consecutive both ways, whispered simultaneous interpreting techniques, sight translation and written translation skills.

Interpreting techniques are mainly taught through role-plays in the classroom. The role-play participants comprise:

- a student interpreting between
- another student with the same language, acting as a member of the public who does not speak the language of the country
- a representative of the legal services, such as a police officer or a lawyer.

Role-play scenarios are carefully planned and graded according to levels of difficulty, as well as accommodating particular points which need addressing. They are firmly rooted in reality and, as the course progresses, include planned professional challenges.

Critiques follow. Tutors, fellow students and the role-play participants comment constructively on performance. Observation sheets are supplied to focus comment and are also graded to reflect the level of difficulty and the content of the role-play. It is useful if role-plays can be videoed, at least from time to time, in order to provide material for analysis and a record of progress.

Later in the course, more demanding situations should be set up, such as moot courts and simulated police investigative interviews with all the normal players and procedures. These provide the challenges of real situations which give students confidence and reveal the practical elements, which cannot be seen in the classroom, such as acoustics and when and how to use short consecutive or whispered simultaneous methods.

Other relevant skills are taught. Note-taking is a vital skill. Memory drills are done to promote a good short-term memory. Voice exercises improve clarity and diction.

Translation skills are taught in the normal way, but with additional components to accommodate the context. These include:

- The need to be rigorous about recognising professional limitations. At this level qualified students will be able to deal with short, straightforward texts. Unless they have additional qualifications, they are not equipped to translate lengthier or more complex legal texts and must know when to refer texts on to specialist legal translators. (See post-graduate training at the end of this chapter)
- How to deal with functional non-equivalencies, such as investigative judges or a probation service which may not exist in some countries.
- How to pre-edit texts, such as information leaflets, with the legal services before translation in order to make the target text accessible and useful.

- Familiarity with the standard common forms and documents, so that their purpose and meaning are fully understood e.g. forms for missing persons, lost property, bail, payment of fines, parking and speeding tickets.

Sight translations are often required (both ways). Students are encouraged to:

- Resist pressures to start sight translating at once, and quietly read the text through completely to make sure they have the general sense and shape.
  - Begin by stating the nature of the text, for example: ‘This is a letter, written by Mrs X of Y address to Mr A at B address on the 10<sup>th</sup> of September this year.’
  - Taking it at a sensible speed and one concept at a time.
  - Cross-checking comprehension of the listener.
- **Codes of Conduct and Guides to Good Practice (See chapters 7, 8 and 9)**

This is a most important part of the course because it provides the basic professional foundation on which the rest sits. It also provides students with a framework in which to operate once qualified. Students therefore have to acquire a full understanding of the principles behind the code and guides, to the extent that they can apply them, even in stressful situations.

They are taught, as an integral part of the whole course, through:

- a formal introduction near the beginning of the course
  - the subject being included in interpreting role-plays and translation exercises
  - a discussion among the class and with people from the legal services, who also share their own similar codes and guides.
- **Personal and Professional Development (See chapter 5)**

These aspects are also an integral part of the whole course. Students are encouraged to:

- take control of, and be responsible for, their own learning on an on-going basis
- contribute to the learning of their colleagues and to the body of knowledge of the profession as a whole
- plan and organise their professional lives in ways which allow them to perform well, learn and improve with each assignment and to create and enjoy job satisfaction
- safeguard their own physical and mental health and well-being
- recognise when they need help and support and know where to access them.

## **2. Professional mentoring**

‘Mentoring’ may be defined as the process of providing professional, post-qualification support to colleagues. It does not normally take the form of appraisal or assessment but is to inform, advise, guide and support. If well done, it is appreciated by legal interpreters and translators at all stages of their careers.

It has long been practised informally but the profession is gradually encouraging more clear arrangements, not only to avoid the more reserved new linguists being overlooked but also to give recognition to the valuable contribution given by senior linguists who mentor instinctively.

Mentoring takes place within the professional circle of confidentiality. Matters between the mentor and the mentored therefore remain confidential to them, except on those rare occasions where the legal process or the reputation of the profession is at risk.

The reasons why mentoring is useful are:

- Legal interpreters and translators usually work alone. Access to informed support is beneficial. Even where they work in teams, it is helpful to have the mentoring arrangements set out.

- Legal interpreters work in stressful situations and, without a mentor, may have no one appropriate to talk to afterwards.
- While many questions and problems can often be resolved through discussion with colleagues in other disciplines, it is helpful to have access to support and advice from a fellow linguist.

The Mentors should be senior, respected and experienced qualified legal interpreters and translators. They should have had some in-service training on the mentoring process and be objective, thoughtful and sensible. It can be best for the person to be mentored to select, with the mentors' agreement, the one or two mentors they feel comfortable with, who work in the same language combination and domain. Mentoring is normally given as a voluntary service.

When mentoring takes place depends a good deal upon those involved. Those who are new to the profession probably need mentoring for many of their first year assignments. More senior practitioners may often still welcome mentoring from time to time, particularly where they are facing very challenging assignments.

Particularly for the newly qualified, mentoring will be useful:

- Before an assignment e.g. to check on contracts/letters of agreement or to identify sources of information for preliminary research to be undertaken.
- During an assignment e.g. to share any anxieties or problems which may have arisen.
- After an assignment e.g. to 'talk out' the assignment and learn from it.

How mentoring is carried out depends to some extent on the context. Much of it is about providing the intelligent and informed listening ear that will enable the mentored to perform well in the professional context.

### ***3. Emergency responses***

Legal services should always aim to obtain the services of a qualified legal interpreter or translator. However, it would be unrealistic to pretend that there are not occasions where a crisis takes place, due to unexpected demand, and there are no qualified linguists available with the required language combinations to meet the need e.g. an influx of migrants from another country due to war or natural disaster.

Emergency responses are rarely satisfactory. Trainers, professional bodies or interpreting and translation agencies are often turned to for help. What follows are suggestions as to what might be done in such circumstances, where there is no other option:

- **Select the best interpreters that can be found** through:
  - assessments similar to those described in Chapter 3 and
  - taking additional care, particularly if selecting from a refugee group, to take account of the degree and nature of post-migration trauma. For example, a traumatised individual with good language skills may either be damaged further by being given responsibility or be helped through being given something useful to do.
- **Clarify matters with the legal services or immigration authorities**, so that they:
  - are fully informed, in advance and in writing, about the likely linguistic and professional limitations
  - are briefed as to how to make the best use of the skills available - including the need to encode what they say simply and unambiguously, listen carefully and cross-check essential facts
  - do not expose emergency interpreters (EIs) to unnecessary emotional pressures - albeit unintentionally- and show that their efforts are valued. Even those who are not refugees are taking on considerable responsibilities with inadequate preparation.

- **Give as much briefing and orientation** as time allows. This may range from an hour after the plane arrives bearing asylum seekers or refugees up to three weeks. It has to be remembered that learning processes are likely to be affected where the EIs have themselves been subject to recent stress.

The following should be included:

- information about the interpreting and translation tasks to be done
  - the codes of conduct and guide to good practice. It should be noted that the code and general guide are designed to accommodate this situation by, for instance, showing it is acceptable to say when one does not understand and why impartiality and confidentiality are important (if difficult to observe)
  - the main terminology to be involved, and the equivalents
  - the likely format and purpose of interviews and hearings
  - the basics of two-way dialogue interpreting techniques
  - short interpreting role-plays, WITH the legal service personnel they will be working with
  - the meaning of any standard documentation or forms to be completed
  - problem solving strategies and routes to assistance (see below)
  - health and safety.
- **Clarify the EI 's role with members of the other language group** so that:
    - they too are aware of possible linguistic limitations and will encode clearly and simply - but also how these are being overcome
    - the code of conduct the EIs are obliged to observe, so that pressure is not put on them to breach confidentiality and impartiality
    - their position within their own language group is not distorted in a negative way.
  - **Ensure proper employment arrangements** which include:
    - scale of fees and subsistence et al
    - insurance cover.
  - **Support**
    - mentoring (see previous sub-section)
    - help from qualified counsellors where needed
    - where EIs are part of a refugee group, ensure that they and their families are not losing out on accommodation, courses and facilities provided for others
    - immediate access to practical informed help where difficulties are encountered
    - access to bilingual glossaries and web-sites where possible
    - on-going in-service training.
  - **Post crisis**
    - de-brief adequately
    - support a recovery period
    - provide appropriate references where required and useful
    - offer career guidance where appropriate
    - offer access to formal training in interpreting and translation for those who have proved their aptitude and for whom work would be available upon qualification.

## **TRAINING AT PROFESSIONAL POSTGRADUATE MA LEVEL**

### **The nature of the course**

To begin with, it should be stressed that it is absolutely necessary to provide courses on legal translation and interpreting at a professional postgraduate level because the complexity of the legal context, by its very nature, requires a high degree of specialisation.

It is important and necessary to ensure that the postgraduate level should not be an isolated course, but that it should be set up in relation to the initial professional level, with elements of continuity and progression so that it furthers the practice and knowledge of the student and avoids any unnecessary repetition. In this way the course can concentrate on specialised areas which might have been left uncovered because they were considered too difficult for the Diploma or First Degree level. It is important to underline the need to give this postgraduate course a specialised character in order to be able to cover in depth the practice of translation and interpretation in the different areas of the legal system. After all, the underlying idea of such a programme must be: to promote the understanding of the discipline, implement the codes of ethics and good practice and introduce the students to more specialised fields within the legal system, using more in-situ cases as well as the literature on court and legal interpreting.

As is the case with the initial professional level, there should be a course core held in common in the different countries for the same reasons that were already mentioned at the initial level, such as the transfer of credits, equivalencies, etc., although, at the same time, we would once again suggest the possibility of various optional specialisations that may be specifically covered by courses organised in the different countries. This would allow for a wider range of modules in this field of study and would also offer the student the possibility of studying his or her desired specialised area in a different country. This broad scope of specialisation would allow the students the possibility of adding extra modules to their repertoire while completing the course and also allow those having completed the postgraduate course, to continue their education by enrolling in other specialised optional modules offered in the other countries.

### **The aim of the course**

The general aim is to further the knowledge and practice of legal translation and interpreting.

The specific aims are:

- To train candidates to become specialised legal translators and interpreters.
- To foster research and produce specialists in the field of legal translation and interpreting. Research at MA level could well provide a stepping stone for students wishing to continue their studies at PhD level. This would undoubtedly be of great benefit to the profession and the body of knowledge as a whole.
- To lay the basis for the training of high calibre teachers in legal translation and interpreting.

### **Course objectives**

At professional postgraduate MA level, the programme should

- further the knowledge of the candidates in the criminal and civil legal system of the country hosting the course
- provide European Law modules on issues such as immigration, family law, tax law, etc.
- further the knowledge in the field legal translation and interpreting
- improve written and spoken competence in both languages in both formal legal language, everyday language as well as improvement of the ability to listen to and comprehend different varieties of a language
- improve translation and interpreting skills (transfer skills, one and twoway interpreting) in specific and specialised settings
- improve communicative skills, including proper use and assessment of body language, efficient use of speaking techniques, etc.
- be able to use translation and interpreting strategies such as adaptation, modulation, etc. effectively
- and be able to work as professionals, i.e. how to
  - prepare for a particular case applying documentation skills correctly and efficiently
  - deal with financial management, etc.
  - implement the code of conduct.

### **The level of the skills**

It needs to be emphasised that the aptitude tests already mentioned in chapter 3, aimed at the selection of candidates, are vital for further specialised training too. These aptitude tests, which gauge the level of competence of the candidates' working languages as well as their mastery of transfer skills, among others, are necessary in order to select the right candidates capable of meeting the rigours of a postgraduate legal translation or interpreting course.

An institution should aim to accommodate a manageable number of students so that effective close monitoring and evaluation of students and their work can be carried out. As a result, constructive feedback can be given to the students.

### **The length of the course**

Although there will be established national educational conventions, ideally a postgraduate course in legal interpreting and/or translation should offer the option of a two-year course part time or one-year course if attended full time.

### **Tutorial team**

It is suggested that the multi-disciplinary tutorial team comprise

- experienced teachers of interpreting, translation and applied linguistics at postgraduate level
- practicing members of the legal services, with proven training skills
- senior legal interpreters and translators
- language tutors, where other members of staff do not cover the languages of all the students.

For economic reasons, the deployment of the members of the tutorial team may have to be carefully judged to make the best use of their contributions on a sessional basis. The considerable investment of time needed, for the proper co-ordination and briefing of a multi-disciplinary teaching team, appears to taper off as members gain experience. It also becomes easier to induct new members of the team, over time, against the context of a strong creative team dynamic. Members of the teaching team are likely to conduct their own research for publication on related areas, often on an inter-disciplinary basis.

### **Format of the course**

Tutors of postgraduate interpreting and translation courses will need to be experienced in the delivery of courses through a combination of approaches which include

- classroom teaching and seminars
- monitored practice and supported student study
- project work
- dissertations.

Tutors may, however, like to consider the following important points specific to legal interpreting and translation and the need to:

- use realia: the graded texts for translation and scenarios for interpreting, which the students work on, should be based upon real-life legal situations. It should be noted that the conventions of professional confidentiality should be observed, where appropriate, when using such material
- accommodate both the formal terminology of the legal services but also the other registers and codes used
- emphasise the essential importance of the code of conduct: students should be constantly reminded of the need, for example, to observe confidentiality, impartiality, accuracy and also integrity in professional dealings
- support observance of guides to good practice relevant to the legal services
- involve legal services practitioners, not only to teach and help the students but also to develop their own expertise

- support students in drawing upon, sharing and reflecting constructively upon their own professional experiences. This may, at times, best be done in collaboration with senior legal interpreters and translators and legal service practitioners familiar with the professional context, possibly in the form of a ‘shadowing scheme’, i.e. accompanying a legal interpreter or translator
- encourage students to be responsible for their own continuing professional and personal development (See chapter 5)
- encourage relevant research so that it develops the student and the body of knowledge in a relatively new subject area, and instils the necessary rigour of approach.

### Course organisation

As on the Initial or First Degree level, the following elements should be considered in the introductory phase:

- About the **course**: programmes and time tables with an academic calendar showing holidays, assessment periods, etc., should be circulated before enrolment time, so that students can make informed decisions.
- About the **tutors**: the programmes should include a presentation of the lecturers who would be teaching the modules and perhaps even their academic and professional experience in the field.
- About the **students**: social events could be organised to establish good contacts and a sense of companionship among the students.
- About the **institution** offering the course: its location, transport facilities, a map of the campus, etc.

### Learning strategies

The continuous and conscious use of learning strategies in translation and interpretation activities allows the students to progress in their achievements and contributes to their further development as they learn to control and monitor their own future activities as professionals. In this respect we would mention, on the one hand, the importance of meta-cognitive or indirect strategies that refer to the conscious control of the learning process by the individual such as advanced organisational planning, self-management and self-monitoring and, on the other hand, cognitive strategies specific to translation and interpreting activities such as repetition, grouping, summarising, substitution, elaboration, note-taking, inferencing, etc. We could, thirdly, also mention interpersonal and socio-affective strategies, which are obviously also very important, especially in the case of interpreting.

### Course programme

The following outline programme could be adopted so as to fulfil the general aims and specific objectives of the postgraduate professional level, offering core modules combined with optional modules.

- Written and spoken competence in both languages, again using more specific and complex legal texts and contexts, with different types of speakers using different varieties and registers.
- Transfer skills. One and two-way dialogues, short consecutive and whispered simultaneous interpreting techniques, sight translation and written translation skills, emphasising the perfecting of the skills intrinsic to each of the modes, such as the ability to listen and speak at the same time, listening and note-taking as well as analysing and searching for equivalents.

Interpreting techniques could be trained through

- role-plays, extemporaneous or documented by the students or teacher to practice the necessary specific areas, to be role-played in class and videotaped for assessment
- recordings of real-life cases, either with interpreting or not, and recordings of quality fictional programmes that present a legal case ‘truthfully’ and ‘realistically’. Such programmes allow the students to analyse and evaluate the linguistic, ethical and legal complexities that a professional might encounter as a practitioner. They also help to enrich the students’ understanding in the field.



Translation and sight translation activities should mainly concentrate on complex legal texts of a specialised nature. The course should emphasise the knowledge, understanding and efficient usage of translation strategies.

- Knowledge of the legal system: a combination of core and specialised modules to be decided by each university, incorporating comparative European Law on current and important issues such as immigration, criminal law, tax law, family law, etc.
- Applied linguistics for translators and interpreters. The more practitioners know about the structure of the languages, their syntax and grammar, the greater their confidence will be. Emphasis should be on language registers and varieties, for example on the differences in the varieties of English spoken around the world.
- Languages and their cultures. The study of the cultures of the students' working languages in the different countries. The aim is to broaden and give depth to the students' cultural understanding and sensitivity.
- Study of legal translation and interpretation issues. The advanced study of these disciplines as fields of knowledge, through a thorough understanding of the literature, which itself could lead to further research, possibly combined with specific practical studies.
- Codes of conduct and guides to good practice. Students should increase their understanding of the code of conduct and its implementation in the different contexts. At this stage the further study of the code of conduct could be done through the study and discussion of specific legal cases.
- Documentation and Computer skills. To facilitate the access of the students to information resources, either as researchers or as professional practising interpreters or translators.
- A specified number of additional modules to be chosen from a series of options to develop, such as
  - training the trainers
  - research based on published works by interpreters and translators, the aim being to understand the contextualisation of their function objectively and sensitively
  - specialisation through projects
  - a compulsory dissertation
  - work placement.

The above is a selection only, there could be others.

### **Professional mentoring**

Due to the nature of the professional postgraduate level course the need of mentoring either on legal matters or on translation and interpreting issues may be greater. Therefore students should have access to established and experienced legal translators and interpreters for the same areas already mentioned at initial level.

It has been found particularly helpful to arrange professional work experience, supervised by senior legal interpreters and translators, alongside and/or after the course to support students embarking on the higher level of practice. This could take place in a range of areas such as legal translation firms, higher or specialised courts, or attached to a service dealing with specialised activities such as drug rehabilitation, child abuse or victim support. The following points are worth discussing:

- matching the placement to the students' needs
- ensuring that the normal good practice over working arrangements is in place, such as insurance and letters of agreement/contracts
- lines of communication, responsibility and accountability
- negotiating and setting out clear arrangements for supervision: who, when and how
- using the supervised work experience constructively.

## CHAPTER 5

# Continuing Professional Development

*Edda Ostarhild*

### WHAT IS CPD FOR LEGAL INTERPRETERS AND TRANSLATORS?

Continuing Professional Development (CPD) is not a new concept. It defines and formalises some specific activities which all professionals are engaged in, namely to keep abreast of new developments in their particular area of work or be at the forefront of such developments through innovation and research. In this way, CPD helps to safeguard the standards required by any profession and thereby contributes to the standing of the individual practitioner, the status of the profession as a whole and the confidence employers and clients have in such professionals.

CPD is, therefore, of particular importance to legal interpreters and translators who in some European countries are a new or developing profession which is currently seeking full recognition alongside other established professions. CPD is also important for them because the law, its procedures and applications are constantly changing. Practitioners (legal interpreters and translators) need to be aware and informed of such changes in as far as these affect their competence as legal interpreters and translators in the work-place.

Practitioners in the legal field frequently deal with matters affecting life, health and security, immigration, family law, drug trafficking and international crime. These represent serious responsibilities for legal interpreters and translators. However, in most European countries they are not yet recognised as a regulated profession. A recognised CPD system, standardised in some crucial respects, would provide an essential safeguard for the standards of this profession and would be an important step on the road to becoming fully regulated.

As a rule, the codes of conduct of most professional membership bodies, other than the regulated professions whose regime is more prescriptive, require of their members to keep abreast of developments and to update their skills and knowledge which means CPD in the widest sense. This also applies to the proposed codes of conduct for legal interpreters and translators in the European Union. In this sense, CPD covers activities all professionals are familiar with. (See chapter 7)

### CPD ACTIVITIES FOR LEGAL INTERPRETERS AND TRANSLATORS

For legal interpreters and translators a wide range of relevant and in the main familiar activities could be listed which are now regarded as part of CPD. Though by no means comprehensive, a random list of CPD activities for legal interpreters and translators could include:

- consulting sources of information and comment on current practice and research, including professional journals, the specialist press, other publications, other media, videos, libraries, the internet
- attending courses, conferences, seminars, workshops, lectures, meetings and interpreters and translators practice sessions to improve or upgrade the skills base, knowledge of legal systems, terminology and procedures
- producing and presenting papers, lectures and workshop material for courses, conferences and other events
- researching and producing papers, articles, chapters and books for publication
- organising and chairing conferences, meetings and other relevant events
- improving management and administrative skills that may be helpful for legal interpreters and translators
- updating technology including relevant data banks, translators software packages, machine translation, simultaneous interpreting equipment (if required)

- upgrading skills and knowledge through further study
- improving the skills and knowledge base in other ways.

### 1 Some factors governing uptake of CPD

CPD activities are governed by a number of factors, some seemingly extraneous, including time, location, availability, costs and eligibility. As a result, CPD activities may be a patchwork of the possible, the affordable and the individual professional's inclinations and preferences. However, as CPD is currently gaining in importance and status - in the eyes of the employers, service providers, professional membership bodies, clients and the practitioners themselves - it is well worthwhile to consider structuring these activities.

### 2 In what way and at what time should the individual practitioner start getting involved in CPD activities?

There are a number of determining factors that will help the individual to pursue CPD actively.

- **Self-assessment.** This is based on an awareness of the level of one's own competence, performance and confidence and requires both a knowledge and understanding of the standards required and of the level of one's own performance. The aim should be to bridge the gap between the two with the help of CPD if such gap exists or to strive for improvements in performance, increased competence or expertise.

One way of monitoring one's performance effectively is to assess in advance what a particular assignment entails and how it would best be carried out. That preparatory process is both a useful monitoring device and a practical way to prepare for an assignment. It requires a detailed understanding of what the assignment entails in terms of knowledge, terminology and linguistic interpreting skills. Notes would help to serve as a written record of what progress is being made. Such notes can be referred to from time to time as part of the monitoring process. Consultation with other practitioners, supervisors, representatives of the legal agencies would also assist in the monitoring process although outside the scope of self-assessment.

- **When to start?** Self-improvement should be an ongoing process - hence the concept of continuing professional development. It is usually assumed that CPD comes into play once formal training has been completed though awareness of one's own performance, self-assessment and the process of monitoring are also part of training itself. What is important is not to lose sight of CPD at the time when newly qualified practitioners seek to establish themselves. At that time CPD is most helpful in supporting both the individual's performance and self-confidence which in turn will have a positive effect on the quality of performance.
- **Longer term aims.** Self-assessment is most effective if practitioners have some longer term goals against which they can measure their current performance and competence though at this early stage a complete plan may be too restrictive and would need to be revised frequently. Some tentative answers to the questions 'Where do I want to be in two, five, ten years?' and 'How do I get there?' could be helpful even though one's own perception of what is desirable or required may change, as indeed may external circumstances.

### 3 CPD and Lifelong Learning

The question is sometimes raised as to how **Lifelong Learning** and **Continuing Professional Development** compare. Are they identical? Are they different? Different in what way? While there are different ways of comparing these two concepts it is certainly the case that Lifelong Learning is most closely related to unstructured CPD which individuals carry out because they are personally interested in certain issues and activities relating to their profession. Once other motives, such as prospects of promotion, additional pay and responsibilities come into play, the individual may decide to plan and structure available time to more productive effect and Lifelong Learning changes into semi-structured CPD.

## **SEMI-STRUCTURED PERSONAL CPD PLANS AND STRUCTURED WORK-PLACE CPD SYSTEMS**

Two factors determine the creation of more focused structured forms of CPD:

- The individual interpreter's and translator's own professional interests which could lead from unstructured CPD activities to a Personal CPD Plan which tends to be semi-structured.
- The need of the employers, legal agencies and other service providers for highly competent and up to date legal interpreters and translators.  
This could result in the creation of work-placed CPD Systems that are as a rule structured.

### **1 Semi-structured Personal CPD Plans**

#### **What are the advantages?**

CPD (as set out above) offers the individual legal interpreter and translator many advantages because

- CPD keeps the legal interpreter and translator in touch and keeps professional interests alive.
- It improves competence, performance and confidence, sometimes in difficult and even life threatening situations.
- Interpreters and translators are autonomous and can determine the direction of their own professional development.
- It helps to reassure the legal agencies, service providers, prospective employers and clients resulting in improved prospects for the practitioner.
- CPD supports staff appraisals.
- It could open up new career prospects.

#### **How to develop a Personal CPD Plan?**

The advantages that CPD provides may motivate individual practitioners to consider how to turn unstructured CPD activities into a more coherent semi-structured Personal CPD Plan. Self-assessment (see above) plays an important part here. A first step would be to find answers, as far as possible, to the following questions:

- What are my strengths and weaknesses?
- What do I need professionally in terms of experience, skills and knowledge now and in the future?
- How much do I need and want to acquire and in what sequence?
- How can I best meet these goals?
- Should I consult or collaborate with employers or colleagues?
- What outcomes, short and long term do I want?
- What time-scale should I aim at?
- What are the benefits of this investment and who pays for it?

As practising legal interpreters and translators gain experience and insights they may develop particular skills, knowledge and interests working in particular areas. They may decide to develop these into a special

dimension of their area of work. For example, experienced legal interpreters may find cases involving family law or relating to immigration particularly important or challenging and relevant to their language combination. They may, therefore, wish to improve their performance especially in these areas. As a result, CPD activities may be pursued in a more focused way, possibly in consultation with the legal agencies concerned but also with training course providers.

Likewise, experienced professionals may be invited to assist in the training of newcomers to the profession as group trainers or as mentors for individual legal trainee interpreters or translators. As practitioners these experienced professionals may also contribute to the training of the trainers. These activities require preparation, which is all part of the individual's CPD.

### **The creation of a Personal CPD plan requires self-motivation and discipline.**

There is sometimes a degree of resistance among practitioners towards developing such a plan, on the grounds of time, effort, cost and benefit plus a general reluctance or unwillingness to admit that even experienced practitioners need CPD and would benefit from a Personal CPD Plan.

Sometimes this reluctance is summed up in 'Do I really need this?' Usually the most experienced and most highly regarded members of any profession support structured CPD wholeheartedly and may well have reached that position themselves by extensive involvement with CPD. In any case, any unstructured CPD activity also requires time and effort but does not usually increase job prospects or higher earnings expectations to the same degree as Personal CPD Plans and work-place based CPD Systems frequently do. Even job satisfaction may be enhanced to a higher degree through a structured CPD System rather than unstructured CPD activities.

## **2 Structured work-place CPD Systems**

CPD Systems for legal interpreters and translators are equally relevant for

- the legal agencies, service providers and employers
- professional membership bodies
- course providers, academic institutions and training organisations.

CPD Systems usually involve one or more practitioners as well as the employers and/or professional membership bodies. Between them they may wish to agree on certain details which are vital for CPD and which can be summed up as

- who
- what
- when
- how much
- who pays for this investment?

## **CPD AND EMPLOYERS, PROFESSIONAL BODIES AND ACADEMIC INSTITUTIONS**

**Employers** may be involved in CPD Systems as and when serious shortages of competent practitioners occur or they may wish to ensure maintenance and improvement of standards as part of their general education and training policies. **Professional membership bodies** develop and support CPD Systems as a safeguard of standards seeking thereby to ensure the standards of the profession as a whole or of certain specified categories of membership. **Academic institutions and training organisations** may provide relevant courses. This usually involves consultation or collaboration with employers and/or the professional membership bodies. In addition to maintaining standards generally, CPD Systems also ensure that certain practitioners are trained and qualified to function in certain essential specialisms.

The involvement of practitioners in CPD Systems may be based on their own interests and/or their awareness of a need for higher standards or certain types of expertise or specialisms. This in turn may mean additional qualifications, improved employment prospects and job security or higher earnings capacity.

Alternatively, depending on need, the **legal service provider** may suggest to individual practitioners further specialisation or qualifications. Such practitioners may or may not be interested in further training and qualifications but by reason of their particular experience and expertise they may, in the eyes of the employers, be the right individuals for further training. Eventually, the benefits would be the same as long as the practitioners can generate the necessary enthusiasm and commitment.

**Academic institutions and training organisations** may offer a variety of courses covering various aspects of continuing professional development. They may include short general refresher courses, short specialist courses, including weekend sessions, for specific purposes, for example updating of legal terminology or knowledge of procedures in a specialist area. Course providers may vary their range of courses depending on employers' needs, practitioners' interests and, not least, the practitioners' languages. For certain courses some of the input should come from legal personnel with training experience.

For legal interpreters with a First Degree or Diploma qualification such as the UK Diploma in Public Service Interpreting, further study might cover a particular specialism or lead to an MA qualification. This is a desirable and in some contexts essential qualification. At present, not all EU member states provide as yet First Degree equivalent qualifications and higher degrees in legal interpreting and translation, especially not in the wide range of languages required. This is likely to change as the implementation of the Human Rights Convention requires equal access to justice for all EU residents regardless of their country of origin, language and other cultural and social factors. This in turn necessitates the services of competent qualified and wherever possible experienced legal interpreters and translators in a very wide range of major and less widely used languages covering all parts of the globe.

## **HOW TO RECORD AND EVALUATE CPD**

Some CPD systems, especially those of **professional membership bodies**, can be formalised and weighted according to the particular CPD activities involved. Some professional membership bodies have a point scale with set time limits. For example reading journals must not take up more than a fixed percentage of the total hours the individual spends on CPD per annum. This total may lie in the region of 35 to 50 hours minimum. Most schemes require evidence that CPD has taken place, recorded by the individual practitioner and verified, for example by confirmation of attendance at conferences and random spot checks.

These schemes frequently operate on the principle of 'stick and carrot', the carrot being special desirable titles (such as 'chartered' or 'Fellow' denoting in Britain a recognised senior status within a profession), the stick meaning exclusion from particularly prestigious, lucrative or specialised types of professional work. The professional bodies for interpreters, translators and other linguists do not appear on the whole to be in the vanguard of developments towards comprehensive CPD Systems. Much development work, including even awareness raising, needs to be done to achieve for legal interpreters and translators what is, for example, already in place for accountants, the legal and medical professions and certain sections of science and technology.

### **The introduction of a CPD System requires agreement on**

- what should count as CPD
- how are CPD activities valued (point system, weighting)
- for which level(s)
- for what purposes
- how are CPD activities recorded and verified
- what total CPD per annum/level/course is needed to meet the purposes agreed
- what combination of activities would achieve agreed purposes best at particular levels (weighting)?

### **CPD systems support and benefit**

- **The individual practitioner** by maintaining commitment, competence, careers and future prospects, status and rates of pay.

- **The profession as a whole** by underpinning standards and competence, credibility and status.
- **The employers**, service providers and clients by securing a better service through updated skills, more expertise and knowledge, increased confidence, reliability.

## **TOWARDS A REGULATED LEGAL INTERPRETER AND TRANSLATOR PROFESSION IN THE EUROPEAN UNION AND THE ROLE OF CPD**

Agreed standards of training and qualification as well as agreed and specified minimum requirements of CPD are prerequisites of any fully developed and recognised profession. However, at present most European countries do not have a clearly defined system of training and qualifications for the profession of legal interpreters and translators for the range of languages required. Some countries do not appear to have progressed much beyond the notion that if you speak more than one language, even with difficulty, you may act as interpreter or translator, in particular for less widely spoken languages.

To achieve agreed standards of training, qualifications and a CPD system, requires the collaboration of all parties involved. The professional bodies need to work with the academic and training institutions to set standards and develop qualifications on this basis. The professional bodies would also need to ensure that their applications procedures for full membership are in line with these standards and qualifications and that membership will also be dependent on fulfilment of the CPD requirements. The collaboration of employers in using only fully qualified practitioners will be essential though in all probability not easy to secure. This may be due to lack of awareness of the dangers of using unqualified or inadequately qualified practitioners or the prospect of lower fees.

Finally, these agencies, training institutions, professional bodies and employers would need to negotiate with the relevant authorities to get standards, qualifications and CPD requirements recognised and enshrined in the law. An agreed European code of conduct is another aspect of these developments. We still have a long way to go towards this goal though this **Grotius project** has been working in that direction and is now recommending agreed standards of selection, training, linguistic competence and a European code of conduct, while CPD requirements may, for the time being, continue to vary in different EU member states depending on needs and established practice.

## **IN CONCLUSION**

Today, wherever more than one language is required for effective communication in a legal context in the EU, the services of qualified interpreters and translators should be readily available. This should be so, irrespective of what languages are required, the size of population speaking these languages or their geographic origin. This is a relatively new concept that will create a much broader base for the profession of legal interpreters and translators. As the profession makes a vital contribution to the legal process, there is an urgent need for training, qualification and continuing professional development in many more languages than has hitherto been the case. The **Grotius project** on legal interpreting and translation in the European Union and candidate member states seeks to make a worthwhile contribution to this vital development.

### ACKNOWLEDGEMENTS

I am indebted to the Department of Education and Employment in the UK for detailed information on CPD policies and a number of Higher Education institutions and major British professional bodies who have provided information on their CPD systems including:

- Leeds University Skills & Departmental Development Unit
- University of Greenwich Centre of Excellence for CPD
- CACDP (for British Sign Language Interpreting)
- The Chartered Institute of Marketing
- The Institute of Chartered Accountants
- The Institute of Directors
- The Institute of Physics.

My thanks are also due to LNTO (the Languages National Training Organisation in the UK) for allowing us free access to the *National Language Standards*.

#### NOTES

Since the mid 1990s a number of British government agencies have examined aspects of CPD including

- UKUCoSDA Task Force 5, 1994, occasional Green paper No.10, 'Continuing Professional Development for staff in Higher Education.'
- QCA discussion paper No.1, July 1998, 'Standards and vocational qualifications in continuing professional development (CPD)' of the Qualifications and Curriculum Authority in Britain, which also contains a bibliography on CPD.
- *The National Language Standards, Interpreting level 5*, August 2000, of LNTO (Languages National Training Organisation of the UK) elements Int. 5.3.1 and 5.3.2 on CPD.
- *The National Language Standards, Translating levels 4 and 5*, November 2000, of LNTO (Languages National Training Organisation of the UK), elements T 3.1, 3.2, 3.3 and 3.4 on CPD.

For further references see also Bell, 2000; Connell, 1998 and Ostarhild 1997, 1998 and 1999.



## CHAPTER SIX

# Training the Trainers

*Ann Corsellis*

Trainers are the lynchpins of any profession. It is they who not only inculcate information and skills but also educate all future members of the profession in the standards, values and conduct required of them.

The best trainers act as examples of the rigour and sense of responsibility needed for the task ahead. Equally importantly, they pass on their own enthusiasm, intellectual curiosity and pleasure in the pursuit of excellence.

Legal interpreting and translation are not new branches of the language profession. They have been practiced for hundreds of years. What is new is the increasing number of practitioners needed (and needed quickly), the range of languages to be covered and the development of professional regulation.

Listed below are some of the many reasons why a specialist cadre of trainers is needed to take matters forward:

- Consistency in the approach and standards of trainers, promotes consistency of approach and standards of practice in a rapidly developing area of work.
- Implementation of any changes in course content, which may be required to keep abreast of current thinking and practice, is more easily done through an identifiable group of trainers.
- Legal interpreting and translation are specialised activities. They are best taught by people who are both experienced practitioners and have the necessary training skills.
- Legal interpreting and translation comprise a series of interdependent skills. It is more cost-effective and beneficial to have one person competent to teach as many of those skills as possible, than to have separate trainers for each skill.
- Informed co-ordination is required to maximise the use of any additional input from tutors in other relevant specialised fields e.g. the legal services.

### SELECTION OF TRAINEE TRAINERS

It would be unfair to potential trainers, and to their future students, to select those who are unsuitable for the task. Not every experienced practitioner, in any field, is equipped with the personality and attributes to pass on their skills to others and there are many whose talents lie in other directions. Successful trainers have that special blend of patience, perception, generosity of spirit and discipline which enables them to face a new set of students every year and then lead and support each one of them through a learning process, within which the students develop as individuals as well as practitioners.

In reality, most of those applying to train as trainers will have had some experience of teaching their skills and a certain amount of self and peer selection is likely to have already taken place before application for formal training.

Carefully structured selection interviews, which allow exchanges of information both ways, are clearly important but it is also recommended that objective evidence of the following are obtained and confirmed:

- qualifications in legal service interpreting and translation at post-graduate level
- satisfactory experience of practice over a specified time
- potential training skills
- appropriate psychological profile.

## **COURSE CONTENT**

Four modules are recommended.

### **1 Educational theory**

The purpose of this module is:

- To provide trainee trainers with knowledge of the main theories of education and training, so that they can have an understanding of the various pedagogical approaches and teaching methodologies.

The multi-cultural classroom presents additional challenges, which require additional preparation so that, for example, harmonisation of individual learning and teaching styles can take place.

- To provide trainee trainers with sufficient insights into the nature of the cognitive and linguistic processes, and of the interpersonal skills, involved in legal interpreting and translation.

### **2 Methodology**

This module is concerned with helping trainee trainers to develop:

- course designs and lesson plans in relation to different teaching methods for training their students in the range of skills they will need and how to support the learning process
- strategies for selecting students, compiling student profiles and for monitoring and evaluation throughout a course
- appropriate teaching materials and how to use them effectively
- quality assurance mechanisms
- classroom management skills
- ways of maintaining and improving their own teaching and professional skills.

The approaches found to be useful for the above purposes have been:

- micro-teaching i.e. teaching one small aspect of a course
- peer group teaching i.e. teaching their colleagues
- mini-seminar presentations
- individual and group assignments
- tutorials.

### **3 Teaching practice**

The purpose of this module is to give trainee trainers supported practical experience and allow them to develop their teaching skills and self-confidence. It is suggested that the following points are among those which should be considered when organising teaching practice:

- appropriateness of placements in relation to the needs of the individual trainee trainer
- prior negotiations with the host educational establishment offering placements for teaching practice e.g. their own students' needs, course design and teaching targets to be met
- supporting the trainee trainers' preparation
- supervising them during their placements
- de-briefing them after their placements
- enabling feed-back between placement hosts, trainee trainers and their supervisors
- keeping records and evaluation of placements.

### **4 Management**

This module is concerned with preparing trainee trainers who, once qualified, will be responsible for the planning and organisation of courses, which will include:

- management of resources
- accountability to whomever the course ‘belongs’ to
- building, maintaining and supporting teaching teams through, for example, selecting and briefing staff, regular consultation meetings
- selecting, briefing and co-ordinating guest inputs by, for example, individuals from the legal services, specialist terminologists
- identifying, co-ordinating and organising visits to legal service contexts
- following recognised quality assurance mechanisms, including writing annual monitoring reports
- managing any conflicts or disagreements
- observing recognised procedures for record keeping
- ensuring the implementation of health and safety procedures
- maintaining lines of communication, reporting and professional relationships within the university or college
- maintaining appropriate professional external relationships with the professional language and legal fields as a whole, and with relevant national examination and professional bodies.

Much of the above used to be learnt on the job, applying common sense and supported by unwritten ‘gentlemen’s agreements’, but matters appear to be more complex in today’s world and it is only fair to give the new trainers the basic information, skills and structures to help them on their way.

The type of approaches used might include:

- formal lectures e.g. on budgeting and employment law
- seminars e.g. on occupational psychology, team building and conflict resolution
- inter-disciplinary seminars with trainers from the legal services
- shadowing experienced members of staff
- visits to universities and colleges to see how others do things
- visits to examination and professional bodies or attendance at their public meetings
- small projects
- attendance at relevant national and international professional conferences.

## **ASSESSMENT**

Universities may care to consider a combination of approaches, which include:

- **Accreditation of prior learning and experience**

There are likely to be trainee trainers who have already covered the content of one or more modules elsewhere. Careful judgements have to be made, based upon adequate objective evidence, before previous qualifications and experience can be accredited towards qualification as a trainer of legal interpreters and translators. That evidence may take the form of a qualification e.g. a relevant post-graduate degree or an agreed portfolio.

It may be that, while a major part of the module in question has been covered, there are relevant elements missing. While proven learning and experience should not be replicated, the missing components have to be clearly identified and supplied. For example, where an individual already has:

- a post-graduate qualification in education theory - which did not include the multi-cultural or linguistic subject content components
- teaching qualification and teaching experience - but in another subject
- experience in education administration - but not in the field.

Such trainees can often be useful resources for the rest of the group.

- **Evaluation of teaching practice**

There has to be prior agreement and shared information over the:

- number of sessions (perhaps the four best out of six)
  - length of sessions
  - number, level and type of students
  - range of subject content ( i.e. not four classes on translation footnotes)
  - range of teaching methodologies and the reasons for using them
  - criteria to be applied to lesson plans
  - assessors to be used
  - evaluation criteria.
- **Project**

Projects should be based on relevant practical subjects, which will clearly support the future practice of the trainee trainers, and will contribute to the general body of knowledge in order to help others.

They need not necessarily be a written text but could take the form of the following examples, with accompanying justifications and texts:

- course designs
- teaching materials - either in hard copy or for a web-site
- teaching videos made to illustrate or support a teaching aim
- sets of interpreting role-play scenarios, critique materials
- assessment materials
- methodologies of teaching legal content, language, terminology.

## **AFTER QUALIFICATION**

Trainers need a support system, once they start their own courses. Universities and colleges will give what they can in the normal way, but this may be a new area for them with its own special demands. New trainers can feel isolated, and even experienced ones need to be kept within the loop of information and engagement with the profession. If the training component, in any profession, becomes disengaged from the whole, the whole is at risk.

It is recommended that the legal interpreting and translation profession takes steps to set up a formal structure, working with the educational establishments involved, which ensures that trainers are given access to:

- confidential and properly informed forums in which to discuss their work, including how best to deal with particular subjects or problems and student needs
- up-to-date information on developments within the profession and its practice, including terminology and procedures
- legal and linguistic expertise
- opportunities for sufficient work as a legal interpreter and/or translator to maintain their own professional skills and registration
- means of carrying out their own continuous professional and personal development.

## CHAPTER SEVEN

# Code of Ethics and Conduct and Guidelines to Good Practice

*Ann Corsellis and Leandro Felix Fernández*

A profession is defined as a group of people who share a common expertise and ‘profess’ to a code of ethics and conduct, which is in the interest of their clients, colleagues and body of knowledge and which goes beyond the self-interest of the individual practitioner.

Professions come into being where trust is required, primarily because the clients are not in a position to judge for themselves the quality of service being given at the point of delivery. Doctors are an example. Likewise, by definition, clients cannot judge for themselves the quality of the work of interpreters and translators, because the clients do not speak both the languages in question.

In order to fulfil what is required of them by their professional code, professions establish:

- selection criteria
- initial training and in-service training
- nationally recognised assessments at all levels
- guidelines to good practice
- disciplinary procedures.

All five of the above should be:

- transparent
- nationally/internationally recognised
- consistent
- accountable to the public and to the profession.

In some countries all practicing interpreters and translators must belong to a regulated profession and may even have protection of title. In other countries only interpreters and translators working in certain contexts are required to do so. It is recommended that legal interpreting and translation should be regulated. A code of conduct is central to this.

In this way, clients from all language groups can be in a position to trust the legal interpreter and translator; to know that, for example, confidentiality and impartiality will be observed and that there are clear professional procedures for identifying and dealing with any breaches of that trust.

Lawyers, police officers, probation officers, prison officers and other members of the legal disciplines have their own professional codes and guidelines and their own disciplinary procedures to preserve and maintain the integrity and probity of the legal system, and to be seen to do so. The code of the legal interpreter and translator reflects that common purpose and supports proper professional inter-disciplinary relationships.

Status cannot be given. It can only be earned through the diligent application by the individual practitioner of professional codes, values and standards agreed by the profession as a whole.

## CODE OF ETHICS AND CONDUCT

The following list comprises the core code of ethics and conduct, which it is recommended should govern the practice of legal interpreters and translators. The code may vary in detail between member states and (where they exist) should be obtainable from the professional bodies in each country in hard copy or on web-sites.

## **The core code requires that legal interpreters and translators:**

### **1 Interpret and translate truly and faithfully, to the best of their ability, without anything being added or omitted; summarising only when requested and with the knowledge and consent of all parties**

Levels of speech must always be respected. That is to say, interpreters must maintain the type of language used by the parties, such as simple, formal or colloquial. Note that, as set out in the guidelines to good practice, the interpreter may intervene to alert the parties to possible misunderstandings and then interpret any subsequent explanations where, for example, one party has not understood the formal language of another.

If abusive or obscene language is used in the source language, target language equivalents must be used. Under such circumstances, personal inhibitions must be overridden in the interests of an accurate record of interview.

It should be noted that the relatively few occasions when summarising is acceptable have to be carefully considered. Summarising causes serious concern even to experienced interpreters and translators because it requires them to make decisions on matters which they may not be qualified to judge, namely what to include or leave out. There is a difference, for example, between summarising the information given by a distressed mother to a police officer about a lost child by the river, to enable the child to be found quickly, and summarising legal argument in court or evidence in a police station.

### **2 Only undertake assignments for which they are competent**

This means that interpreters and translators must be clear about what an assignment involves before they accept it. They have to be as sure as they can be that it is within their existing competence, or that they have the time and facilities to make satisfactory preparations or research.

If they judge the assignment to be beyond their competence, they must decline it.

### **3 Disclose any professional limitations which may arise during an assignment and take steps to remedy them or withdraw**

It is not always possible to predict what may arise during an assignment, despite the most careful preliminary enquiries and preparations. Recognition and admission of limitations are acceptable in all professions, and always preferable to the alternative.

### **4 Do not delegate accepted assignments, or accept delegated assignments, without the consent of the parties concerned**

Good practice requires that accepted assignments are always honoured, except where there are real emergencies. On these occasions, the employer/client should be contacted at once. An appropriately qualified substitute can be suggested where the client is not aware of one. Contracts or letters of agreement for the assignment should be revised accordingly. Accepting delegated assignments without consent is bad practice and risks placing all parties in legal and professional difficulties.

### **5 Declare any conflict of interest arising from an assignment and withdraw if any of the parties so require**

The following are examples of such a situation:

- A client is known personally: e.g. a relative or close neighbour. It is considered bad practice to accept assignments involving a relative. Given that linguists may at least be aware of individuals in their own local language community, where clients are known personally to them has to be declared, and the potential for conflict of interest assessed by others involved (for example, by the court) and agreed by all parties.
- A client is known from a previous assignment. It would be difficult to be seen to be preserving the necessary impartiality where a previous assignment allowed the interpreter to be privy to information

that was not appropriate to the current assignment. In some countries it is not acceptable, where separation of stages of legal process is required (e.g. preserving the separation between the investigative and judicial stages), for the same interpreter to act in more than one.

- The interpreter has shares in, or close relatives employed by, a company that has become involved in the legal process.
- There may be risks to personal security or embarrassment where a case involves a matter which gives rise to unusually heated local feelings e.g. child abuse, contested domestic disputes, racial disputes. In such matters it may be wiser for an interpreter from outside the area to be called in and not publicly identified.

## **6 Observe confidentiality**

Interpreters and translators must treat as confidential any information, which may come to them in the course of their work including the fact that they have undertaken a particular assignment. This does not preclude them from making use of their experiences, on an anonymous and strictly confidential basis, within recognised structures of professional support and training where colleagues are bound to observe the same codes.

It should be reported to the proper authorities immediately if any significant approach is made to legal interpreters and translators which attempts to breach their confidentiality; if, for example, they are approached by the press or parties related to the case who are not entitled to information.

## **7 Observe, and be seen to observe, impartiality**

The role of legal interpreters and translators has to be one of complete impartiality, whatever their personal feelings might be. They have to be scrupulous in avoiding the appearance of partiality. This involves interpreters, for example, avoiding:

- appearing to be over-friendly with any of the parties for the defence or the prosecution
- involving themselves in discussions with one party which are not known to the other parties
- being seen alone with a party during breaks e.g. during court hearings
- demonstrating, even non-verbally, their own feelings or views
- giving advice or opinions.

If their impartiality is at risk, they must declare themselves professionally embarrassed and withdraw.

## **8 Do not use any information gained during the course of their work for the benefit of themselves or anyone else**

## **9 Decline any reward arising from an assignment other than the agreed fees and expenses**

Individuals often wish to show their appreciation of the legal interpreter or translator by offering gifts. In some cultures in particular this is a polite convention.

Sometimes gifts are offered for other motives. It is therefore required that all gifts, or any other type of reward, are declined. If this is known to be an absolute requirement, then any appearance of discourtesy is avoided. Any approach that is thought to be an inducement to corruption should be reported at once to the proper authorities.

## **10 Seek to increase their professional skills and knowledge**

Languages, language usage and legal procedures change and move on. Legal interpreters and translators are constantly challenged by new subject matter, terminology, jargon and procedures. (See chapter 5)

## **11 Safeguard professional standards and offer assistance to other interpreters and translators whenever reasonable, practical and appropriate**

This item of the code reflects the individual interpreter's and translator's responsibility to their profession as a whole.

Legal interpreters and translators are under a duty to do what they can to contribute to overall standards and, as part of that, to give assistance to one another wherever practicable.

### **GUIDELINES TO GOOD PRACTICE**

Guidelines to good practice are designed to support the

- practical implementation of the code
- best possible communication outcomes
- application of agreed inter-disciplinary conventions e.g. between linguists and members of the legal services.

Guidelines are not mandatory in the way that the code is, but should be followed wherever possible. This approach reflects a recognition that, in practice, circumstances may arise which make it difficult to follow the guidelines. However, should disciplinary proceedings arise where the guidelines were not followed, the disciplinary panel is likely to require an explanation.

It is recommended that guidelines to good practice be set out and made available in each country and in relation to each legal service, including:

- police
- criminal and civil courts and tribunals
- probation service
- prisons
- immigration service
- customs and excise.

(The list of services or organisations included within a national legal system, may obviously differ between countries).

#### **1 Assessing an assignment before accepting it (Code item 2)**

When contacted about an assignment, interpreters and translators should check the following, before deciding whether they are competent and able to accept it.

- Language and dialect match: it should be confirmed that there is a match between the best language of the client(s) and that of the legal interpreter or translators, and whether there are any dialects or regional variations of the standard language to be accommodated e.g. Scottish English. Interpreters can confirm this through a telephone conversation with the party concerned where this is necessary and appropriate.
- Availability for the assignment: the day(s), times, length and location:
  - translators should be satisfied that they are able to complete the text to a proper standard by the date of delivery expected
  - interpreters should consider the practical implications of travel times and arrangements.
- Subject matter: cases involving particular subjects e.g. fraud, defective brake linings on a lorry, assault, child abuse, all give rise to a particular terminology. Interpreters and translators have to be satisfied that either they are familiar with that terminology or that they can, in the time allowed, carry out the necessary research. Translators can assess the complexity and specialist nature of the text.



- Procedures: these differ according to context. Coroners courts, industrial tribunals, youth courts, criminal courts, immigration appeals, prisons and police interviews all have their own procedures and processes which need to be understood.
- Absence of conflict of interest (**Code item 5**): the name of the client(s) and the subject matter will allow interpreters and translators to ensure that:
  - the defendant or witness is not related to them, or known to them in a way which may give rise to conflict of interest and
  - they have not interpreted or translated texts in previous or current matters which might give rise to conflict of interest e.g. where separation between the investigative and judicial stages of a criminal case is to be preserved.
- Gender requirements for interpreters in matters involving, for example, rape or child abuse.

## 2 Accepting an assignment

Legal interpreters and translators are wise to compile their own check-lists for use and record taking when accepting an assignment, which include the following items:

- Confirm the name and details of the contact person.
- Confirm name of client/case and file number.
- Organise and confirm contract or letter of agreement. (See chapter 8)
- Clarify and confirm any security requirements or arrangements.
- Translators should clarify the type of presentation required, how the text is to be delivered e.g. e-mail, fax, hard copy or disc and any necessary arrangements for proof reading or checking.
- Translators should clarify and confirm how such matters as non-functional equivalents should be dealt with e.g. by footnotes or explanations within the text in the target language.
- Organise and confirm arrangements for any briefing that may be required by the legal services on such matters as terminology or procedure.
- Organise and confirm any arrangements that may be necessary to facilitate the interpreting process during the assignment.

## 3 When the interpreter arrives for an assignment

Interpreters should:

- Be punctual and arrive some time before the assignment starts in order to complete preparations and be told of any last minute information. Where emergencies cause delay, inform the legal client at once.
- Observe dress codes. Respond to the formality of hearings and interviews by, for example, male interpreters wearing a suit and tie in countries where that is formal dress. Working on the road-side after an accident is a different matter.
- Wear identification: Some countries have identification badges for interpreters bearing their photograph and the word INTERPRETER in large letters on the front and their name and registration number on the back. This is done for security reasons and also to allow the interpreter to be identified, for example, across a courtroom or in the melee of the aftermath of an accident.
- Report to the correct person immediately, showing them the letter of appointment and identification badge.

- Check any necessary arrangements e.g. microphones and seating positions so that you (the interpreter) can see and hear those speaking and can also be seen and heard. Note that sign language interpreters need to be in different positions from spoken language interpreters.

#### 4 Before the interpreter's assignment starts and in the presence of a member, or members, of the legal services

- Check language/dialect match, if not previously done, by having a short conversation with the client on a general topic to ensure adequate mutual comprehension. Where required this could take the form of interpreting a conversation between a member of the legal services and the client.
- Inform all parties that all that is said will be interpreted (**Code item 1**), that nothing should be said during the assignment which is not to be interpreted; that interpreters are bound to act in a confidential and impartial manner. (**Code items 6 & 7**)
- Ensure, if at all possible, that the parties to be involved understand the interpreting process, so that they can accommodate it. This includes:
  - using direct speech
  - expressing themselves clearly and unambiguously
  - pausing, and at the right places, to allow for consecutive interpreting
  - allowing the interpreter to keep pace during simultaneous interpreting
  - responding appropriately to interpreter interventions
  - allowing the solo interpreter breaks, at least every hour.
- Confirm names and their correct spelling and pronunciation for all concerned.

#### 5 During an interpreted assignment

- Interpret all that is said, summarising only with the consent of all parties. (**Code item 1**)
- Use consecutive or simultaneous interpreting techniques as required.
- Intervene when necessary for the following reasons, informing all parties in both languages as to the reason:
  - to clarify the meaning of something which has been said in order to be able to interpret it correctly
  - to alert one of the parties that, in spite of accurate interpreting, the other party may not have understood what has been said
  - to alert all parties to a possible missed cultural inference and ask the party to explain it i.e. where communication is breaking down because differing cultural frameworks have led to one party assuming erroneously that another party has a background knowledge of a set of traditions, conventions etc
  - to ask for accommodation of the interpreting process e.g. that someone is speaking too quickly, quietly or for too long or that someone is being abusive/offensive in ways which compromise the interpreting process.
- The interpreter should interpret any subsequent explanations and not give their own advice or opinion. This avoids situations where the interpreter has conversations in one language which are not accessible to speakers of the other language and also preserves the interpreter's impartiality. (**Code item 7**)
- Where explanations are asked for of the interpreter, which go beyond the linguistic, interpreters should clarify their own role. If the request for explanations is to be pursued, the interpreter has formally to become an expert witness where they are qualified to act as one.
- Take breaks away from anyone involved. It is not acceptable, for example, to have lunch or coffee with either the lawyers or the witnesses during an assignment.

## 6 Finalising an assignment

- Interpret for the appropriate member of the legal services while they summarise the outcomes of the occasion and ensure that the client has fully understood what the next steps are, if any, and how they are to be accomplished in practical terms.
- This may involve translating any written instructions e.g. bail forms, the day, time and location of appointments with lawyers.
- Organise the completion of any necessary forms which need to be completed for the payment of the interpreter or translator.
- Destroy, or hand in, any notes or texts, which should not be taken away.

## 7 After an assignment (Code item 10)

- Reflect on how the assignment went and learn consciously from each one. Try to identify what went well and why, so that these satisfactory approaches can be used in the future. As no individual or situation is perfect, try and identify what elements were unsatisfactory and why, so that steps can be taken to avoid these in the future.
- Seek advice from the proper, confidential quarters, and take action through the appropriate channels where necessary, on for example:
  - a nuance of terminology which might be improved
  - a procedure which hindered the interpreting or translation process.
- Note, and store safely, what is required for professional and tax records.
- Record relevant and non-confidential data, and file it in an accessible way for future use. The development of a personal professional resource is a valuable tool, which aids swift information retrieval and may also be of assistance to colleagues, and includes such matters as:
  - terminology e.g. the parts of a car in both languages
  - glossaries of legal phrases and concepts
  - maps e.g. of locations of court houses and police stations
  - procedures e.g. of a coroner's court or employment tribunal
  - useful web-site addresses.
- Seek support where assignments have been distressing or disturbing. Linguists are not immune to personal feelings after dealing with such matters as child abuse, rape and the results of road or air traffic accidents. Like their colleagues in the legal services, it is not appropriate for interpreters and translators to indulge in personal reactions during assignments when all efforts must be directed at the needs of those directly involved. Experience has shown that interpreters and translators should have access to qualified help where they need it. In some countries, linguists are given access to the post-trauma counselling services that exist within, for example, the police and rescue services.

## QUALITY ASSURANCE

Quality assurance strategies are designed to:

- maintain professional standards and the integrity of the legal system
- identify any faults which may have occurred during the interpreting and translation processes caused by linguists or by members of the legal services when working with linguists
- provide professional support to interpreters, translators and others by identifying such faults as early as possible, which may have happened despite best efforts being made, and remedying them
- provide a framework for supporting good practice
- provide assurance to clients of any language group.

There are several types of quality assurance strategies, which may operate interdependently, and some may be the responsibility of all the professional disciplines involved. It is essential that whoever carries them out is competent to do so and should be senior members of their profession with the requisite specialist expertise.

The strategies include:

### **1 The code and guidelines to good practice**

Legal interpreters and translators promote quality assurance where they follow their code and guidelines.

### **2 Tape-recording interpreted interviews and hearings**

In some countries police interviews and court hearings, whether or not they are interpreted, are tape-recorded. Where sign language interpreters are employed, the situations are video-recorded. Where police interviews are recorded, the defence - as well as the prosecution - are given a copy of the tape, which may be challenged in open court. Expert linguists may be called as witnesses to comment on the accuracy of the interpreting.

Where court hearings are recorded, these too may be examined for interpreter accuracy.

### **3 Translations**

Translated texts are, of course, available at any point for quality assurance purposes. Proof reading and cross-checking of translated important texts provides a second line of assurance and is welcomed by the responsible translator.

### **4 The skills within the legal services**

The quality of legal interpreting and translating may be damaged where those working with them do not make the necessary accommodations. Difficulties may arise where members of the legal services are unused, or inept, in working with interpreters and translators. Appropriate strategies for raising these with those responsible can provide an acceptable educative process, which prevents the difficulties re-occurring. Examples include:

- not briefing the interpreter or translator adequately
- demanding a translation at too short notice
- not taking proper heed of the interpreter's requests to accommodate the interpreting process e.g. persistently speaking too quickly, quietly or indistinctly or not responding to cultural inferences appropriately
- using ambiguous language and lack of clarity in speech or text.

While the interpreter or translator may bring such matters to the attention of the legal service involved, it is the service's responsibility to act upon them in the interests of its own good practice requirements. It is recommended that a liaison person be appointed for each legal service, to work between interpreters and translators and their service.

### **5 Procedures and processes**

The quality of legal interpreting and translation may also be damaged through a lapse of standards in administrative, technical or procedural matters. Unless these are remedied, the situation is likely to recur. Examples include: inefficient technology and calling an interpreter in the wrong language or dialect.

## **DISCIPLINARY PROCEDURES FOR LEGAL INTERPRETERS AND TRANSLATORS**

A profession regulates its own code of conduct, and responds to any allegations of breaches of that code, through its disciplinary procedures.

The disciplinary procedures are separate from any criminal or civil matters, such as allegations of corruption, which are dealt with by the legal system, although any interpreter found guilty by the legal system is likely also to face professional disciplinary procedures. To take an example from another profession, a doctor found guilty of manslaughter in the criminal courts will also face medical professional disciplinary hearings.

Inter-disciplinary conventions also have a bearing. For example, a judge can request an interpreter or translator to do, or not do, something and has the right not to employ an interpreter or translator in a particular matter and/or to report them to their professional body for any alleged breach of their code. Equally, interpreters and translators have the right to decline to carry out an action which breaches their own code e.g. act in an assignment for which they consider their skills to be inadequate.

Professional disciplinary procedures for legal interpreters and translators differ between countries. The core elements are as follows:

### **1 Who is responsible for disciplining legal interpreters and translators?**

If interpreting and translating are to be professions (see the introduction to this chapter for a definition), their professional bodies/registers have to be primarily responsible for conducting disciplinary procedures in respect of their own members.

The legal services may decide not to employ an individual interpreter or translator but they cannot discipline them, any more than legal interpreters and translators can discipline lawyers or police officers.

It is, however possible, under the normal inter-disciplinary professional conventions, for one discipline to invite another discipline to look into the conduct of one of its members.

It used to be traditional for professions, e.g. doctors and lawyers, to be solely responsible for disciplining their own members. Recent experiences and new legislation are leading to changes, which are likely to involve the necessity for the involvement of an independent third party in disciplinary procedures. It may be that the Human Rights legislation will give rise to further fundamental changes given that, in extreme circumstances, individuals may be deprived of their right to practice by their professional disciplinary body.

### **2 How are disciplinary proceedings brought?**

It may well be possible to resolve minor matters by speaking directly with the interpreter or translator. Most people are capable of small lapses, which can be pointed out in an appropriate way and a short discussion brings improvement in future work.

Where matters are more serious the following may be considered:

- The complainant submits written evidence to the professional body and obviously can only do this in connection with members of that body or register. The complaint has to be submitted within a specified number of days of the alleged breach of the legal interpreters' and translators' code and guidelines to good practice. The complaint can come from any of the parties. However, where the complainant is the legal service, the complaint should be made by the appropriate person, which may be, for example, by the judge in charge of the hearing.
- The complaint has to be specific and the evidence corroborated where possible.

### **3 Approach**

The following principles govern how complaints are handled:

- matters will be handled fairly, objectively and openly
- wherever possible, complaints will be speedily resolved
- all matters will be recorded in writing
- the individual subject of the complaint will be informed of the nature of the complaint and given a copy of it
- in linguistic matters, advice will be sought from sources of proven linguistic expertise.

### **4 Structure for handling complaints**

- The interpreter or translator is informed of the complaint by the disciplinary body, in writing, seeking further information about the incident and offering a right of reply. Absence of a response does not normally mean that the matter will not be taken further.
- The interpreter's or translator's response is directed back to the complainant for further comment, if appropriate, along with any comments from the professional body.
- The matter may rest there if it is felt that the matter has been satisfactorily resolved. If not, the disciplinary procedures are activated.

### **5 Disciplinary panels**

- A disciplinary panel normally consists of
  - a senior officer of the professional body
  - two experienced practising legal interpreters or translators
  - one representative of the legal services.
- A disciplinary appeal panel is made up of different, and usually more senior, people than the disciplinary panel. It normally consists of
  - the chairman or most senior officer of the professional body
  - two senior practising interpreters/translators
  - an appropriate senior person from a relevant outside body.

Expert advice can be called upon where required.

### **6 Disciplinary procedures**

- If a complaint is to progress to any of the disciplinary procedures outlined below, statements will be sought from the complainant and other parties involved and penalties only imposed if, on the balance of probabilities, the interpreter or translator is found to be at fault.
- The panel may consider documentation alone, or representation from any interested parties or a mixture of both.

If the alleged breach of the code is proven, the panel may decide to take one of the following steps:

- **Warning:** For minor indiscretions (such as inappropriate dress or lateness), a warning will be given in writing, which will offer advice and guidance on future conduct.
- **Suspension pending further enquiry:** In certain circumstances, for example, failure to improve after several warnings or an alleged major breach of the code, the interpreter or translator will be suspended pending the conclusion of the enquiries.

- Demotion: Where circumstances of the breach are serious and proven on a balance of probabilities, but which do not call for suspension or expulsion, the interpreter or translator may be given a warning and demoted where there are categories of membership. Undertaking a recognised in-service training or passing an appropriate examination may be required before a reinstatement is considered.
- Suspension for a determined period: This may be necessary in situations where the breach of the Code is of grave concern but where there may be acceptable mitigating circumstances that would preclude expulsion. Such circumstances may include first time major breaches, lack of judgement in isolated instances or delegating assignments without authorisation.
- Expulsion: This course of action may be taken where there has been found to be a major breach of the code. Major breaches include unprofessional conduct likely to discredit the profession (including impairment due to drugs or alcohol, sexual misconduct, violence, intimidation or abusive behaviour); substantiated allegations of incompetence such as major lapses in accuracy; negligence causing unacceptable loss, damage or injury.

### 7 Appeals

Appeals can be brought within 28 days of hearing the decision of the disciplinary panel, in particular where new material evidence has since come to light.

## **CONCLUSION**

The code of conduct and guidelines to good practice provide a professional framework. The professional disciplinary procedures are there to ensure they are observed and, if necessary, to enforce them. It is usual that, where legal interpreters and translators are well trained in an understanding of their code and guidelines, the incidence of disciplinary procedures is correspondingly lower, which is something to be welcomed because disciplinary actions are unhappy experiences for everyone involved in them.

Codes and guidelines are also designed to complement, and dovetail with, the codes and guidelines of other disciplines working in the legal system. It is useful for practitioners to know those of other disciplines.

It is helpful if legal interpreters and translators publicise their own code and guidelines as widely as possible, as they are relatively new members of the multi-disciplinary legal team. It may also be considered helpful to have a summary of the legal interpreters' and translators' code available in both languages, for the benefit of other language speakers.

## CHAPTER EIGHT

# Professional Working Arrangements

*Doris Grollmann, Bodil Martinsen and Kirsten W. Rasmussen*

The quality of legal interpreting and translation does not only depend on the linguistic and personal competence of the interpreters and translators and whether they comply with a given code of ethics and conduct when they perform an assignment. It also depends on their general working conditions and the whole set of arrangements surrounding the assignment allowing, for instance, the client to find a suitable and competent interpreter or translator, and providing the interpreter or translator with optimal working conditions. As for interpreters and translators, professional working arrangements are elementary for good performance, personal security and motivation.

It should also be recognised that satisfactory working arrangements will retain the services of interpreters and translators with a high level of skills, in the legal system. After all these skills are attractive to other employers. When competent interpreters and translators find continued job satisfaction in the legal system, their expertise develops to the benefit of all those involved.

### REGISTRATION

To the benefit of all interested parties, official registration of all qualified legal interpreters and translators is highly recommended. It allows the clients to find the interpreter or translator who best corresponds to their needs and gives the interpreter and translator an optimal chance to find employment in line with their particular specialisation and location.

- It is recommended to set up a well thought out and regularly updated National Register, which will be the most adequate instrument for a search without waste of time when the assistance of a legal interpreter or translator is required. The National Register of Public Service Interpreters in the United Kingdom is an example of the potentially great efficiency of such a register. A National Register contains personal data about the qualified legal interpreters or translators but is also structured according to e.g. area and specific specialisation.
- It is furthermore recommended to link up all the National Registers into a European network. This would be of help e.g. when a legal interpreter or translator is needed for a very rare language.
- It is recommended to make registration obligatory, which means that interpreters and translators who are not registered in the National Register, cannot work for the police and the legal services, and that v.v. the police and the legal services are obliged to use only registered interpreters and translators.

#### 1 Admittance to the Register

It is strongly recommended that admittance to the Register presupposes the passing of an assessment test. An assessment is necessary in order to make sure that interpreters and translators admitted to the Register have a good command of both languages involved, can interpret and translate accurately and that they are well acquainted with both legal systems and procedures as well as with both cultures. Furthermore, the aim of the assessment is to make sure, that the interpreters and translators are aware of their professional guidelines and codes of conduct.

The body administering the register does not have to carry out the assessment tests. These tests will either be set by the training institutes of the country or possibly by some central examining body, if preferred.

The admittance to the Register, i.e. 'registration', may take place either



- automatically, as soon as a legal interpreter or translator has passed the assessment tests and the accredited institute has authorised the results, or
- on application by the interpreters and translators themselves when they have passed the assessment test and given evidence of this fact.

In both cases, registration implies that the interpreters and translators have to observe the Code of Conduct and will face disciplinary procedures when the Code is breached. (See chapter 7)

As soon as registration has been accomplished it is recommended that:

- All legal interpreters and translators receive an ID card with at least their name, photo and registration number and their language pairs for legitimisation. This ID-card also gives access to all support systems (see below). The ID-card should be reissued on a regular basis to show that the interpreters and translators still comply with all the requirements as well as to take account of any changes (e.g. additional language pairs). It should be withdrawn if the performance of the bearers has breached professional standards (see chapter 7) or when they have resigned.
- Translators, in addition, sometimes get an official stamp with their name and registration number and, again in some countries, a license to buy the special watermarked paper that they might need for the translation of official legal documents.

Given the particular circumstances in which legal interpreters and translators have to accomplish their work it is strongly recommended to ensure that only interpreters and translators without a criminal record are admitted to the Register.

When the interpreters and translators are admitted to the Register, they should be told that once on the Register, they should respond to a request for their services whenever reasonably possible. Reasons to deny a request might be:

- illness or other serious impediments
- an other current assignment
- the fact that the assignment is beyond their specific competence
- bias or partiality concerning the case or the persons involved
- strong personal reasons.

## **2 Structure and content**

The National Register may well cover several different services at the same time, such as hospitals, schools, social welfare institutions, listing the interpreters and translators that are qualified to do the interpreting and translating in these particular services. The Register will thus function as a National Register for the whole of the Public Services.

The Register may then be structured in such a way that it contains different sections, one for each service, thus making it easier for clients to look for a specialised, qualified interpreter or a translator. Another strategy is to have all interpreters and translators listed in alphabetical order and then to specify their qualifications and the services for which they are qualified to interpret and/or translate. A good database should be able to provide both alternatives.

The National Register should contain enough information to make it clear to the client who wants to employ an interpreter or a translator from the Register what the exact qualifications of each interpreter and translator are.

For each of the interpreters and translators admitted to the Register, the Register should therefore specify:

- name and address
- gender

- phone and fax number and if possible, e-mail address
- language combination(s)
- education and training
- special qualifications
- specialist expertise
- experience: assignments, references, services
- the cases, if any, in which the interpreter is not ready to work (e.g. child abuse, rape)
- availability (e.g. night-time assignments).

For security reasons it might be worth considering not to provide full addresses but only area codes.

As far as qualifications and experience are concerned, the interpreters and translators on the Register may be at different levels. This means that some will be qualified to take on very demanding assignments whereas others will be qualified for taking on only less demanding assignments. No matter how the Register is structured, the important thing is that the exact level of qualification and experience of each interpreter and translator appears clearly from the Register in order to ensure that the clients get the interpreter or translator who best matches their needs.

It is recommended to update the Register very regularly.

### **3 Administration**

The National Register should be administered - and updated- by a national body (state or private). This body will be in charge of setting up the rules and conditions - in consultation with the legal services and the language profession- that govern the admittance of interpreters and translators on to the Register.

### **4 Presentation of the Register**

It is recommended, that the Register take the form of a

- loose-leaf file
- data base on CD-ROM and
- data base on a WEB site,

all of which allow for regular updating and give the legal services easy access to the Register. Copies of the Register should be available to all local services.

### **5 Access to the Register**

It is recommended, as a rule of principle, that access to the Register should be free to all legal services.

However, there will be costs to be covered, and thus to be paid. Therefore, it could be suggested that:

- The State pays all costs and the Register is made available, free of charge to all legal services.
- If it is preferred that the Register be independent of the State and yet still free of charge, then the Register could be administered by an independent body, with the State paying the costs against accountable and transparent structures.

If the State is not involved, i.e. if the Register is run by a private body, one could provide:

- Access free of charge to courts, police and other official authorities, or perhaps against a token annual subscription fee.
- Access by subscription to responsible organisations, companies, lawyers, public notaries, bailiffs etc. or vetted individuals who regularly need the assistance of interpreters and translators.

- Access against payment via a Premium telephone line for organisations, companies etc. or individuals who do not want to take out a full subscription.

It should be made obligatory for the police and the other legal services to use only interpreters and translators from the Register, except in those circumstances in which an interpreter or translator is needed in languages or situations for which there is demonstrably no qualified interpreter or translator available. In these circumstances, interpreters or translators may be selected from whatever source available but with as many guarantees as possible built in.

The interpreters and translators should be contacted by phone, e-mail, fax or letter as soon as possible. They should be given as much information as possible about the assignment. (See chapter 9)

## **LETTERS OF AGREEMENT**

The terms of engagement should be clear to both parties when discussing a particular interpreting or translation assignment.

It is recommended to draw up a formal Letter of Agreement covering the basic issues in relation to a specific assignment:

- details of the assignment, such as
  - date, time, place, estimated duration
  - language and dialect, if relevant, technical or specialised vocabulary, etc
  - specifics of the assignment: defendant, age, sort of case, etc.
- terms and conditions
- fee, travel and subsistence.

A frequently recurring problem is that of cancellation fees, particularly when an interpreter has been engaged by the court for a lengthy trial which then does not take place. It is recommended to clarify, in advance, what is to happen in the event of a cancellation. This should help reduce misunderstandings and ill feelings.

The Letter of Agreement should either be accompanied by a copy of the professional Code of Conduct or else remind the interpreters and translators that they are obliged to abide by this code, a copy of which they received when admitted to the Register.

The interpreters and translators have to confirm that they are available for the assignment in question and on the terms and conditions agreed upon, by returning a signed duplicate of the letter to the legal service.

However, formal letters of agreement need of course not always be used, but basic terms and conditions should at least be discussed and agreed upon before either party commits him- or herself to the assignment. The alternative - which may well be preferred- is to have a general set of terms and conditions known to all parties involved, in order to avoid having a discussion before each assignment and in order to ensure equal terms and conditions for all interpreters and translators.

## **LIABILITY AND INSURANCE**

Legal interpreters and translators should take out professional liability-insurance.

It is recommended that the legal authorities accept liability for accidents and physical harm legal interpreters might be the victims of in the context of their work.

It is recommended that interpreters and translators, to be on the safe side, also take out their own accident insurance.

## **SECURITY**

The legal authorities have to take all measures to protect the interpreter and the translator against invasion of their privacy.

- Address and phone number of the interpreters and translators must be known to the authorities only.
- An interpreter should never be left alone with a person to be interviewed.

## **SUPPORT**

Interpreters and translators will, in general, need support first and foremost to get factual and terminological information about the assignment to be carried out and, after the assignment has been carried out, to get some feed-back or counselling. It is therefore recommended to set up adequate support systems in these respects.

Legal interpreters and translators therefore should have access to:

- Sources of terminological and factual information such as:
  - libraries
  - monolingual and multilingual databases for terminology and legal texts
  - documentation services
  - intranet services
  - other services able to give specialist information that exist within legal and other official bodies.
- Feed-back and mentoring:
  - comments on shortcomings and suggestions as to how they could perform better
  - names of persons who could possibly give advice in the future
  - names of more experienced colleagues in a special field.
- Psychological and mental support:

As stress and psychological factors in certain cases (e.g. fatal accidents, terrorism, child abuse, rape) can deeply affect the interpreter, and even the translator to some extent, it is recommended that interpreters and translators have access to qualified help when needed. (See chapter 7) It is therefore recommended to set up a formal framework that gives also legal interpreters access to post-trauma counselling services that exist e.g. within the police and hospital services.

## **VETTING**

Before being admitted on to the Register, the criminal record of legal interpreters and translators should be checked. In some cases, particularly in security cases (e.g. terrorism) or in very sensitive cases (e.g. organised crime), a more exhaustive security vetting may be necessary.

## **LEGAL STATUS**

It is recommended that legal interpreters and translators have protection of title and that the status, the obligations and rights of legal interpreters and translators should be defined in the law.

## CHAPTER NINE

# Interdisciplinary Conventions with the Legal Services

*Kirsten Wolch Rasmussen and Bodil Martinsen*

### WHY INTERDISCIPLINARY CONVENTIONS WITH THE LEGAL SERVICES ARE IMPORTANT

The quality of judicial decisions rests upon the quality of information on which they are based. The quality of information depends upon the quality of communication. However, in a multi-lingual Europe adequate communication will not be reached solely by the provision of legal interpreters and translators. The legal process is multi-disciplinary. Members of each discipline are trained to work with members of other disciplines e.g. judges with police officers. Each knows and respects the other's role. It is equally important that the judiciary, the police and other legal personnel, know how to work with interpreters and translators.

It is recommended that good practice guidelines on working with legal interpreters and translators are set out and made available in each country to each legal service, including the

- police
- civil and criminal courts and tribunals
- probation service
- prisons
- immigration service
- customs and excise.

This list may obviously vary in different EU countries.

### GOOD PRACTICE GUIDELINES ON WORKING WITH LEGAL INTER-PRETERS AND TRANSLATORS

#### Interpreters

##### 1 Recognise when an interpreter is needed

Find out how well the other language speaker comprehends, speaks, reads and writes the language in question. If there is the slightest doubt about the adequacy of his or her competence, an interpreter is needed.

##### 2 Identify the language/dialect required

- Find out in which language the client can best express him/herself.
- Find out, if possible, if the client speaks a regional dialect or a regional variety of the identified language.
- Be aware of the risk of using a third language which the client may apparently be able to speak. Trying to communicate in a language of which the client has only an imperfect knowledge is inviting problems.
- If finding out the language match from the client proves difficult, arrange a short telephone conversation between the client and a qualified interpreter who may be able to identify the language needed. In appropriate cases inform the interpreter that the conversation must be confined to that sole purpose - or arrange a three-way telephone conversation in which only the questions needed to be asked and the replies given are interpreted.

### **3 Select a suitable interpreter**

- Select an interpreter with the language expertise, experience and other qualifications needed from the National Register of Interpreters and Translators. (See chapter 8)
- If it is not possible to select an interpreter from the National Register (for example in the case of a rare language), or if a National Register does not yet exist, the interpreter may be chosen from some other list or from whatever trustworthy source that may be available. However it is essential to check the interpreters' qualifications and experience of legal interpreting before engaging their services. (See chapter 4)
- Check with interpreters that it is not inappropriate for them to act because, for instance, they:
  - are related to the client
  - know the client on a close personal basis
  - are in a position which gives rise to a conflict of interest.
- Check that interpreters have not interpreted or translated texts in previous or current matters which might give rise to a conflict of interest e.g. where separation between the investigative and judicial stages of a criminal case is to be preserved.
- Ensure that interpreters are given enough information about the proposed assignment to enable them to judge whether it is within their professional competence.
- In exceptional circumstances, which are particularly complex or where the interpreter is needed for very long periods of detailed interpreting, it may be appropriate to arrange for more than one interpreter for each witness or defendant. This would have to be assessed on a case-by-case basis.

### **4 Contact, brief and commission an interpreter appropriately**

- Provide the maximum possible notice to interpreters to allow them to arrange their assignments to fit in with other work. Early warning will also allow interpreters to prepare more thoroughly for their assignments.
- Tell interpreters the venue and the dates and times for which they are likely to be required. Make sure there is no misunderstanding.
- Organise contract or letter of agreement. (See chapter 8)
- Organise any security requirements or arrangements. (See chapter 8)

### **5 Prepare for an interpreted interview, hearing etc.**

- Once the interpreter has accepted the assignment:
  - explain transport arrangements including directions and parking facilities; where appropriate, arrange service transport
  - give the name of the person whom the interpreter is to contact on arrival and exactly where they are to meet (e.g. a precise room number)
  - give the name and telephone number of the person to be contacted in case of query or subsequent non-availability due to an emergency. Also give the interpreter a name or file number which will identify the assignment
  - provide the interpreter with access to information and documents needed to find out, in advance of the assignment, relevant terminology (e.g. parts of a car) in both languages and also about any less common procedures which will be followed
  - secure arrangements for the interpreter to study any relevant documents, especially any which are likely to require translation during the course of the assignment
  - and it may be advisable to arrange for the interpreter to participate at least in part in any preparatory meetings.

- On arrival:
  - the interpreter must be shown to a waiting area away from the public and the person for whom he or she is interpreting
  - and the interpreter should be updated on any recent developments in the matter which may affect the original arrangements.

## **6 Get the venue ready**

- Acoustics: interpreters must be able to hear clearly all that is said and what they say must be heard clearly by everyone else.
- Positioning: interpreters must normally be able to see the person for whom they are interpreting; a good deal of communication is non-verbal (e.g. facial expressions, gestures).

Interpreters should not be placed so that their impartiality may be perceived as suspect. For example, at a police interview the interpreter should not be placed on the same side of a table as either an officer or the suspect; the interpreter should normally sit at the end of the table while the police officer and suspect face each other across it.

A court hearing is an exception to the general rule. The interpreter normally sits next to the client - be it the defendant or witness. This means that there must be space in the dock or the witness box - or wherever the client is seated- for the interpreter as well as the client.

Sign language interpreters must be seen clearly by the deaf persons and therefore should not be placed in front of a light source. The deaf persons should also be able to see the hearing people whose speech is being interpreted for them.

- Equipment: make sure all equipment to be used (e.g. tape recorders, □microphones) is in the correct position and is all in good working order.

## **7 Set the context out clearly**

- Inform those involved in the proceedings that an interpreter is to be used.
- Introduce the client through the interpreter to those directly involved. Interpreters should normally be introduced last to signal that they are not some of the legal officials. If the security of the interpreters so requires, they should be introduced as 'The Interpreter' and not be obliged to reveal their name publicly. During the process of introductions, the match between the languages of the interpreter and the client should be confirmed.
- Explain to the client through the interpreter to whom he or she is speaking (e.g. clerk of the court, custody sergeant, court welfare officer) who the other parties present are and their roles and responsibilities.
- Explain to the client through the interpreter the purpose of the forthcoming interview, hearing, consultation etc. and the procedures which will be followed.
- Where appropriate, ascertain through the interpreter whether any necessary legal advice has been sought and, if so, whether it has been understood.

## **8 Make sure everyone understands the interpreting process**

Explain the interpreting process. This is obviously carried out in the language of the legal agency concerned to native speakers and through the interpreter for other language speakers.

The following points are among those which need to be made:

- that the interpreter is bound to act in a confidential and impartial manner
- that direct speech will be used i.e. ‘What is your name?’ rather than (to the interpreter) ‘Ask him what his name is?’
- that the interpreter will interpret everything that is said in the presence of the other party. The interpreter must not have discussions in one language, the purpose and content of which are not made known to speakers of the other language. This also helps avoid interpreters being given information which could jeopardise their independent role
- that the interpreter will interpret any questions asked and explanations given. The interpreter will not answer questions or give explanations (other than linguistic)
- that the interpreter will usually interpret what is said consecutively. This means that the interpreter will interpret after the speaker has spoken up to three or four sentences. It follows that the speakers must stop talking to allow the interpreters to speak and what they say to be heard
- that, if what the speaker wants to say cannot conveniently be interrupted by pauses, the interpretation may be simultaneous by the interpreter whispering into the ear of the listener while the speaker is still speaking. Simultaneous interpreting is obviously not appropriate where tape-recording is in operation
- that, in the case of sign language, interpretation will be simultaneous but extra pauses may be needed for explanations.

### **9 Respect the role of the interpreters and do not use them for tasks outside their role**

The role of the interpreters is solely to facilitate communication between speakers of different languages. Therefore:

- Speak to and look directly at the person being addressed, not the interpreter.
- Do **not**:
  - ask interpreters for explanations, which go beyond the linguistic. If that is to be pursued, interpreters must formally become expert witnesses if they are qualified to act in that different role
  - ask interpreters to give opinions on the likely views and background of another person, simply because they share a language
  - ask interpreters for their opinion e.g. ‘Is he telling the truth?’
  - transfer to interpreters your feelings for the person being interpreted for and vice versa.
- Ask for clarification when needed from the clients through the interpreters but not from the interpreters themselves.

### **10 Be aware of cross-cultural non-verbal communication**

Non-verbal communication comprises a surprisingly large proportion of the whole exchange of information in situations where the parties have sight of each other. It is all too easy to misread it across cultures because e.g. gestures, facial expressions, degree of eye contact, tone of voice or body language can denote different things in different cultures.

It is wise therefore:

- not to make any assumptions about non-verbal signals
- not to allow others to make assumptions on that basis
- to ask questions directly to confirm a non-verbal signal which needs decoding
- to be sensitive about the non-verbal signals used when speaking so as to ensure that the other language speaker understands them accurately.

### **11 Accommodate interpreting techniques: consecutive or whispered simultaneous**

Unless there are interpreting booths and headphones or other simultaneous interpreting facilities that allow continuous simultaneous interpreting, the interpreter will either interpret:

- consecutively two ways: that is after the speaker has completed a concept in a few sentences or



- simultaneously, whispering, that is interpreting in a whisper to the listener at the same time as the speaker is speaking in his or her own language.
- Support effective interpreting by making sure that speakers:
  - are audible
  - express themselves clearly and unambiguously
  - avoid unnecessarily convoluted language
  - pause for consecutive interpreting at regular short intervals (i.e. after each three or four sentences). Do so at the point of a natural break in their train of thought and never in the middle of a sentence
  - speak at a pace which allows the interpreter to keep pace during simultaneous interpreting.
- Allow the interpreter to:
  - take notes, as an aide mémoire
  - alert the judge etc. if there is a problem.
- Allow the solo interpreter regular breaks.

Interpreting requires a high level of concentration and its quality may diminish unless the interpreter gets at least one break per hour. During any such break interpreters should sit apart from those involved in the case to avoid being drawn into conversation by persons sitting next to them.

**12 Respond appropriately to any interventions made by the interpreter to preserve the integrity of communication**

Interpreters will not normally intervene but may do so to preserve the integrity of the communication. Permissible reasons for intervention are:

- to clarify the meaning of something which has been said in order to be able to interpret it correctly
- to alert one of the parties that, in spite of accurate interpretation, the other party may not have understood what has been said
- to alert all parties to a possible missed cultural inference and ask the party to explain it i.e. where communication is breaking down because differing cultural frameworks have led to one party assuming erroneously that another party has a background knowledge of a set of traditions, conventions etc.
- to ask for accommodation of the interpreting process e.g. that someone is being abusive or offensive in ways which compromise the interpreting process.

If an intervention is necessary, interpreters give the reason for their intervention in both languages, so as not to be seen to have a conversation in one language which other parties cannot understand. They then interpret any subsequent explanations.

**13 At the end of the interpreted interview, hearing etc., clarify the next steps**

- When clarifying for the client what is going to happen next, explain the way in which the language barrier will be dealt with on the next occasion.
- Experience shows that it is often desirable that matters such as time and place of a court hearing, bail conditions, appointment with a probation officer or the amount, method and place of payment of a fine, are written down by the interpreter in the language of the client and handed to the client. A photocopy of the foreign language note together with a translation of the note should be put on the case file.

**14 After the interpreted interview, the hearing etc. complete the necessary administrative tasks in connection with the interpreter's employment**

Carry out the procedures to ensure that the interpreter's fees and expenses are paid in accordance with existing regulations.

### **15 Reflect upon how performance may be improved**

Try to identify what went well and why so that these satisfactory approaches can be used in the future. Try and identify what elements were unsatisfactory and why so that steps can be taken to avoid these in the future. It may often prove fruitful to discuss these matters with the interpreter.

## **Translators**

In the legal system, there is much material which requires written translation from and into the language of the legal agency concerned. This includes not only standard letters, official forms and notices, indictments, witness statements, reports from experts and decisions but also, for instance, information leaflets intended for a wider distribution.

### **1 Assess the text to be translated**

Where possible the person commissioning a translation should first assess the text to be translated and its context in order to select an appropriate translator and to brief the translator for the translation task.

The following elements should be taken into consideration:

- the languages involved
- the type of document (e.g. indictment, sentence, witness statement, professional report, letter, information leaflet...)
- the purpose of the translation (e.g. is it for publication or for in-house use where an unpolished translation will suffice as long as the meaning is accurately transmitted)
- in the case of a document in the native language, the complexity and specialist nature of the text (e.g. the degree of specialised vocabulary used)
- its legibility (e.g. a policeman's hand-written notes; a poor photo-copy); a clarification of the manuscript may be needed
- the length of the material to be translated
- the presentation required and how the text is to be delivered e.g. e-mail, fax, hardcopy or disc
- whether the document needs to be a certified translation or provided with any other official endorsements by the translator (e.g. for use in court)
- the deadline for delivery of the completed translation.

Remember that it takes time to produce a quality translation.

### **2 Select and contact a suitable translator**

- Select a translator with the language expertise, experience and other qualifications needed from the National Register of Interpreters and Translators. (See chapter 8)
- If it is not possible to select a translator from the National Register (for example where the language is rare), or if a National Register does not yet exist, the translator may be chosen from some other reliable list or from whatever trustful source that may be available. However it is essential to check the translators' qualifications and experience of legal translation before engaging their services.
- The following elements should be taken into account when choosing a translator:
  - language match: bear in mind that in general you obtain the best result if you select a translator whose mother tongue is the target language
  - the translator's level of qualification, specialisation, standard of general education and relevant experience should be appropriate to the complexity of the text and the specialist nature of the text
  - membership of a professional body with a code of ethics and disciplinary power
  - access, where necessary, to specific computer programs or certain IT tools (such as modem and e-mail)
  - ability to carry out the assignment within the time limit required.

### **3 Commission the translator**

- Organise contract or letter of agreement. (See chapter 8)
- Organise any security requirements or arrangements. (See chapter 8)

### **4 Brief the translator**

- Explain to the translator the nature of the text, its background, its purpose and its likely readership.
- Make available such information and specialised knowledge as the translator needs. If possible, give the translator access to relevant background information and supportive material (e.g. any previous, perhaps even translated, documents in the same case) or arrange for an opportunity to consult it.
- Appoint a person for the translator to contact in case of doubt or need for clarification.
- Decide together with the translator how words and terms for which there is no equivalent in the target language will be dealt with. Should they be explained in the text or left untranslated but with an explanatory footnote?
- Arrange collaboration between the author/expert and the translator on any pre-editing of the text in the source language which may be required to meet the needs of a particular readership (e.g. a crime prevention leaflet may well need to accommodate completely different starting points from the text in the source language). Pre-editing does not apply to formal documents but only to leaflets etc. for particular community groups.
- Specify whether there are any specific safety requirements for storing the source text and the translation, i.e. whether the translator may store the translation on a personal computer, or whether the material must be locked up.
- Provide the translator with a workplace in the building of the legal agency if the documents contain sensitive material requiring strict security. Do not forget that this also means that translators must be provided with a keyboard they are generally accustomed to work with (azerty, querty, etc).
- Explain when, where and how the completed translation is to be sent and to whom it should be addressed or handed in.

### **5 Arrange if necessary for finalisation of the translated text**

The following applies to translations of leaflets etc. for publication:

- Check that the explanations in the translated text of, for example, information leaflets can be easily followed. This can conveniently be done by showing the text to some of the likely readership.
- Take expert advice before printing starts to avoid misunderstanding or offence being caused among the readership by lay-out, colour or presentation.
- Make sure that instructions, suggestions or advice given in the text can be acted upon by those reading it (e.g. if a leaflet offers an advice service at a particular place at a stated time, it is imperative that an interpreter is available there and then).

### **6 Complete the necessary administrative tasks in connection with the translator's employment**

Carry out the procedures to ensure that the translator's fees and expenses are paid in accordance with the existing regulations in the country.

## **7 Reflect upon how performance may be improved**

Try to identify what went well and why, so that these satisfactory approaches can be used in the future. Try and identify what elements were unsatisfactory and why, so that steps can be taken to avoid these in the future. It may often prove fruitful to discuss these matters with the translator.

## **GOOD PRACTICE GUIDELINES ON WORKING ACROSS CULTURES**

Providing a channel of communication, through reliable interpreters and translators, is an essential pre-requisite but is not enough on its own to provide an efficient service. Those working in the legal services must not only be able to use the channels of communication but also to accommodate the backgrounds of the individuals they are communicating with.

They already do this when they deal with individuals with whom they share a language and culture. In those situations, they intuitively recognise and work accordingly with differing educational, social and economic backgrounds to achieve their objectives. Where they do not share the languages and cultures of those they are dealing with, more conscious thought has to be given as to how the same standards of service may be provided.

The legal services are of course responsible for their own training and practice, but they might like to consider the following broad guidelines, which suggest ways of both giving and receiving necessary information, which would normally be simply assumed when a cultural framework is shared. They also suggest ways of identifying and accommodating different backgrounds to achieve the same ends.

### **1 Retrieve general information about the cultural and linguistic backgrounds of potential clients prior to meeting them**

Seek general cultural and linguistic information on the backgrounds of potential clients. Much of this information is already available from such sources as education departments and community groups.

It is recommended to establish an easily accessible, regularly up-dated database with parallel information about different cultural conventions (with strong caveats about stereotyping) which would be of use to all legal services.

### **2 When giving information to clients prior to meeting them, remember that clients may have different starting points**

When explaining to clients the purpose and context of the forthcoming interview, hearing or consultation, the procedures which will be followed etc., do not assume knowledge of organisations, procedures etc. even if well known by native speakers.

### **3 Find out during the meetings, relevant information about the clients' individual, social and educational background and attitudes, beliefs, perceptions and needs**

If members of the legal services are to give speakers of other languages the same quality of service as they do to native speakers, they need, through preliminary conversation with the clients, to elicit tactfully items of information about them of which they would probably be aware if they shared the same background. The first is:

- How well do the clients comprehend, speak, read and write the language in question? If there is any doubt about the adequacy of the clients' competence, an interpreter or translator is needed.

Other information to be sought may include the following:

- How much do the clients know about the legal system and its procedures in so far as they affect them? What perceptions do the clients have of them? Knowledge of the language in question alone is not

sufficient unless it is accompanied by knowledge of how things function. The level of knowledge will be affected by when and under what circumstances the clients arrived in the country.

- How the situation the clients find themselves in, is affected by the different conventions and expectations arising from their background. The officer behind the counter at a police station should be aware that the state of mind of a father reporting an eighteen-year-old daughter as “missing” when she has not returned home by 11 p.m. will differ considerably depending on his background.

**4 Give appropriate and relevant information about the service, its procedures and the staff to be involved and adapt the service, wherever necessary and possible, to meet the clients’ individual needs**

On the basis of their knowledge of the clients’ background, legal service personnel should be in a position to decide what they need to say or do in order to ensure that it effectively meets the needs of a client of any background.

**5 Make assessments, negotiate and implement decisions which accommodate, in as positive a way as possible, the bicultural nature of the situation**

**6 Record and report any additional cultural dimensions objectively on an informed basis, and make any explanations which may be necessary for colleagues and members of other disciplines to carry out their tasks**

Legal service personnel may also require access to appropriate sources of information on a once-only basis. For instance, how does a victim support worker faced with bereaved relatives know which minister of religion to contact and which mourning customs should be observed?

It would be advantageous if those who identify solutions to such questions, could share them with other legal service personnel or, at the very least, record them in ways accessible to those who come up against the same questions subsequently.

It is therefore recommended to set up an easily accessible, regularly up-dated broad database to store such information.

**7 Reflect upon how performance may be improved**

Try to identify what went well and why, so that these satisfactory approaches can be used in the future. Try and identify what elements were unsatisfactory and why, so that steps can be taken to avoid these in the future.

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# Legal Interpreting and Translation: a selective bibliography with an emphasis on training

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## **5 TRAINING VIDEOS**

*Court Interpreting in New York State.* Produced by Mountain View Productions for the New York State Unified Court System, 885 Second Avenue, New York, New York 10017, USA.

*Working With Interpreters.* National Center for State Courts, Office of the Administrator for the Courts, 300 Newport Avenue, Williamsburg, VA 23187.

*Interpreters: Their Impact on Legal Proceedings.* National Center for State Courts, Office of the Administrator for the Courts, 300 Newport Avenue, Williamsburg, VA 23187.

*Court in the Act.* A video about deaf awareness in the law. Solihull: West Midlands Probation Service, 1996.

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*The Interpreter: A Historical Perspective.* Produced by AIIC, 10 Avenue Sécheron, CH 1202 Geneva, Switzerland, 1998.

Points of Departure: Ethical Challenges for Court and Community Interpreters. Part I for Interpreters, Part 2 for Legal Professionals. Vancouver: Open Learning Agency, 2000 (email: [dinis@ola.bc.ca](mailto:dinis@ola.bc.ca)).

Best Practices for Working with Interpreters. Contact Elba de Leon at <[e.deleon@schliferclinic.com](mailto:e.deleon@schliferclinic.com)>

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