

TRAFUT WORKSHOP – ANTWERP OCTOBER 2012

PRESENTATION BY THE LORD PRESIDENT

Interpretation Facilities in the Scottish Courts

I first became aware of the Directive early in 2011. It came as a surprise to me. It made me aware of some of the dangers in interpretation in the courts of law, which I had never had occasion to think about before.

My Helsinki presentation will be published in due course along with the other documents after the conclusion of these Workshops.

I do not propose to repeat what I said at Helsinki. I shall simply give you a list of the main topics. I discussed the growth of the problem of interpretation facilities in the Scottish courts. I discussed how we had dealt with the problem. I discussed in general terms the operation of the outsourcing contract that applied in the Scottish courts and how it was monitored and enforced. I then dealt in detail with the problems that had emerged and in particular with the resource implications, the need to maintain the quality of justice and the status of the interpreter. I then ended with some points for consideration, for example, whether the court should require interpretation even where the accused person said that he does not wish it, whether accreditation or certification of all interpreters was a realistic ambition and finally the question of unrepresented litigants.

I think that the focus has now shifted to the system by which the Directive will be implemented in the UK, namely outsourcing.

On the face of it, outsourcing is a sensible method by which a government can have its functions carried out by specialist contractors. But the process of tendering, contract negotiation, day to day performance of the contractor, monitoring of performance and so on, requires careful consideration. The consequences of a failure by the contractor may be serious; for example, where a major criminal trial is aborted.

I am speaking now in general terms and not with reference to any specific case.

The question that we must ask is what is at stake here? My answer is, the integrity of the criminal justice system. That integrity is essential to a just society. Anything that casts doubt upon it raises an issue of public confidence. Ultimately it endangers the rule of law.

Since the Helsinki Workshop, difficulties in the UK have become more evident. In England and Wales and in Scotland highly qualified professional interpreters have been critical of the policy and practice of outsourcing interpretation services in the courts.

Those criticisms resulted in the making of representations to the Minister of State at the Ministry of Justice in July 2012.

Until September 2012, the critics of outsourcing were open to the retort that they had a direct personal and professional interest in the controversy. But on 10 September 2012 the National Audit Office published the report of its investigation of the Ministry of Justice's language services contract with its chosen contractor, Applied Language Solutions.

The report is couched in the bureaucratic language that is typical of such investigations; but its key findings are unmistakable. The NAO found that there was a failure to do due diligence on the successful bid; that there was a failure to pay sufficient heed to the concerns and dissatisfaction expressed by professional interpreters about the new arrangements; that there was a failure to appreciate the risks inherent in a change from a regional to a national roll-out; that the contract was allowed to go operational when the contractor was not ready to implement it; that there was a failure by the contractor to alert the Ministry of Justice to its own breaches of the contract; that there was inadequate performance, involving missed targets and continuing problems, and that there had been a slowness on the part of the Ministry of Justice to enforce penalties and to inspect the contractor's work.

The main recommendation of the NAO study was that there should be complete checks on all interpreters to ensure that they had appropriate qualifications and criminal records clearance and that they were properly assessed.

Since Helsinki, there has been a change in my own circumstances. I have become Lord President and Lord Justice General of Scotland. I have taken a particular interest in the quality of interpretation in the Scottish courts. One recent worrying case occurred where the inadequacies of an interpreter required that a murder trial should be stopped after seven days of evidence. This was not a case where interpretation was required in relation to some obscure language. The language in question was Punjabi, a language commonly spoken in Scotland. The inadequacies of one of the interpreters were noticed by a Punjabi speaker who was a member of the jury.

It is my intention to keep a close eye on the working of the system. Time is running out before the Directive comes into force on 27 October 2013. It is conceivable that the courts may have to examine interpreters as to their qualifications and experience and to monitor their performance during the course of their cases.

The wording of the Directive is clear and straightforward. The obligations that it imposes on Member States are, in my view, onerous, not to say arduous.

I think that it will be difficult to achieve full compliance in the United Kingdom within that time limit; but the effort will have to be made. Since I have the responsibility for the working of the Scottish Courts at all levels, and therefore responsibility for the proper observance of the Directive, I think that we may have to consider the efficiency of the existing outsourcing agreements, consider what might be the terms of a model contract, consider how the Directive is to be implemented in relation to obscure languages and perhaps also have a review of the working of the system at some suitable stage.