

Practice Direction 28

Translation and Interpretation for Referrals, Children's Hearings and Related Court Proceedings

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SUMMARY

- The reporter must only make arrangements for translation or interpretation where there is clear and reliable information that such support is essential for an individual's effective participation. In the absence of such clear information, the reporter is not to make any arrangements. No assumptions about the need for interpretation or translation are to be made by the reporter.
- It is expected that partner agencies will consider the issue and include relevant information about translation or interpretation needs within any referral.
- Both (i) the need for translation, and (ii) the need for interpretation must be assessed individually. It is possible that one may be required but not the other.
- The following approach is to be taken by the reporter:

Circumstances	Action by Reporter
Clear and reliable information that translation and/or interpretation is necessary.	Presumption that translation and/or interpretation is necessary and is to be arranged.
Information that translation and/or interpretation is likely to be necessary.	Seek clarification from partner agencies. If clear and reliable information is received that translation and/or interpretation is necessary then it is to be arranged.
Information that translation or interpretation may be necessary.	Do not arrange. Re-assess the need for translation and/or interpretation if further information is received ¹

- Any decision to arrange for translation or interpretation must be taken by the reporter in consultation with the Locality Reporter Manager or a person explicitly authorised by the Locality Reporter Manager.
- Where the reporter assesses that translation is necessary the following must be translated:
 - Notification of receipt of referral
 - Notification of decisions NOT to arrange a Children's Hearing
 - Notifications of hearings
 - Papers for hearings
 - Notification of hearing decisions
 - Notification of proof application and date of court calling
 - Notification of ICSO application and date of court calling

¹ A multi-language leaflet informing the individual to contact the reporter if the individual thinks they need translation and/or interpretation may be developed for use in these circumstances.

- Where the reporter assesses that interpretation is necessary the following must be interpreted:
 - Interpretation at the hearing
- The reporter is not to arrange for interpretation of court proceedings as the Scottish Courts and Tribunal Service is responsible for arranging this.
- The reporter is not to arrange for translation of any documents relative to court proceedings other than proof or ICSO applications except where:
 - (i) there are clear grounds for concluding that translation of that document is necessary for an individual's effective participation in the court proceedings, or
 - (ii) the reporter is ordered to by the Sheriff
- Following a decision by the reporter to arrange translation and/or interpretation, the reporter is to reassess the need when:
 - (i) any new information becomes available and/or
 - (ii) when any new proceedings, including review hearings, arise.
- In cases where the reporter has not made arrangements for interpretation of hearing proceedings, the hearing can require the reporter to arrange for an interpreter or for translation in terms of Rule 61(1)(f) of the Children's Hearings Procedure Rules.
- In arranging interpretation or translation the reporter is to follow the relevant Operational Guidance.
- If the reporter considers there to be any issue concerning the quality of the translation or interpretation being provided then the reporter must raise this appropriately. Appendix 1 sets out best practice standards for engaging with interpreters.
- The general approach to identifying the need for interpretation or translation applies equally to identification of the translation and interpretation needs of participants with hearing or visual impairment.

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1. Introduction

For some children and families involved in proceedings under the Children's Hearings Scotland Act 2011, a limited ability to understand the material provided or the nature of the proceedings is a potential barrier to effective participation. For the most part this can be addressed by personnel within the hearings system - reporters, solicitors, representatives, panel members and others – ensuring that those children and families have all relevant information and by taking time to explain what is happening in a way that they can understand. However, for some people specialist assistance – from an interpreter or through receipt of translated documents - will be required.

This Practice Direction covers:

- Translation and interpretation of communications by the reporter and for children's hearing and court proceedings.
- The general principles to be applied in arranging for translation or interpretation.
- What documents or proceedings give rise to a responsibility on the reporter to arrange interpretation or translation.
- Which individuals might require interpretation or translation to be arranged for them.
- Links are included to the Operational Guidance on Translation and Interpretation and the Operational Guidance Note on Appointing a Sign Language Interpreter
- Links are included to the Joint Agreement between the Scottish Courts and Tribunals Service and SCRA.
- Appendix 1 sets out best practice standards for engaging with interpreters.

Note that for the purposes of this practice direction the term "participant" will be adopted. This term covers children, relevant persons and others – for eg. persons with significant involvement or who have a contact direction in their favour – all of whom have rights to receive information regarding any referral and to effectively participate in proceedings under the 2011 Act.

The general approach set out in this Practice Direction - particularly the focus on effective participation - applies just as much to the translation and interpretation needs of hearing-impaired participants and visually-impaired participants as it does to those whose needs relate to a limited understanding of English. The reporter is to identify what support is to be arranged for a person with hearing or visual impairment taking into account the particular circumstances of the individual and in consultation with the LRM.

2. General Principles

- 2.1 The overall approach of the reporter must be consistent with what is fair.
- 2.2 Article 6 of the European Convention on Human Rights states:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”
- 2.3 European case law - in considering what a fair hearing is - identifies a number of aspects. The most significant in this context is the right to “effective participation”. The issue of what support a party requires to participate effectively is a matter of fact to be decided by the tribunal or court before whom the party appears.² However, the way the reporter carries out statutory functions in advance of the hearing can support effective participation at the hearing by individuals.
- 2.4 The responsibility to ensure that any hearing – whether before the Children’s Hearing or before the court – is fair rests with the state. Where translation and interpretation relative to children’s hearings are concerned, there are strong practical arguments in favour of the reporter assuming responsibility for making the necessary arrangements.
- 2.5 Communications regarding receipt of a referral, the reporter’s investigation, and the reporter’s decision on a referral are not part of the “proceedings” to which Article 6 of the ECHR applies. However these communications generally reflect legal requirements to inform certain people – principally children and families - of certain matters. It is therefore important that the information is provided in a way that is reasonably capable of being understood.
- 2.6 Assessment of the need for translation or interpretation must be carried out on an individual basis. For example, it should not be assumed that members of the same family have similar needs, or that individuals who have recently arrived in the UK will be unable to speak English, or that the need for interpretation or translation are inseparable from each other. The decision to arrange translation or interpretation or both must be based on clear information that it is required.
- 2.7 There should be no delay in investigating a referral, making a decision on that referral, or arranging a hearing while any clarification on the need for translation and/or interpretation is being sought, unless there are exceptional circumstances.

²*K v Authority Reporter* 2009 SLT 1019

3. What the Reporter is required to Translate or Interpret

3.1 The table below summarises what the reporter is and is not required to translate and/or interpret (where the need for this support has been identified).

SITUATION	OBLIGATION ON REPORTER
Notification of Receipt of Referral	Translate
Notification of Decisions NOT to arrange a Children's Hearing	Translate
Notification for hearings	Translate
Papers for hearings	Translate those papers which have not already been translated
Interpretation at the hearing	<ol style="list-style-type: none"> 1. Arrange for an interpreter to be present where the reporter has made the decision beforehand that one is necessary. 2. Arrange an interpreter where hearing directs reporter to arrange for one per Rule 61
Notification of hearing decisions	Translate
Notification of proof application and date of court calling	Translate
Notification of ICSO application and date of court calling	Translate
Other documents lodged by reporter in a proof or ICSO application or in an appeal	Not to translate unless <ol style="list-style-type: none"> (i) clearly needed for effective participation, or (ii) ordered to by court.
Documents lodged by other parties in a proof or ICSO application or in an appeal	Not to translate
Interpretation of court proceedings for the child or relevant person in proof or ICSO application or in an appeal	Not to arrange. The obligation rests with the Sheriff Clerk. See paragraphs 5.7 and 5.8 and the Joint Agreement between SCRA and SCTS
Interpretation for a witness called by the reporter in proof or ICSO application or in an appeal.	Arrange for an interpreter
Interpretation of evidence of a witness called by another party in a proof or appeal	Not to arrange

4. Identifying the Need for Translation or Interpretation

Referrals and Hearings

- 4.1 Assessment of the need for translation or interpretation commences at the point that a referral is received for a child.
- 4.2 The obligation to identify which individuals require translation or interpretation does not sit with the reporter alone. There is an expectation that partner agencies making referrals to the reporter will consider the issue before a referral is made and will include all relevant information within the body of the referral.
- 4.3 The decision that translation or interpretation is required should only be made where there is clear information that such support is essential for an individual's effective participation. Such a decision will be informed by the assessment of the case reporter on the basis of specific information received from the referrer, partners or participants. The reporter is not to make any assumptions about the need for translation or interpretation.³
- 4.4 The information about the need for translation or interpretation contained within referrals or other reports could range from an explicit statement that someone cannot understand written and/or spoken English to information that the person has a limited understanding of English without making the nature or extent of the limitation clear.
- 4.5 Where clear and reliable information is provided that a participant requires translation and/or interpretation, there is a presumption that the translation and/or interpretation is required.
- 4.6 Where the information does not clearly state that translation and/or interpretation is required but indicates that translation or interpretation *may be* required (for example a comment in a report that an individual's understanding of English is limited), the reporter is **not** to decide that translation and/or interpretation is required at this point. Such a decision is only to be made if and when it becomes clear that translation and/or interpretation is required for the individual's effective participation.⁴
- 4.7 Where the information available indicates that translation and/or interpretation may be required, the appropriate action by the reporter will depend on the strength of the information:
 - (a) Translation and/or interpretation **likely** to be required. Where the information indicates that translation and/or interpretation is *likely* to be required, the reporter should generally seek clarification from partner agencies. If clear and reliable

³ See Principle set out at paragraph 2.6

⁴ This approach is also to be taken where the information clearly states that translation and/or interpretation is required but the information is not reliable

information is received that translation and/or interpretation is necessary then it is to be arranged.

- (b) Translation and/or interpretation **may** be required. Where the information indicates only that translation or interpretation *may* be required, the reporter is **not** to arrange translation and/or interpretation or proactively seek clarification. However, if further information is received, the reporter is to re-assess the need for translation and/or interpretation⁵

- 4.8 The requirement for (i) translation of documents, or (ii) interpretation of proceedings must be assessed individually. It may be that only one or the other will be required for effective participation.

Consultation and Recording

- 4.9 A decision that translation or interpretation is required must involve consultation with the LRM, or someone explicitly authorised by the LRM, before being finalised.
- 4.10 Where the decision is taken that translation or interpretation is required, then this must be recorded within the Case Notes on CMS. To support later reassessment of the need for translation or interpretation (see para. 4.11 below) the reporter should record as much information as possible regarding the participant's ability to understand spoken or written English.

Re-assessment

- 4.11 Where there has been a decision at any point that translation and/or interpretation is needed, the reporter is to reassess the need when:
- any new information becomes available and/or
 - when any new proceedings, including review hearings, arise.

This takes into account the possibility that the ability of participants is different to that initially indicated and that participants may develop a better understanding of written and spoken English over time. CMS should be updated to record the detail of most recent assessment.

- 4.12 Where untranslated material has been sent to a participant and it is subsequently ascertained that they will not have understood it, then the need arises to consider translation of that material retrospectively. As with all translation, the decision will be made in consultation with the Locality Reporter Manager. There is no need to forward translated material where the participant will otherwise have been made aware of

⁵ A multi-language leaflet informing the individual to contact the reporter if the individual thinks they need translation and/or interpretation may be developed for use in these circumstances.

the information contained within it (eg discussion with social work through a translator).

- 4.13 If the reporter has not identified the need for translation or interpretation prior to a children's hearing being arranged, but forms the view on the day of the hearing that an individual appears to require such support, and the hearing has not given the matter consideration, the reporter is to intervene and express a view on the need for the hearing to consider the issue. The hearing is entitled to direct the reporter to arrange for such support under rule 61(1)(f) of the Children's Hearings Procedural Rules⁶.
- 4.14 Conversely, if the reporter **has** identified the need for translation or interpretation prior to a children's hearing being arranged, but forms the view on the day of the hearing that an individual does **not** appear to require such support, and a further children's hearing is to be arranged, the reporter is to explain to the hearing and participants that the reporter may decide not arrange for translation and/or interpretation. This will enable the hearing to consider the issue. The hearing is entitled to direct the reporter to arrange for such support under rule 61(1)(f) of the Children's Hearings Procedural Rules.

Court Proceedings

- 4.15 In almost every case where there are court proceedings the question of whether a party requires interpretation or translation will already have been assessed by the reporter and/or children's hearing and this assessment will carry through to the related court proceedings. Exceptionally, if new information becomes available which indicates the most recent assessment requires to be changed, the issue should be reconsidered. The reporter should be cautious about making an assessment different to any clear view of the most recent children's hearing unless significant new information becomes available. Any change of assessment is to be clearly recorded, with reasons, within Case Notes on CMS.
- 4.16 When the reporter intends to call a witness to give evidence, the following approach to assessing the interpretation needs of that witness is to be adopted:
- (a) If the information available makes clear that interpretation is required then an interpreter is to be arranged for court proceedings and for any appointments with that witness (for example to take a precognition).

⁶ The rules states that the hearing may "... require the Reporter to make arrangements for an interpreter for the child or any relevant person or take any other step with a view to securing participation of the child or any relevant person in the hearing;" While the rule does not specify translation of documents it is possible that the hearing consider this covered by the phrase "any other step".

- (b) If the information available indicates that interpretation is likely to be required or may be required, the reporter is to proactively clarify the need for interpretation eg by checking with other agencies who have had contact with the person and or through direct contact with the witness.
- 4.17 The reporter must be alert to whether a witness called by the reporter will require translation of any document to which the reporter intends to refer the witness.
- 4.18 A decision that interpretation for a witness (or translation of a document for a witness's benefit) is required must involve consultation with the LRM, or someone explicitly authorised by the LRM, before being finalised.
- 4.19 Appropriate preparation for court remains essential in relation to a witness who requires interpretation as for any other witness, for example taking a precognition

5. Arranging for Translation or Interpretation

- 5.1 The reporter is to arrange for translation and/or interpretation where:
 - (i) It is one of the matters identified in the table in section 3 above as being the reporter's responsibility and the Locality Reporter Manager authorises it as necessary for the individual's effective participation or
 - (ii) The Children's Hearing orders the reporter to arrange for an interpreter (or for translation) in terms of Rule 61(1)(f) of the Children's Hearings or
 - (iii) The sheriff orders the reporter to translate a document or arrange interpretation for a reporter's witness where this has not already been arranged.

Referrals and Hearings

- 5.2 Where in any circumstances the reporter requires to arrange for translation or interpretation into a spoken language then the process set out in the Operational Guidance on Translation and Interpretation is to be followed.
- 5.3 Where the reporter requires to arrange for sign language interpretation then the process set out in the Operational Guidance Note on Appointing a Sign Language Interpreter is to be followed.

- 5.4 Where more than one participant requires an interpreter in the same language for a children's hearing, only one interpreter should be arranged. Only in exceptional circumstances and where it is clear that more than one interpreter is essential for the effective participation of all participants should more than one interpreter be arranged.
- 5.5 Where a participant has interpretation needs because of hearing impairment, particular considerations might apply to the arrangements made, including whether more than one interpreter is required.
- 5.6 Where a participant is visually impaired the issue centres around how to communicate information contained within hearing papers in an accessible manner. The arrangements that will require to be made will depend principally on (i) the nature and severity of the visual impairment and (ii) the resources that the participant already has available for accessing written material. In the event that such a situation arises, the reporter should liaise with the local authority to find out what resources exist for the individual. Any electronic provision of information to the individual must be by a secure route. Where appropriate, the reporter should contact the Practice Team for advice.

Court Proceedings

- 5.7 Where the reporter has assessed that interpretation of court proceedings is required for a participant in any of the undernoted proceedings, the reporter is to inform the sheriff clerk in line with the Joint Agreement between the Scottish Courts and Tribunals Service and SCRA.
- (i) Proof applications
 - (ii) ICSO applications
 - (iii) Appeals against the decision of children's hearings.
- 5.8 The reporter is to inform the sheriff clerk by providing a completed Form 1 (attached to the Joint Protocol) as follows:
- Proof application – lodge with the application
 - ICSO application – lodge with the first ICSO application
 - Appeal – provide within 2 working days of intimation of the appeal on the reporter
 - Short notice appeals – inform sheriff clerk immediately by telephone and provide completed Form 1 before commencement of the appeal hearing

6. Issues following arrangement of Translation and/or Interpretation

- 6.1 Where interpretation is arranged by the reporter he/she must act with regard to the Best Practice Standards set out in Appendix 1.

- 6.2 While there are limitations on the ability of the reporter to assess the standard of translation and/or interpretation services being provided, the reporter must be alert to that standard, particularly with regard to interpretation during hearings. In particular if the reporter has serious concerns as to “*continuity, precision, impartiality, competency and contemporaneousness*”⁷ then these concerns must be raised with the hearing or with others as appropriate.
- 6.3 Where the reporter is contacted by an interpreter in advance of any children’s hearing seeking information which the interpreter states is required to enable them to interpret effectively at the forthcoming hearing, the following approach should be taken:
- (i) No case sensitive information can be given to the interpreter as the reporter has no authority to do so.
 - (ii) The reporter can provide the interpreter with general information about the role of the hearing to assist the interpreter in his/her preparation and should be as supportive as reasonably practicable in this regard.

⁷ The test adopted in *Hassan v HMA* 2013 SLT p217, following Canadian case of *R v Tran* 1994 2 SCR 951.

Best Practice Standards for Engaging with Interpreters instructed by SCRA

Notes:

- These standards have been developed with reference to guidance developed by a multi-agency working group looking at interpretation in criminal proceedings. They are consistent with that guidance, with appropriate amendment to fit interpretation in children's hearings.
- Reference to the "agency" is taken to be a reference to the language translation and interpretation service provider appointed by SCRA. The provider will from time to time change.
- Interpretation will require to be arranged for a range of parties, normally children and relevant persons. For ease of reference the term participant is used in this section.
- If during a children's hearing or court proceedings, the reporter considers that standards 15 – 21 are not being fully met and as a result the proceedings are not being conducted fairly or are likely to not be conducted fairly, the reporter is to draw the matter to the attention of the hearing or court.

Appointment

1. Ensure that all relevant documents have been sent to the interpreting agency or sign language interpreter – these should include:
 - A letter of instruction containing full details about the assignment
 - The date, time and location of the assignment
 - Where appropriate, include information about the needs of the person for whom they are being asked to interpret.
 - Where the subject matter of proceedings is likely to include technical language, then the need for an interpreter with a sufficient vocabulary should be requested.
2. Advise the agency or the sign language interpreters if any special arrangements have been made that might affect how the interpreter will have to discharge their role.
3. Consider if there are particular sensitivities to do with selection of an interpreter such as gender or some other characteristic. An example of this might be considering a female interpreter where a female participant may wish to speak about sensitive subjects.
4. Take account of any other issues noted by the partner agencies as to specific religious and/or cultural considerations affecting the use of an interpreter.

Before the Proceedings Commence

5. Remember that the proceedings are likely to take longer when working with an interpreter so allow for additional time.
6. Where the reporter has instructed the interpreter, it is important to check the identity of the interpreter. Ask to see their letter of instruction, agency identification or ID such as a passport or driving licence.
7. Check that the interpreter instructed can speak or sign the required language and dialect or communicate in the appropriate form of sign language.
8. While the approach to be taken within the children's hearing is a matter for hearing members, the reporter should speak to the interpreter before the proceedings start to clarify how they intend to fulfil their role and what their expectations are. Issues to be discussed include:
 - The style or mode of interpreting to be used. This will be either (i) Simultaneous – the interpreter listens in one language and speaks in another at the same time or with short time lags, or (ii) Consecutive – first the interpreter listens to the entire original phrase or passage, then interprets it into the other language.
 - Check if there are any cultural issues, which may need to be taken into account both in terms of the process of interpretation and in relation to the subject matter of the proceedings. For example, where references to body parts are concerned.
 - Where the matters to be interpreted are technical in nature ensure that the interpreter has a sufficient vocabulary to interpret fully. (The need for this should be flagged up at the instruction stage but it should be clarified with the interpreter).
 - Clarify what arrangements will need to be made for breaks. Interpreting and listening to an interpreter are both demanding activities and regular breaks are required.
 - The procedure for resolving difficulties (see 9 below).

These matters should be communicated to the hearing as soon as proceedings commence. Communication should take place in line with PD 11 on the "Role of the Reporter at Children's Hearings or Pre-Hearing Panels" Practice Direction. Any communication on matters to do with interpretation should take place after the hearing has commenced unless the information concerning interpretation is likely to affect the chair's management of the fair process of the hearing or pre-hearing panel if known to the chair **in advance**.

9. A clear procedure for resolving difficulties and interventions is crucial. It is of particular importance that the interpreter has the confidence to interrupt proceedings in cases where parties are speaking too quickly or where there is no equivalent term in the community or foreign language for the English term being used. As with the other matters to be discussed, remember to advise the hearing or court of the suggested process at the start of proceedings.

10. Try to put the interpreter at ease – mistakes are more likely to happen if the interpreter is nervous.
11. Arrange for the interpreter to meet the participant as soon as possible before commencement of the proceedings to ensure a language and dialect match.
12. Do not leave the interpreter alone with the participant. In addition to issues of safety and risk management, the interpreter may be put under pressure to take on tasks beyond their remit.
13. Consider and if appropriate agree with others appropriate arrangements for seating, ensuring the interpreter is positioned so that he or she can see all the people that he/she needs to. Communicate this to the children's hearing on entering the hearing room.
14. Ensure that the hearing is made aware of the need for appropriate breaks for the interpreter and participant. For sign language interpreting 2 interpreters may be required. They may interchange roles at intervals of around 15 – 20 minutes. Whilst it may appear that one is resting while the other is signing, the non-signing interpreter is listening closely to what is being said and discreetly offering support – they are both working all the time.

During the Proceedings

15. Where asking a question of a participant whose comments will require to be interpreted, any comment should be addressed to them directly and not the interpreter. Specifically, the interpreter should not be asked questions which begin, for example "Could you ask (the mother/father/child)....".
16. The pace of delivery should be slowed and speech broken up into shorter segments if this seems necessary – but sentences should be said in one segment and not in separate parts. Where possible, jargon, complicated language, proverbs or local sayings should all be avoided.
17. Where the interpreter is a sign language interpreter it should be remembered that he/she must listen to what is said then translate. This means that they work slightly behind what each speaker is saying sometimes by 10 to 20 seconds. The speaker should have regard to varying the pace of their speech, or using shorter phrases or sentences to accommodate the interpreter.
18. Some words do not always have precise equivalents and that a short sentence in English may take several sentences to explain in another language – or vice versa. However, if the reporter (or assistant reporter) considers the interpreter is not fully translating the proceedings then this must be queried with the interpreter. (See paragraph 6.2 of PD.)
19. In some languages there are no equivalent terms to English words or phrases and the interpreter may ask the speaker to re-phrase something or provide a fuller explanation of the intended meaning. This is entirely appropriate.

20. When using sign language interpreters it is important to avoid leading questions. In British Sign Language there are a number of words where there is no exact equivalent to the English generic term - eg weapon, window, door. Sign language is very descriptive and if a general term like weapon is used the interpreter has to make a choice of a type of weapon before signing the interpretation. Anyone speaking should try to be precise in their narrative.
21. Remember to ask the hearing to provide a short break if the interpreter is working for 30 minutes or more. The need for breaks should have been discussed with the interpreter in advance. Such breaks are often required for the benefit of the participant as well as for the interpreter. In court proceedings, the reporter should clarify with the Clerk what arrangements have been made in this regard and should assist the court in ensuring that they are adhered to.