

Article

Interpretation in Police Stations: Lawyers' Perspectives on Rights and Realities

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Abstract

Limited attention has been paid to the realization of the right to interpretation in the police station. What has been done often focuses on the police or the interpreter experience. We seek to address this lacuna by focusing on the extent to which the right to interpretation is realized in Ireland. We start by outlining the nature of the right at international and European levels, and exploring the reasons why the right is so important. We consider how this has been implemented in Ireland, and note how even on paper there are significant, fundamental concerns as to how the effectiveness of the right is achieved. We then present findings from semi-structured interviews with over 40 criminal defence solicitors in Ireland, with experience of attending police interviews. The findings show that solicitors have concerns about the process of securing interpreters, the quality of the work, their independence, their understanding of their role, the overall impact on the process and the urgent need for training. It is abundantly clear that the right cannot be effectively realized under the current system in Ireland, despite the Directive on Interpretation being in effect there. Further, we note that solicitors are often uncertain and unclear on the extent of the right and what they can ask for. This means that those who are defending the rights of the detainee are unlikely to challenge breaches as they occur. The right to interpretation is clearly deeply neglected and ineffective in Ireland.

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The criminal justice system is undeniably complex. It can move at a pace, and through a vernacular, that is impenetrable for a lay person who encounters it, whether that be a suspect of a crime or a victim. An intensely important process in an individual's life can be entirely mystified. Where an individual does not speak the language of the system that mystification is only amplified. The provision of interpreters to detained suspects is therefore essential to create some minimum fairness to proceedings, to protect fundamental human rights and access to justice.

Literature has increasingly pointed to the growing importance of police station interviews in the criminal justice process, due to an increased use of non-trial disposals, and the professionalization of police interview techniques that enables the gathering of even more reliable evidence at this stage (Jackson 2016). It is important, in that context, to explore the work of interpreters in the police station, as the mechanism through which someone speaks into this critical moment. Layer onto this increased global mobility, including within the EU where the free movement of persons is both protected and encouraged, and we see increased numbers directly affected by this issue.

While there has been some analysis of court interpreting, there has been limited focus on interpreting in the police station, particularly from a human rights perspective. The work that has been done centres on police perspectives on the use of interpreters (Mulayim et al. 2014; Walsh et al. 2020; Wilson and Walsh 2019; Shaffer and Evans 2018). This work does not engage with the rights of the detainee or the possibility of lawyers also being in the interview. Given the increased importance of the police interview, it is a significant lacuna that this issue has not been considered from a human rights or defence perspective.

This article analyses this issue, using Ireland as a case study. First the article considers the importance of interpretation, especially in the police station. Second it explores the human right to interpretation, as it exists at international, European and domestic levels. We then present findings of our qualitative study. Interviews were conducted with 44 criminal defence solicitors who practice in Ireland, about their experiences of attending garda (police) stations: 15 interviewees had direct experience of working with interpreters, and many others also had insightful views on this issue. Concerns emerged as to the regulation and training of interpreters; the process of assessing the need for, and securing the services of, an interpreter; the quality of interpreting and the independence of interpreters; knowledge of the parameters of the role; appreciation of confidentiality; and the impact on the proceedings. Each issue is explored in depth, using qualitative interview data.

We conclude that substantial concerns exist relating to the ability of a suspect who does not have the language of the system as their first language to communicate effectively at this crucial moment in the process. Deficiencies in existing legal regulation enable this to happen, and also enable other problems of engagement and quality to emerge, which are compounded by a lack of oversight. In order to ensure the realization of all detained persons' rights to a fair trial, to interpretation, to legal assistance and to access to justice, significant changes at a systemic level are required. Additionally, while much research on interpreting, and understanding of role, has been conducted in other settings (e.g. medical settings), we argue that greater attention needs to be paid to the need for professionally trained interpreters who understand the importance of accuracy and the consequences of

language in the legal system. Guilt or innocence, charging or not charging, can turn on the specific words used in a police interview. Ireland is unlikely to be the only jurisdiction where challenges to human rights exist in this context, and the concerns examined within this article may also reflect experiences within other Member States that require attention.

1. The importance of interpretation in the police station

1.1 The need for interpretation

Interpretation in the police station is essential for a number of reasons. Primarily, it helps to ensure fairness for a suspect who does not understand the language of the criminal justice system (Brown-Blake 2006). An interpreter ensures a suspect has access to the proceedings, and can participate or, indeed, refuse to participate. The police station interview creates vulnerability for all (Dehaghani 2020) but when there is also a language barrier, that vulnerability is heightened. The suspect is disadvantaged by their lack of access to the process. The interpreter should bridge the linguistic and cultural gap for the suspect, providing access to communication. Failure to provide an interpreter in court has been likened to denying the accused the right to be present at trial (*US ex rel Negron v New York*, United States Court of Appeals, Second Circuit 1970). In a police station interview, the real significance of having no interpreter, or a poor interpreter, is that damaging misunderstandings may occur that are later detrimental to a suspect's situation (Hale et al. 2019). The interpreter should ensure that the suspect is not unfairly disadvantaged by miscommunication. Interpreters in police stations are also important for police themselves, facilitating communication and questioning, and thereby achieving the ultimate police aims.

The nature of legal language compounds the need for an interpreter. Language learning and language competency is highly situational. There are layers to language acquisition which vary from person to person (Ellis 1985). Factors such as educational background and age (Piller 2016) or disability mean people learn language differently. While one person living in Ireland for five years might have an excellent command of English, another may not. The need for an interpreter depends on the individual's capacity, but also on the context. Fluency in a language is not a static state of being across all scenarios. Humans are competent in certain domains of language, like 'family', 'school', 'place of recreation', and 'church' (Berk-Seligson 1988). Competency in one domain does not mean competency in other domains, especially ones where specific and complex terminology is common, such as medical, scientific or legal settings (McCaffrey 2000). In a police station, what is said by an accused person, and how they respond to the questions put to them, has the potential to seriously impact on future criminal proceedings and, thereby, their lives (Mulayim et al. 2014). An everyday understanding of a language is not sufficient for police interviews.

On top of this, global mobility means that more people find themselves in this situation. This is particularly true in the Irish context where the rate of change has been quite dramatic. The 2016 census found that over 610,000 people living in Ireland speak a foreign language in their home, an increase of 19 per cent on the 2011 census (CSO 2017). Fifteen per cent of those individuals indicated that they spoke English 'not well' or 'not at all'. Over 70,000 people indicated that they speak the Irish language daily outside of education. In addition, Irish Sign Language is the first or preferred language of over 5,000 people. In total, this suggests that English may not be the first language for almost 700,000 people, out of a population of 4.7 million. Thus a minimum of 15 per cent of the population would require an interpreter should they be detained. Add to this issues of systemic racism, and

our knowledge that migrants are more likely to end up in the criminal justice system (Culleton 2007; Fekete and Webber 2010), and we see that 23 per cent of the Irish prison population in 2019 declared themselves as non-Irish nationals (Irish Prison Service 2019). Thus somewhere between one-in-five and one-in-six persons arrested in Ireland might require the services of an interpreter or their right to a fair trial may not be realized.

1.2 Existing research

Despite both the clear need for effective interpreting in order to realize rights, and the increasing frequency with which this need arises, there has been a paucity of related research. Court-based interpreting has received some attention in Ireland. O’Nolan (2013) found interpreters were lacking confidence to state that they couldn’t hear or that the person was speaking too fast. Waterhouse (2014) documented that interpreters were challenged by the vernacular of the court and that silent interpreters, where the interpreter stands next to an accused and says nothing, or very little, were ‘a widespread phenomenon’. Some interpreters only summarized what was said, while others went so far as advocating and advising clients.

Walsh et al. (2020), noting the lack of research on interpreters in police interviews, conducted a survey of both interpreters and investigators in England and Wales on the practice of interpreting in the interview. While they did not engage with the perspective of detainees or their legal representation they nonetheless found,

there was not always a consensus of opinion either within or between these two groups of professionals concerning whether (when participating in investigative interviews) (i) they prepared jointly with each other; (ii) interpreters assisted (or otherwise) with rapport building; (iii) interpreters could interpret accurately; and (iv) interpreter interventions were disruptive or not’. (Walsh et al. 2020: 318)

Wilson and Walsh (2019), drawing on the same survey, found that issues of role, trust and emotion could inhibit impartiality between police and interpreters. In relation to role, Wilson and Walsh (2019) found that police can mistrust interpreters in part because their presence means police have to give up some control in the interview setting (Salaets and Balogh 2015), a setting which is overtly designed to maximize police control. Shaffer and Evans (2018) found that police were concerned that the presence of interpreters could disrupt the building of rapport, a key step in enabling the extraction of the best evidence (Noone 2015). On the other hand, Walsh et al. (2020) found that over two-thirds of interpreters felt that they aided police building rapport with interviewees, which may suggest a lack of neutrality in the process. The same study found police were confused over whether or not interpreters should aid police in building rapport too. Hsieh (2006) also raised the concern that people may communicate, in the midst of an interpretation, with an interpreter as a ‘private individual’ and they may feel compelled not to interpret that ‘private’ speech. While Hsieh was speaking in a medical setting, the stress and intensity of the police setting could give rise to similar compulsions. Clarity as to role is lacking.

Numerous studies have identified concerns among police as to the quality of interpreting (e.g. Mulayim et al. 2014). In the study by Walsh et al. (2020), only 41 per cent of police were willing to describe interpreters as effective or very effective ‘at undertaking faithful interpretations’. Mayfield (2016) found that officers reported concerns as to inaccuracies in

interpreting, interpreters acting as investigators, and substandard evidence being procured. What qualifications police have to make those judgements complicates this matter further. That all the exact words are not directly translated is a commonplace concern but some research suggests there may be a fundamental conflict here:

Findings suggest that reparations, which complete fragmented dialogue during interpreter-assisted events, are not unacceptable to interlocutors, and perhaps even desirable... completing or smoothing partially constructed sentences can enhance interlocutor comprehension. (Wilson and Walsh 2019)

This perspective indicates that interpreters may believe that they are aiding communication by altering words, which conflicts with a legal position whereby the exact words and phrases used by a suspect can be pivotal to the outcome, particularly where either a confession or a defence is at play. In England and Wales, Her Majesty's Court Service (HMCS) and the Crown Prosecution Service (CPS) have addressed this with clarity, stating that '[the interpreter is] required to convey the exact meaning of what is said without adding, omitting or changing anything' (HMCS & CPS Terms and Conditions for Interpreters 2008: 6.1.1). This suggests a very stark need for interpreter training on how language is utilized in the legal system. Mulayim et al. (2014) emphasize how important words are in a legal context.

This is all complicated further by the particular terminology, with very exacting meanings, that can be part and parcel of police interviews. In the absence of sufficient and appropriate training, some have developed ways to work around this. Wilson and Walsh (2019) found that a good briefing from police in advance of the interview enabled interpreters to prepare linguistically for what was going to be discussed. Shaffer and Evans (2018) suggest that the emotional content of what is covered in police interviews can have an emotional impact on interpreters which can, particularly in lengthy interviews, affect the standard of interpreting.

In all, what we can see is that in recent years, greater attention has been paid to the presence of interpreters in the police interview, although primarily from the perspectives of the police and the interpreter. Within this issues of quality, trust and emotional impact have been identified. This work has not, however, considered the matter from the perspective of the rights of the person and the impact of interpretation on defence. We now consider the issue through this lens.

2. Right to interpretation

2.1 International human rights law

Interpretation is fundamental to achieving minimum rights in the criminal process. The United Nations International Covenant on Civil and Political Rights (ICCPR) and the Council of Europe's European Convention on Human Rights (ECHR) both identify the right to an interpreter as a minimum standard under the right to a fair trial, bearing in mind that the right to a fair trial extends beyond court interactions and applies also to interactions with police prior to the trial, therefore including the police interview. The right to an interpreter is provided by Article 6(3)(e) of the ECHR and Article 14(3)(f) of the ICCPR. Both provisions are identically worded, stating that an accused has the right 'to have the free assistance of an interpreter if he cannot understand or speak the language used in court'. While the provisions do not clarify what the standard is for 'understanding' or 'speaking' a language, both the European Court of

Human Rights and the UN Human Rights Committee have, through jurisprudence, shifted towards a position of mandating an interpreter where the language is not sufficiently understood by the relevant individual to defend themselves ([Vizgirda v Slovenia, European Court of Human Rights 2018](#); [Zeynalov v Estonia, UN Human Rights Committee 2016](#)). Neither the European Court nor the UN Human Rights Committee has provided clarity on who may act as an interpreter, nor have they imposed any requirement for quality or training of interpreters.

2.2 EU law

As part of a broader programme of harmonizing suspects' rights ([Cras and De Matteis 2010](#)), the European Union introduced the Directive on the Right to Interpretation and Translation (2010/64/EU, the Directive) in 2010 ([Hertog 2015](#)). The Directive explicitly states that the right to interpretation extends beyond court proceedings (Article 2.1). The entitlement to an interpreter exists where the accused does not 'speak or understand' the language of the proceedings, and interpretation ought to be provided without delay (Article 2.1). The right extends to the interpreting of consultations with legal counsel, where doing so is 'necessary for the purpose of safeguarding the fairness of the proceedings' (Article 2.2). Article 4 states that Member States will meet the cost of interpreters, irrespective of the outcome of proceedings.

Essentially, Article 2.8 of the Directive requires that interpretation be of a sufficient quality to 'safeguard the fairness of the proceedings' by ensuring, inter alia, that the accused has 'knowledge of the case against them and are able to exercise their right of defence'. States are required to provide a mechanism to ascertain an accused's need for an interpreter (Article 2.4) and a mechanism to challenge a decision that no interpreter is needed (Article 2.5). There are no specifics as to what these should look like. Article 2.5 requires a mechanism to complain about the quality of interpreting provided, but again, the detail is absent. While Article 5 of the Directive details that states shall take 'concrete measures' to ensure interpreter quality (Article 5.1) and that they should 'endeavour to establish a register' of 'appropriately qualified' interpreters (Article 5.2) there is no clarity on the meaning of these phrases.

2.3 Domestic rights

Irish law is long acquainted with the need for interpretation given that both the Irish and English languages are official languages of the state under the Constitution (as of 2020, Irish Sign Language has been recognized in legislation). As far back as 1929, the Court of Criminal Appeal recognized the right to interpretation in the case of *AG v Joyce and Walsh* and where Chief Justice Kennedy stated:

It would seem to me to be a requisite of natural justice, particularly in a criminal trial, that a witness should be allowed to give evidence in the language which is his or her vernacular language, whether that language be Irish or English, or any foreign language; and it would follow, if the language used should not be a language known to the members of the Court, that means of interpreting the language to the Court (Judge and jury), and also, in the case of evidence against a prisoner, that means of interpreting it to the prisoner, should be provided.

In *DPP v Yu Jie* ([Ireland Criminal Court of Appeal 2005](#)) the applicant argued that an interpreter of his own choosing should be present where he was being interviewed by the Gardaí, but the Court ruled that any possible prejudice caused to the applicant due to errors

by an interpreter during interrogation in custody could be addressed at trial (Bacik 2007). The cases of *DPP v Malai* (Ireland Court of Appeal 2020) in the Court of Appeal, and *DPP v Savickis* (2019) in the High Court, make clear that the issue of interpretation falls within the parameters of the constitutional right to a fair trial. In *Malai*, a defendant who relied on an interpreter at trial was not provided with one in the garda station on arrest for drink driving. There is no evidence that he requested it, but the defence argued that the Member in Charge was required to make an assessment as to whether one was needed, note this in the custody record, and inform the detainee. There was no evidence that the latter two steps were taken. The Court of Appeal ruled that these were ‘administrative breaches’ of the constitutional right, which did not meet the threshold for excluding evidence.

In *Savickis*, part of the appeal was that ‘interpretation facilities [in the garda station] were completely inadequate to the point of unfairness’. An interpreter had been secured for an interview in 2017 relating to a failure to comply with requirements of the sex offender registry, but she had no training or qualifications. The accused was charged and met his solicitor subsequent to this. It was argued that the accused was unable to participate fully in the interview because of the substandard interpreting. The solicitor arranged for the transcript of the interview (from the audio-visual recording thereof) to be independently translated, and when this was compared with the memorandum of the interview (the notes taken by gardaí during the interview itself) it was clear that the latter was abbreviated and included inaccurate interpretations at times. Donnelly J. was clear not only that the right to interpretation was one of constitutional status, but that it also applied in the police station as well as at trial, stating that ‘It would be to tolerate injustice if a person who could not fully understand English was nonetheless required to defend themselves without the assistance of such an interpreter’ (para.58). She found that it is for the trial judge to ensure that the trial is fair, which includes ensuring that the translation is adequate. It is for the state to determine qualifications, and the judicial function is not to comment on that but to assess the adequacy of interpretation facilities: ‘The fundamental issue is whether adequate translation was provided that permitted the accused to exercise fully their right of defence so that the fairness of the trial proceedings has been safeguarded’ (para.62). The trial judge must ensure that the right to a fair trial is not compromised by inadequate translation: the specific remedy in any case will turn on the facts of the case. While this judgment is important in asserting the right to interpretation in the Garda station, not all cases come to trial to afford an opportunity for judicial remedy of investigative difficulties. It is important then that the law and practice applicable to the pre-trial investigative stage of the criminal process would provide a clear and effective basis for detained suspects to adequately rely upon their right to interpretation.

Legislation provides piecemeal footing for the right. There is no general legislative provision of interpreters. The Treatment of Persons in Custody Regulations 1987 provide for interpreters for persons with hearing disabilities. Foreign nationals are mentioned in the regulations, but only as regards consular assistance. The Refugee Act 1996 provides for interpretation for those claiming refugee status. The Official Languages Act 2003 mentions a right to an interpreter and interpreting between the official languages (Irish and English) in court (Section 8.3) but it does not specify who may act as an interpreter, quality assurance, or any requirement for training or accreditation. The Irish Sign Language Act 2017, in effect since December 2020, more progressively prohibits the use of an unaccredited Irish Sign Language (ISL) interpreter by a court or public body, under Section 7.

As regards the adoption of EU Directives in the area of freedom, security and justice, Ireland maintains an opt-in status. It has not opted into some, including the 2016 Directive on the presumption of innocence or the 2013 Directive on the right of access to a lawyer in criminal proceedings, but it has opted in to the Directive on the Right to Interpretation and Translation. This Directive is executed in Irish law as it relates to garda stations by the European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013 (the Regulations). These Regulations state that it is for the Member in Charge (MIC—the officer tasked with ensuring a detainee’s rights are upheld) to determine if an interpreter is required. In making that decision they shall,

consider whether interpretation is necessary to ensure that the arrested person knows the offence or other matter in respect of which he or she has been arrested, will be able to communicate effectively with his or her solicitor and will be able to appreciate the significance of questions put to him or her or of his or her answers during interview. In case of doubt it shall be presumed that interpretation is required. (Regulation 4.2)

The interpreter should then be arranged ‘without delay’ and can attend both meetings with legal representation and police interviews. While the Regulations name some of the functions of the interpreter, they do not define the role of the interpreter.

The Regulations vary in some respects from the Directive. The mechanism for establishing the need for an interpreter, as required by the Directive, is achieved via the opinion of a garda. It is questionable whether a garda would be sufficiently informed to make this decision. There is no mechanism corresponding to Article 2.5 of the Directive, to appeal a refusal of an interpreter, a fact of grave concern to the Irish Translators and Interpreters Association (ITIA) (2018). Finally, the requirement that the interpreter be of ‘quality sufficient to safeguard the fairness of the proceeding’ under the Directive is transposed under Regulation 7.2 whereby the MIC can remove a poor-quality interpreter from proceedings and replace them. What expertise the MIC has to make that decision is unclear.

In practice, the Department of Justice issues requests for tenders for the provision of interpreting services in the justice system. A multi-member framework agreement is then created with members to provide interpreting services. A separate agreement is reached for Irish language interpreting. In the most recent tender three companies were successful for the provision of services to an Garda Síochána. It is from these companies that interpreters are provided each time the MIC determines that one is needed.

Perhaps the most striking issue is that of accreditation: there is no system of interpreting accreditation nor is there mandatory legal training for legal interpreters. The most recent request for tender, in 2020, indicated an intention to spend €5 million per annum, for four years for garda stations, prisons, courts and the Department of Justice (and associated agencies). Previously tenders had not required any standards to be proven by interpreters. In 2015 all that was required was ‘an academic qualification in English’ with no specificity: a diploma in business studies could satisfy the requirement. The most recent tender partially addressed this, adopting the Common European Framework of Reference for Languages (CEFR). Under this framework basic users are at levels A1 and A2, independent users at B1 and B2, and proficient users at C1 and C2. Under the tender, interpreters for the 10 most common languages will need C1 proficiency and B2 for other languages. The ITIA is clear, however, that B2 is not sufficient (ITIA 2020). A legal dispute has meant this tender has not been concluded as yet, and so at the time of writing (May 2020) no language qualifications exist for interpreters as the previous tender still applies.

Interpreters contacted by gardaí are paid €18 an hour for attendance at a garda station, are reimbursed travel costs for travelling beyond their county, but receive no pay for travel time. However, the [Department of Justice \(2011\)](#) has clarified that criminal legal aid will be paid where interpreters are employed ‘to assist in matters associated with the defence of their client’. Accordingly, solicitors should be entitled to employ their own interpreter to operate in addition to the interpreter secured by the police. In this instance interpreters will be paid €40 for the first hour, €20 for the second and a mileage allowance; however, if that interpreter is accessed through a company not all of that will be passed on to the interpreter. Recent personal communications with solicitors indicate that a commitment will not be made to pay for this independent interpreter unless legal aid is granted, which will not happen until the first court hearing, sometime after the garda station detention and interview. The practical realization of this right may be undermined by this approach.

Relevant practitioners have neglected the issue to an extent. In 2014 solicitors were permitted to attend garda interviews for the first time and this decision prompted the Law Society and An Garda Síochána to issue codes of practice for garda interviews. The Law Society guidance makes no mention of interpreters; however, the Garda code says the following:

the interpreter being used by An Garda Síochána to interview a suspect can be used by the suspect’s solicitor to assist in the giving of legal advice. If the suspect and/or solicitor object to the use of the interpreter, the suspect/solicitor will be advised to make their own arrangements for an interpreter. An Garda Síochána will provide a reasonable opportunity for a further interpreter to be located.

The document does not define the role of the interpreter. It is also important to note that An Garda Síochána adopted a new model for conducting interviews some years ago, and information that is available in relation to it makes no mention of interpreters, suggesting that gardaí are not trained to work with interpreters ([Noone 2015](#)). It is also essential that interpreters are kept up to date with the garda way of working. Indeed, [Mulayim et al. \(2014\)](#) recommend that interpreters working in police station settings should be familiar with the process of police interview techniques and strategies in order to better perform their job.

We can quickly establish serious problems in the system as it operates: there is no accreditation of interpreters; no training for the specific context of working in a Garda station; no clear definition of the role; questions of independence and accountability; as well as poor rates of pay. Additionally, we can see that this is an issue that has been largely neglected by interested parties in Ireland. By comparison, in England and Wales, [HMCS and the CPS have discussed this with clarity, publishing Terms and Conditions for Interpreters in 2008](#). Strikingly, in Ireland, the greatest expression of concerns has come from interpreters themselves. Most recently the Irish Translators and Interpreters Association ([ITIA 2020](#)) raised the following concerns in a submission to the Department of Justice:

1. The sector is unregulated – anyone can call themselves an interpreter or a translator regardless of whether they possess qualifications or experience in these high-skill fields.
2. There is no properly accredited course to train legal interpreters how to interpret accurately and how to behave ethically (e.g. confidentiality, impartiality, conflict of interest).
3. There is no testing system to ensure that interpreters are competent.
4. As a result of outsourcing in recent years, current rates of pay are appallingly low for what is normally highly skilled work.

5. The current system of outsourcing does not provide value for money.
6. People who work with interpreters need training in how to do so effectively.
7. There is little or no independent quality control of interpreting and translation.
8. There has been very little research on the provision of translation and interpreting in Ireland to date.

While domestic case law, as mentioned above, has considered the right to have an interpreter, in fact no scenario has as yet led to the exclusion of evidence based on the quality of an interpreter. Rather than indicating that all is well in this space, this may stem from a lack of understanding on the part of both defence lawyers and the judiciary of the significance of professionalized interpreting services. In the adjudication of the right to an interpreter under the ICCPR and the ECHR, there has been a general failure by the UN Human Rights Committee and the European Court respectively to engage on the issue of quality of interpreting. For example, in *Hill and Hill v Spain* (UN Human Rights Committee 1997), the UN Human Rights Committee failed to engage with whether or not the use of a bilingual inmate as an interpreter impacted on the right to a fair trial. The lack of consideration given to non-professionals acting as interpreters is also seen in a number of European Court cases, where family members were used as interpreters (*Cuscani v UK European Court of Human Rights 2002*; *Baytar v Turkey European Court of Human Rights 2014*) and the Court did not discuss whether this specific issue impacted on the right to an interpreter. It points to a possibility that the judiciary has not given adequate consideration to the realities of what it means to actually need an interpreter. In her work on the Irish judiciary, *Phelan (2011)* has documented a multitude of instances whereby judges have shown a disregard for the needs of accused persons who do not speak English or Irish.

In considering the lack of assessment of the right to quality interpreting, it is also likely due to a lack of standards against which interpreters can be assessed.

It is therefore clear that there are serious concerns about the extent to which rights to interpreters are being realized in Ireland. In 2007, Bacik concluded that ‘It is inexcusable that so little attention has been paid to such an important question in this jurisdiction before now’ (2007: 123). In 2021, we still say the same.

3. Methodology

Solicitors have been attending police stations to consult with detainees since at least the 1990s and have been permitted to attend interviews since 2014 (*Conway and Daly 2019*). This aligns with European developments. We have argued elsewhere that recent changes to the investigatory process, including changes in interview models, evidential changes, and a move to non-trial based disposals have increased the importance of the police interview. With that increased importance comes an increased need for the protection and realization of rights. The right to legal assistance—having an active lawyer, building the defence, in the interview—is an essential component of the safeguards for detainees (*Jackson 2016*; *Blackstock et al. 2013*; *Pivaty et al. 2020*). It follows that the ability to communicate effectively with that lawyer is critical to the realization of rights.

For all of these reasons, inquiring as to solicitors’ experiences of and perceptions of interpreters is an important indicator of how detainee’s rights are being protected and upheld. This is a different lens for assessing the work of the interpreter. Previous studies were

focused on how they interacted with police, but we question how they work for detainees, via their legal representation.

We interviewed 44 criminal defence solicitors in Ireland. The project was a broader one, focused on the general experience of attending interviews. The experience of working with interpreters was one element of that project but one on which strong views were expressed. Fifteen of those we interviewed had experience of working with interpreters, but many others also expressed views on the issue: in total 23 of those we interviewed are quoted in this work. Some of our findings align with what has been found in more police-orientated studies, but other concerns were different to those raised elsewhere. Solicitors were identified through both purposive and snowballing methods. Our sample contains a mix of genders, rural and urban locations, newly qualified and experienced, as well as sole practitioners and those working in firms. Just over half were male, and we spoke to solicitors in 11 of 26 Irish counties. Half were based in Dublin.

After institutional ethical approval was secured, semi-structured interviews were conducted with participants, for an average of one hour. Interviews were recorded, transcribed, anonymized and coded using NVivo. Participants are referred to by interviewer and order (YD1 = the first solicitor interviewed by YD, VC16 = the sixteenth solicitor interviewed by VC)¹. Given the size of the country, solicitors may continue to encounter the same interpreters on an ongoing basis and a degree of caution in responses is occasionally apparent.

4. Findings

Our findings centre on issues such as the process of securing an interpreter, the quality of interpreting, the role of the interpreter, issues of confidentiality, the impact on the defence, and issues around training and accreditation.

4.1 Process

Among our participants, seven reported regular experiences of interpreters, and another eight had limited experiences. One reported experience of working with an ISL interpreter and the rest related to spoken-language interpreting. A large portion of those we interviewed had not had experience with interpreters. Some linked this limited experience to a question of whether detainees always understood, in both legal and linguistic ways, their right to legal assistance.

There was a mixed understanding of how an interpreter was selected. Some were confident that the gardaí proactively made the decision, whereas others had experiences of having to advise gardaí that an interpreter was needed (YD 1). Some believed there was one company which had the tender, many were unsure.

YD19: Have you any sense of where they get the interpreters around here? I think they have a company that they phone. A translation company.

YD20: Do you know how they source the interpreters? No, not a clue.

Given how fundamental this is to the right to a fair trial, it is perhaps surprising that defence solicitors do not take more interest in how interpreters are secured. This may reflect practices seen in courts, where legal practitioners seldom meet the interpreter, or engage with that process. Phelan shows in her work (2011) that it is judges who have the control

1 Anonymized for the purpose of blind peer review.

over who is granted an interpreter and who is refused one when a request is made for court interpreting. Indeed, in the Garda station the onus is on the gardaí rather than the solicitor to ensure access to an interpreter when needed.

Solicitors noted difficulties when the system failed to produce an appropriate interpreter:

YD18: And have you had any difficulties or any interesting experiences with them? Well you can't get a Georgian, interpreter has to come from Dublin for [X other city].

YD22: I can imagine if you're dealing with an extreme minority language that it could be very difficult maybe to source an interpreter.

Thus there are immediate concerns where a less common language may need interpreting, and that interpreters may be centralized in Dublin, the capital city. Delays will occur if an interpreter has to travel from Dublin.

A concern regularly cited is the dynamic created by the fact that it is the gardaí who contact the interpreter. The independence of the interpreter was automatically in question for many solicitors.

VC2: Although, the interpreter was very pleasant, but she'd been ordered by the Gardaí and stuff and sometimes I wonder... I thought that she was very pleasant, but chatty with the Gardaí and maybe a bit chatty about the client with the Gardaí, which I didn't particularly like.

VC9: So sometimes there can be a little element of a conflict of... you're worried about a conflict of interest and you're worried because you don't know what that interpreter has been discussing with the guards before or in between, you just don't know what that relationship is, and that can be a little bit difficult.

YD1: basically the interpreter is there for Garda, not for my client and this is how Garda sees it. That they call interpreter to help them to understand what client says, not to help the client.

YD10: I don't like the way the interpreters are allowed to stay in with the guards. So, I had one where I was sitting in the public office while the interpreter was sitting with the guards, that's absolutely inappropriate.

There is a feeling evident here that the interpreter is employed by gardaí and is working with them. It is not as objective as they would like. Professional standards are clear that interpreters should not 'chat' with gardaí in this way, and certainly not discuss clients with them. While some solicitors did not believe they could do anything about this, others felt the only way to overcome this issue was to insist on an independent interpreter.

YD17: I never use the Garda station Interpreter. I always get my own... I'm just not satisfied that, you know, I think to be independent... I'd be concerned... I'm not aware of any provisions whereby if an interpreter tells a guard something that's said in a consultation, that they'd be sanctioned in any way.

But again uncertainty pervaded, with others not realizing that this was possible:

YD4: So you don't get a separate Interpreter? I have never done that and I've never actually asked if other people do that... I don't know if I did do it what, you know, how would it be paid for or what scheme like?

This lack of understanding of the process and rights among solicitors is of great concern. These are the people employed to protect the rights of the detainee and some seem unsure of what they are entitled to request or expect. The need for independence in the process is

something which may be intuitive within their legal training, and so comes up time and again.

Some questioned whether the interpreter may not be conveying accurately the right to a solicitor.

VC5: **Much work with interpreters?** No, very little and maybe that's a problem in itself as well because maybe, people don't fully understand they can have a solicitor there.

VC16: And you're totally relying on potluck that they'll find somebody, or that the interpreter that's called will call a solicitor. . .

Detainees should be advised on arrival of their right to consult a solicitor and there should be no question of interpreters calling a solicitor. The Legal Aid Board Annual Report for 2019 (p. 53) suggests that just over 2,000 claims were made for attending interviews. Some 20,000 are detained annually in Ireland. Therefore, the vast majority of detainees do not avail of their right to have a solicitor, and may only meet their legal representation at a court hearing. The key point being raised here is whether detainees understand this right. Research has shown elsewhere that the failure of police to explain the right has been a historic problem (Blackstock et al. 2013) but the question emerges as to whether this is compounded through interpreting deficiencies. If the quality of interpreting is poor, as will be discussed next, a situation may arise where the explanation provided by gardaí is not correctly interpreted, or if they operate beyond their role, they may cross into advising a client, such as saying that a solicitor is unnecessary, for instance, in the interests of speed.

4.2 Quality

Solicitors quickly raised the issue of quality. Some were actively satisfied with the quality of interpreters:

YD22 (also does immigration work): In Garda stations I've been present with interpreters. Have I had an interpreter present at interviews? I have yeah, I can think of one anyway and I was satisfied on those occasions with the adequacy of the interpretation.

VC4: . . . there's no difficulty with interpreters. They come along, they interpret, everything is just slower.

YD20: I'd know the interpreters here very well, the main Polish and Lithuanian one. They're excellent. Sometimes they're not available and then there's substitutes sent in who wouldn't be as good. And you would have concerns then.

Others however were not so happy:

VC1: I've had a few cases where the [non-Irish] person who's been arrested says that the interpreter didn't really speak properly [the other language] or that the level wasn't great

YD1: it happened once or twice that I actually have to correct the interpreter to specify exactly and to clarify what was said by the client, because that would make a difference.

YD10: Again, I better be careful what I say but there'd be a few that I would know through the courts and all of that, again you don't really fully know if, again I'm very conscious of that interpreter who keeps on talking and you're like 'I said one sentence, it was five words long, how are you still talking?' so, that's a situation where, if I had to, I would say 'sorry, I want you to interpret word for word'.

YD8: I have a big issue with interpreting services, I think they're dreadful. Why? I just don't like the way they interpret, they don't just interpret, they're almost trying to explain. . .

Some lawyers have sufficient knowledge of another language to assess the standard of interpreting but it is of concern that others are judging the standard of interpreting on unofficial, and perhaps uninformed, criteria. Perhaps the more reliable, and the more commonly referenced, position was that solicitors know they are not in a position to judge the quality:

VC2: I think it's hard to know because I actually have no idea what's being interpreted back.

YD19: I suppose ideally you'd love to know what they're saying. To just be able to understand. Because sometimes I'll say one thing, it could be one sentence and the talk could be going on for five minutes. And I'm like 'What are they talking about now?'

YD16: I suppose there's a lot of trust. You'd need to have a lot of trust in interpreters because we wouldn't have a clue what they're saying. So you'd hope that they're translating word for word, basically.

Many solicitors are aware that they do not have the skills to assess the quality of interpreters.

VC14: it's very hard for me who doesn't speak Lithuanian, or Russian or Polish, to say 'Well, they're not asking the question properly'. But I have seen that when I've got statements translated that there is a ... on the tape that there is a discrepancy.

We noted earlier that research has found police also don't always feel they have such skills, and given that the detainee requires an interpreter they inherently will be unable to assess the quality. Some solicitors proceed on trust, however, in the absence of accreditation and oversight it is difficult to see the basis for that trust. Solicitors could name instances where they identified failings. YD5 pointed to a particular instance where they had completely misunderstood something that had been interpreted:

...it is possible that I misheard something but 25 minutes in something fundamental to whole thing occurred again so I wanted clarification on it and I put it to the client and then it became clear that what I had understood... was completely wrong, that something had occurred a year and a half ago and was ongoing that I had originally heard that it happened four or five years ago.

Fundamental facts can be misinterpreted, and without legal training the interpreter may not appreciate the significance ([Hale et al. 2019](#)). Precision is hugely important and the example given of the third person being used is bad practice in any context:

YD4: But it's even simple things like they'll say, you know, your client will say something and the interpreter will say 'He said lah-de-blah-de-blah...' Instead of interpreting exactly, instead of saying 'I went to the shop' he'll say 'He said he went to the shop'... So you'll know like this person hasn't had very good training on how to actually interpret so and they could get the point across fine, but there just could be nuances or things that are missed that might be important or might not.

The use of the third person in this way is unclear, and may leave the police officer unclear as to who is being referenced. A related concern, as discussed earlier, is the complexity of some terms and concepts which can be central to the police interview. Inferences from silence, a complex area of law ([Daly 2014](#)), is one such example. The basic principles of the law must, in some circumstances, be explained to detainees because of the potential trial consequences of what is said or not said at interview. Gardaí have adopted lengthy phraseology to explain this, and solicitors will often seek to provide additional explanations.

Solicitors recognize the complex nature of this legal issue and interviewees raised concerns about the ability of interpreters within the Irish system to accurately interpret all of this.

YD20: a lot of interpreters are very good, but you'd have concerns like even if they're to fully get everything across to your client. And then you've things like if inferences are raised... I mean, it's fairly hard to understand in English, and they read through all the legislation and all that. It takes such a long time then, it's being interpreted. And you just don't know if your client has a full grasp on what it is. Like I said, I find it hard to explain in English.

YD1: it happens from time to time that we have an interpreter who just shouldn't be doing that [interpreting] and I don't expect really huge knowledge of legal vocabulary, because that is very difficult and completely different than normal English.

Not all cases involve this degree of complexity, but there is always the potential for complications and so precision is important. This can apply in both directions, not just the interpreting of terms to the detainee, but also for the exact words of the detainee to be interpreted. How something is expressed could make a significant impact at trial.

YD5: during the interviews he [the detainee] was talking but he was talking gibberish in Polish and... it took me until the third interview to figure out that my guy, the client, the interpreter was not translating everything that the guy was saying. So, I had to say to the interpreter, 'listen, even if he's talking gibberish, if it's not constructing, if it is not a sentence, just translate the words because that's what the whole point is.' And so as that went on he did interpret a little bit more of what he was saying but he sort of [gestures - puffs lips twice]. Anyway then I began to think is this guy, because he was talking rubbish, well was he talking rubbish, he was saying that his wife or his partner was poisoning him with battery fluid and his urine was black, this was just some of the stuff he was saying, he was also saying that she'd had an affair... the interpreter was getting fed up with your man because he was talking gibberish... Subsequently because of my concerns about it we actually got the Legal Aid Board or the Department of Justice to allow us to transcribe the interview notes again and then we got that done... there were quite significant, it's really quite interesting, there were quite significant gaps... we went and we got it transcribed again and there were significant differences and in ours you can see clearly that my man was talking nonsense.

They subsequently established that the client was delusional at the time of the interview, but the process of interpretation didn't show that. This is a dramatic example, but it goes to the broader point that most solicitors are not trained to be able to spot deficiencies, and indeed even where they can, they will not feel confident to call it out. Further, an appropriately trained interpreter would have known the importance of conveying what was happening to the gardaí and solicitor. Two participants mentioned securing independent interpreters but the majority did not even know this was an option, and there is currently no basis for confidence that such an interpreter would be any more qualified. A great deal of trust is being exercised, which has no real basis given the lack of accreditation or accountability. It seems defence teams are not challenging poor-quality interpreters, even when they see them.

4.3 Limits of the interpreter's role

Just as with police research, solicitors had concerns as to interpreters' concept of their role:

YD1: I actually refused to work with him, because he does not understand where his role ends. And he actually, I heard him giving the legal advice to the client and the legal advice was not correct.

YD18: There's one or two of them they feel that they're the solicitor themselves, but I mean, when you get over that and you put them in their place, there's usually no problem... they're giving advice rather than interpreting.

YD15: they have no idea what they're supposed to be doing there. A lot of the times you end up telling them what they're supposed to be doing as well.

This overlaps with findings in other studies, such as [Mayfield \(2016\)](#) mentioned above. But it is particularly interesting in this context given that there is no formal statement in Ireland as to what the role of the interpreter is. Solicitors are confidently stating that they know what interpreters should be doing, when in fact there is no statutory clarity on the role in Ireland. It would seem that solicitors work off a basis that interpreters are there to provide a verbatim translation of words, however studies we considered earlier showed interpreters see theirs as a broader, cultural role. While definitions, where they exist, are clear that cultural 'brokering' is not a part of the interpreter's role, some research has noted that interpreters find themselves operating as 'institutional gatekeepers' and that 'the significance of the interpreter being the client's compatriot could also lead to conflicts of loyalty' ([Gustafsson et al. 2013:193](#)). This confusion as to role may cause distrust and conflict, which ultimately may impact on the realization of the detainee's rights.

4.4 Confidentiality

Solicitors raised the issue of confidentiality about which they had a number of concerns. Most immediate was a concern for the confidentiality of the client:

YD4: I was outside waiting to go back in with the interpreter and I heard the interpreter on the phone mentioning my client's name, talking to somebody and I was like 'What's going on?' So I pulled him up afterwards. I was like 'What? You know this is really... why are you using...?' Now it turns out he was talking to, I think, his boss or something in the translation thing, but it was just the way the conversation... when it's a small community, be it an Indian or Pakistani community within a country, they're very small. So just mentioning this person's name to somebody from that community could cause all kinds of problems.

Interpreters are privy to sensitive, private information and distrust may be compounded by the 'chats' interpreters were seen to be having with Gardaí. Solicitors were unclear whether they could be sanctioned for breaching privacy. Confidentiality concerns were also expressed in circumstances where the interpreter was present for both the consultation and the interview. Under the European Convention on Human Rights law the consultation between the solicitor and client is a private, privileged conversation. The consultation is where initial strategizing about the future defence will occur. That the interpreter for the consultation was contacted by gardaí and will be in the interview, was of concern to some.

YD21: there is a danger that they might relay information from the consultation to the Gardaí and it is important that the solicitor would warn them that it is a confidential matter and that nothing should be relayed outside the consultation room.

YD17: I'm not aware of any provisions whereby if an interpreter tells a guard something that's said in a consultation, that they'd be sanctioned in any way.

To facilitate effective consultations with legal representation, a suspect must feel safe in their disclosures ([Law Society of Ireland 2013: 95](#); [Lynch 2016](#)). However, the interpreter is not bound by a requirement to ensure confidentiality, even though they are facilitating a privileged communication. At present there is no legislation dealing with confidentiality

and thus no legal requirements or express rights to privilege extended to interpreters. In the absence of formal guidelines or legislative requirements, an interpreter is not bound by privilege and poses a risk to a privileged communication which they facilitate (Phelan 2011). The only code of ethics which applies is that provided by the translation company for whom they work, so such concerns may become employment issues rather than privacy ones.

Briefings held in the UK between police and interpreters help to alleviate some of these concerns (Wilson and Walsh 2019) and may create a space to review some of these requirements and rules. But ultimately accreditation, training and clear definition of role are required as precursors to protect the right to privacy.

4.5 Impact

Many participants reflected on the impact of having an interpreter present. For many, this primarily was about the speed of the interview. This is important because in Ireland there is still a requirement for gardaí to make contemporaneous written notes of interviews. This is done in a handwritten format, even though interviews are video recorded. So they are quite slow already and interpreters slow that down further.

VC4: ... there's no difficulty with interpreters. They come along, they interpret, everything is just slower. That's the problem. Interviews and consultations.

YD6: It just can make it a lot longer, to have interpreting. Like it might turn an hour interview into maybe two and a half hours or something like that, it can be really convoluted.

It is inevitable that interpreting will slow down the process and this is in fact important in the context to ensure that all participants understand both the words and their meaning. While this may feel inconvenient for all involved, it can in some instances be in the best interests of the detainee, whereby slowing down the process allows for more careful consideration or clarity. However this benefit is dependent on whether or not the interpreter is trained and skilled. If the interpreter is not trained in notetaking, or other appropriate interpreting skills, they may hinder the process. In the recent Irish District Court case of *DPP (Dorneau) v Mike* (2020) the court considered that an interpreter may become an important witness at the later trial if the accused has stated something in Garda custody which is sought to be entered as evidence. The facts in the case centred on an alleged utterance made by the accused, via an interpreter on the telephone, in a prosecution for failure to provide a breath sample under road traffic legislation. The Court held that admission of the utterance in this case, through the testimony of the Garda as to what the interpreter told him in English, would be contrary to the rule against hearsay, and that admission could only be considered if the interpreter was called as a witness. The Court did not determine whether the interpreter ought to be required to testify directly as to what was said by the suspect to them at the time, or merely to testify as to the general accuracy of their interpreting throughout the relevant interview, as it was not necessary to do so on the facts. While this might be different in the context of a Garda interview which was audio-visually recorded, where the statement could be otherwise verified, it highlights the importance of careful contemporary note-taking by the interpreter. Of course, such importance might not be well known to one who is not appropriately trained.

Given we know that getting out of the police station as quickly as possible is often the most pressing concern for a detainee (Blackstock et al. 2013) the issue of delay may have a

significant impact on detainees' experiences. It would be important to examine whether these processes that slow the interview down impact the engagement and response of the detainee, and even whether they access assistance such as lawyers and interpreters. One solicitor explained that the presence of an interpreter, and their concerns about quality, could impact on how they approach defending a client:

YD4: If you've somebody who 1, doesn't understand the system and 2, you're trying to explain it with an Interpreter who maybe isn't great and you don't really know then at the end of it 'Does this person actually understand what I'm saying?' and ultimately you end up, rightly or wrongly, erring on the side of caution and being like 'I think we should just say nothing for the moment' because, you know, you can't be sure 1, are you actually getting the information across to this person properly and 2, do they understand it and will they be able to cope, you know, with the questions at the interview stage? Now obviously that just depends on the situation, but yeah, that can be quite difficult.

A decision to say 'no comment' throughout an interview is a significant one. [Blackstock et al. \(2013\)](#) have outlined how such an approach can aggravate police and contribute to a dysfunctional cycle and dynamic in the interview. It is also not always in the best interests of the client as often speaking clearly, early in the process, can bring longer term benefits at the trial and sentencing stage. Most solicitors understand this and tailor their advice on the right to remain silent to the relevant circumstances including the nature of the offence, the level of police disclosure, the nature of the client and so on. For a 'no comment' position to be adopted because of concerns as to the quality of the interpretation is a direct example of how the lack of proper structures for interpreting can infringe on a person's right to a fair trial ([Hale et al. 2019](#)).

On the other hand, we also heard a very positive reminder of the immediate and tangible relief that an interpreter can bring to the detained person.

YD19: I think they're delighted if they can meet someone that speaks their own language. And again that is very reassuring for them, it would seem. Even though a lot of the time I would find their English to be okay, but you're just better off having someone there and making sure that they do fully understand.

Detention is a scary, intimidating space, which can easily be forgotten by the practitioners who may be in that context on a regular basis. For someone who is not able to communicate with those detaining them, holding all that power over them, this is especially true ([McCaffrey 2000](#)). The interpreter can be a lifeline in these situations and that importance to the detainee should never be forgotten. However, at the same time, simply because a detainee appears relieved or pleased at the engagement of the interpreter, this should not be assumed by a legal representative to mean that this person is an adequately qualified interpreter. This would also be problematic where the untrained interpreter felt bound in some way to aid their compatriot or community member and allowed that concern to affect how they interpreted the proceedings. It should be noted that in many instances, the interpreter will be the one with the most understanding of the interview, and therefore be more likely to be privy to issues of concern (e.g. a detainee who may lack competency). This is not to say that trained interpreters are not at liberty to highlight these concerns. Indeed, [Brennan and Brown \(2004\)](#) demonstrated that trained and seasoned sign language interpreters felt more confident to alert actors in the criminal justice process to misunderstandings. Untrained interpreters are less well equipped to do so.

4.6 Need for regulation and training

The question of training and regulation came up repeatedly, both for standards of interpreting and for some basic legal training. We've already noted how participants had mixed feelings on the quality of interpreting with many saying they felt required to trust the interpreter in the moment. Others knew the training did not justify this trust:

YD5: I said to him 'What are your qualifications as an interpreter?' and he said 'Oh, I have a business degree'. He had a degree in business from Pakistan or something and I said 'Okay and your English?' and he said 'oh' and I said 'have you got a certificate or what are you doing now?' and he was a delivery person. . . .who met somebody, who met somebody who was working [as an interpreter].

While YD5 was surprised at this interpreter's 'qualifications' for the role, some were more aware.

YD4: Interpreters it's really, it just depends, because it's not really regulated. So you could have interpreters who are very good, but you could have interpreters who like just don't know how to interpret basically like, or just bad.

YD22: there's no qualification for interpreters in Ireland so you just have to be satisfied that the level of interpretation is sufficient.

There's a sense of helplessness here, that they know they aren't qualified for the role but are performing it anyway. This is compounded by the previously noted concerns at interpreters overstepping their role, or possibly not appreciating the specificity of language required in criminal investigations. A number of participants seemed to mistakenly believe that interpreters had legal training: :

YD1: Well they are usually okay. It sometimes happens that they don't have this legal background. . .

YD20: they're trained interpreters, yeah. They do the court interpreting here as well. You'd have zero concerns about them anyway.

It is worrying if solicitors have a belief that interpreters are legally trained when they are not. Trust placed in them may thus be misplaced, and solicitors may be less inclined to challenge what is happening. Only two of our participants took actions like securing independent interpreters or reviewing material afterwards. There may thus be an unjustified acceptance of standards of interpreters, with the very people who should be asserting the rights of the detainee wrongly believing that this particular right is being met.

5. Conclusion

Walsh et al. (2020) found a 'primary goal of investigative interviews is the gathering of reliable and fulsome information' and considered that an impediment to that goal was created by the 'continuation of obfuscation concerning what is good practice in interpreter-assisted investigative interviews'. Thus existing work suggests that in the UK context concerns exist from the police perspective as to the role of the interpreter and their potential impact on achieving policing goals.

This article expands these parameters of investigation, arguing that the perspective of the detainee and their legal representative is a crucial voice in these discussions. We have clearly established the essential role that interpretation plays for a detained person, and the

importance of legal representation in protecting the rights of that detainee, including the right to interpretation. We explored the scale of the right at both the European and domestic levels, and how it has been translated into law. Our first finding was that Ireland has not put the systems in place to give the right proper effect. Accreditation, training and oversight are key to this, but none exist in Ireland.

We then presented data from interviews with over 40 criminal defence solicitors across Ireland, 15 of whom had experience working with interpreters. Solicitors expressed a myriad of concerns, from the method of selection, to the role of the interpreter, the independence of that position given that they are employed by gardaí, as well as concerns as to confidentiality. Unsurprisingly numerous questions as to the quality of interpreting emerged. These findings confirm how the lack of regulation infringes the rights of the detainee. All of this mirrors findings from previous studies of police and interpreter perspectives, but the context is different as solicitors are concerned about how this all impacts on the realization of the rights of the detainee.

Perhaps what is more worrying is what is not known by solicitors. Significant numbers of participants did not know how interpreters are obtained, how they are trained (or not trained), what their role is, what to do when they have concerns about quality, and the extent of detainees' legal rights. This dearth of knowledge amongst those who are supposed to be defending the detainee is troubling. We heard repeatedly that solicitors felt they had to just trust what was happening. Stark comments from solicitors around the possible impact of interpreters on the detainee's exercise of their right to legal assistance, and on the solicitor's decision to advise a 'no comment' approach to the interview, expose how fundamental this issue is.

Thus in Ireland, where potentially one in five detainees may be affected, the right to interpretation is not being realized: there is no accreditation or legal training required; there are no independent mechanisms for complaints or replacement that could be relied upon; and, the majority of lawyers are simply unclear about what their client's rights are and what could be done in these moments. Detainees' rights to interpretation, and more broadly to a fair trial, cannot be realized in this context.

The importance of professional, high-quality interpreting in the police station cannot be overstated. Detained suspects themselves may be as oblivious to poor interpreters as the lawyers and police with whom they are trying to communicate. This situation has arisen despite the fact that Ireland has implemented the Directive on the Right to Interpretation. While pressure should be put on States to address this at the national level, more informed legal representatives who challenge these breaches of rights may have an important role to play going forward.

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