

# Attending Court as a Witness

Office of the  
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**Director of Public Prosecutions**  
**Stiúrthóra Ionchúiseamh Poiblí**



**Plain English**

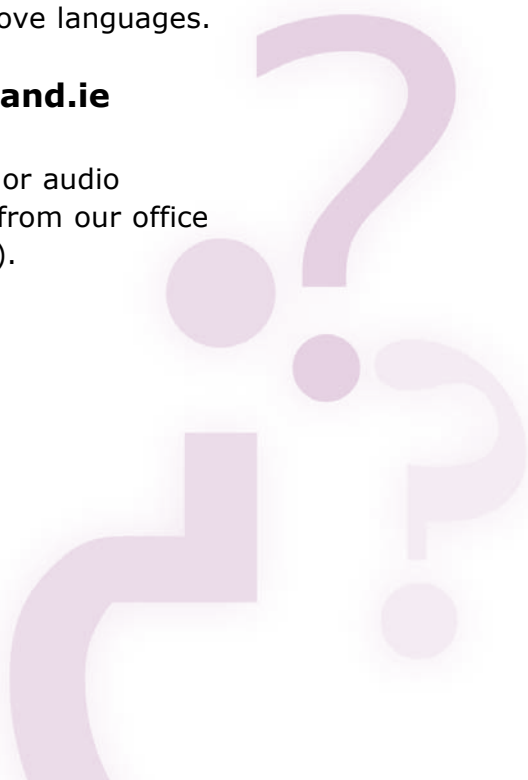
Approved by NALA

- This booklet is also available in the following languages:
  - Arabic
  - French
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  - Latvian
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  - Polish
  - Russian
  - Spanish

Visit our website to download the booklet in any of the above languages.


**[www.dppireland.ie](http://www.dppireland.ie)**

- You may request Braille or audio versions of this booklet from our office (see page 28 for details).



## **Attending Court as a Witness**

Office of the Director of Public Prosecutions



## Introduction

Going to court can be stressful for many victims and witnesses. If you need to give evidence in a criminal trial, we hope that this booklet will help you to understand what happens in court.

The booklet does not deal with every possible situation but tries to answer the questions that people ask us most often. We don't intend that it will give you legal advice. If you need legal advice, you should talk to a solicitor.

We also have a booklet, *The Role of the DPP*, that explains in plain language what the Office of the Director of Public Prosecutions (DPP) does. For a more detailed description of the work of the office, please see our *Guidelines for Prosecutors*.

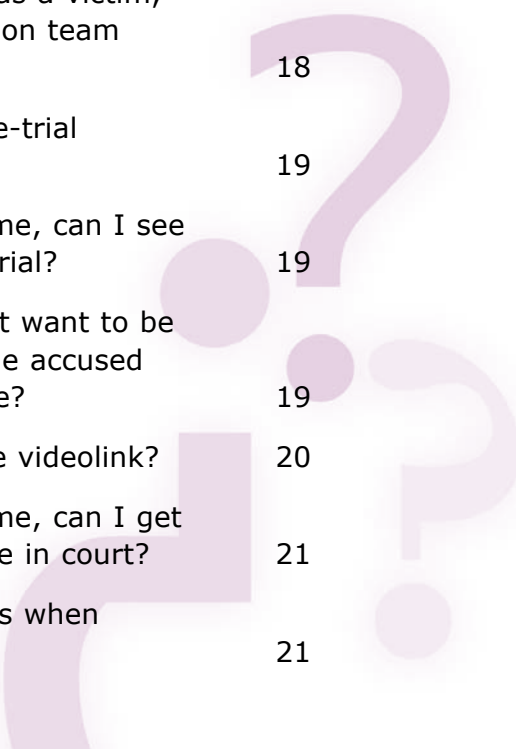
You may request copies of these publications from our office (see page 28 for details). You can also read them on our website at [www.dppireland.ie](http://www.dppireland.ie).



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### 1. What does the Director of Public Prosecutions (DPP) do?

The DPP decides whether to charge people for committing crimes and what the charges should be. Once the prosecution starts, the Office of the DPP is in charge of the prosecution case.

### 2. What does the Chief Prosecution Solicitor do?

The Chief Prosecution Solicitor acts as solicitor to the DPP and is head of the Solicitors Division of the DPP's office. The staff of the Solicitors Division represent the DPP in all courts in Dublin. **Local state solicitors** represent the DPP in courts outside Dublin.

### 3. What happens after somebody commits a crime?

Once somebody commits a crime, a number of stages follow.

- Somebody, usually the victim, complains to the Garda Síochána.
- The Gardaí take a **witness statement** from the victim. A witness statement is a written record of the complaint.
- The Gardaí investigate the crime.

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- Depending on what they find, the Gardaí may arrest a suspect.
- A decision whether or not to prosecute is made. In serious crimes, the Gardaí send a file to the DPP and the DPP makes the decision. In less serious crimes, the Gardaí make the decision.
- The Gardaí charge the suspect.
- The Gardaí bring the suspect to a District Court judge. From this point on, the suspect is known as 'the accused'.
- The District Court judge decides when and in which court the trial should take place.
- The trial begins.

### **4. What are the types of criminal offence and how do they differ?**

Crimes are divided into two types – summary offences and indictable offences.

#### **Summary offences**

- are less serious crimes;
- are heard by a judge without a jury in the District Court; and

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- carry a maximum prison sentence of 12 months for one offence.

### **Indictable offences**

- are more serious crimes;
- are heard by a judge and jury in the Circuit Court or the Central Criminal Court;
- carry more serious penalties if the court convicts the accused – up to life imprisonment for some crimes; and
- are sometimes dealt with in the Special Criminal Court by three judges without a jury.

## **5. Which courts deal with crime?**

### **The District Court**

This is the first court to which Gardaí take the accused. In the District Court, a judge:

- hears details of the charges against the accused;
- says whether a case is ready to go to trial; and
- hears trials for less serious cases (summary offences) without a jury.

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If the accused pleads 'not guilty' in the District Court, the prosecution will call witnesses to give evidence to try to prove that the accused is guilty.

### **Circuit Court and Central Criminal Court**

These courts hold trials that are usually more complicated than those in the District Court. In these courts, the judge:

- hears trials for more serious cases (indictable offences); and
- is joined by a jury, which must decide if the accused is guilty or innocent.

### **Special Criminal Court**

This court is similar to the Circuit and Central Criminal Courts, except:

- there is no jury; and
- three judges hear each case.

## **6. Who can be a witness in a criminal case?**

The prosecution or defence can call anyone who has information about a crime, including the victim, to be a witness at a trial.

## **7. If I am a witness, how am I called to give evidence?**

You will receive a **witness summons** from the Gardaí. The witness summons is an order from the court for you to give evidence at a particular time and place.

## **8. What happens after the Gardaí charge the accused?**

Once the Gardaí have charged the accused, the prosecution will write down the evidence against the accused. The document that contains the evidence is called the **book of evidence** and is an important part of the case.

- It includes statements from witnesses, including the victim.
- It includes other documents and a list of any physical evidence, such as photographs or weapons, that will appear in court.
- It sets out the evidence that the prosecution thinks witnesses will give in court.

When the prosecution has gathered all the evidence they need for the trial, the Gardaí will give the book of evidence to the accused. Once this happens,

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the District Court judge will set a date for the trial and, in most cases, decide which court will hear the case.

Sometimes, the DPP will decide which court will hear the case. It can take some time to decide this.

### **9. If I am a witness or a victim, can I see the book of evidence?**

No. You can see a copy of your own statement, but you cannot see the whole book of evidence.

### **10. Is the case decided on the book of evidence?**

No. The court and the jury decide the case on what they hear in evidence at the trial, not on what is in the book of evidence.

### **11. What is a deposition?**

A **deposition** is a statement by a witness made under oath. Either the prosecution or the defence can ask the judge to allow them to take evidence under oath before the trial. If the judge agrees, a solicitor or barrister will ask you questions under oath in a courtroom. The other side may also ask you questions.

Your answers will be written down. When you have finished giving evidence, the court clerk will read the deposition to you. If you agree that it is correct, you sign it.

## **12. What happens when the case begins in court?**

If the case is being heard by a jury, a barrister working for the DPP will present the prosecution case. The barrister will begin by explaining to the jury what the case is about. He or she will then call the witnesses one at a time. When the barrister calls you as a witness, you must tell the truth by law.

### **Giving evidence**

The prosecution barrister will ask you questions to get your evidence. He or she cannot ask you any question that could lead you to answer in a certain way (which is called 'leading the witness'). For example, the barrister may ask you questions such as, "What did the accused do?" He or she cannot ask you, "Did you see the accused put his hand across the counter and take money from the cash register?"

### **Members of the jury**

You should not know anyone on the jury. If you do, you should tell the prosecution solicitor or barrister. The judge will not allow anyone who knows the

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victim or the accused or has any other connections with the case to sit on the jury.

### **Cross-examining a witness**

When the prosecution has finished asking you questions, the defence may question you. This is called **cross-examination** and is the only time that a barrister is allowed to ask you leading questions.

### **Beginning the defence**

When the prosecution has finished questioning all their witnesses, the defence team will start to make their case.

They have a choice of what to do.

- They can call witnesses to support the defence. If they do this, the prosecution can cross-examine the defence witnesses.
- They can call the accused to give evidence. If they do this, the prosecution can cross-examine the accused.
- They can simply argue that the prosecution has not proved its case. This is because by law the prosecution has to prove that the accused is guilty, but the accused does not need to prove innocence. The jury is not allowed to assume that an accused who does not give evidence is guilty.

## Considering the verdict

When the prosecution and the defence have finished with their witnesses:

- they take turns to argue their case to the jury;
- the judge sums up the evidence, explains the law to the jury and tells them what to consider to reach their verdict; and
- the jury then go to the jury room to consider a verdict.

If the accused is found not guilty, he or she is free to go. If the accused is found guilty, the judge will sentence him or her. If the jury cannot agree a verdict, the DPP has to decide whether a new trial should take place.

## Sentencing the accused

If the jury finds the accused guilty, the judge has to decide what the sentence should be. The judge may not do this immediately. Usually, he or she will set a later date for sentencing. This is to allow probation officers, social workers, doctors, psychiatrists or the Gardaí (depending on the particular case) time to prepare a report. These reports help the judge to decide on the sentence. In sexual or violent crime cases, the reports might include a Victim Impact Statement, which will describe the effect the crime has had on the victim.

### **13. Are there any reasons why a trial might not go ahead?**

Sometimes a trial cannot go ahead for various reasons, such as:

- an important witness is not available because of illness;
- the defence legal team has changed or is not ready to go ahead;
- the defence team has asked questions about part of the case, causing the trial to be delayed;
- the court list is full and there is no judge or court ready to deal with the case; or
- the defence has started a judicial review to stop the trial going ahead.

### **14. What is a judicial review?**

There are different types of **judicial reviews**. A common type is where the accused asks the High Court to prevent the trial court or the DPP from going ahead with the trial. For example, an accused might ask the High Court to stop a trial because:

- there was too long a delay by the victim in reporting the crime; or

- the investigation or prosecution of the crime took too long.

If the High Court agrees to stop the trial, the accused goes free. Even if a judicial review does not succeed, it may hold up the trial for several months.

Judicial reviews can also be taken after the trial and the outcome may affect the verdict or cause a re-trial.

## **15. What kind of help can I get if I need to give evidence as a victim of a crime?**

The prosecution solicitor will work with Gardaí to make sure you always know what is happening in the case.

There are also a number of organisations that can offer you a court support service. This means that, if you wish, a volunteer will accompany you to the trial and stay with you throughout. The **Crime Victims Helpline**, which provides a telephone support service for victims of crime, can give you contact details for court support and other victim support services. You can contact the Crime Victims Helpline at 1850 211 407.

Many courthouses have a room available for victims and witnesses during a trial.

## **16. What help can I get with the cost of coming to court to give evidence?**

The Garda Síochána is responsible for paying **witnesses' expenses**. This is the cost to you of coming to court to give evidence. These expenses may include the cost of taking time off work, travelling expenses, meals and, if you live in another part of the country, accommodation.

Expenses are paid by the Garda Superintendent (District Officer) in the area where the case is being prosecuted. The Garda dealing with your case can handle this for you. He or she may ask you for receipts for travel and, if you are claiming loss of wages, a letter from your employer.

In some cases, you may be able to get an advance on expenses before the case so that you can travel to court.

## **17. If I am giving evidence as a victim, will I meet the prosecution team before the trial?**

Generally speaking, you will be able to meet the prosecution lawyers at a **pre-trial meeting**. In serious cases, such as sexual offences, the prosecution solicitor will offer to arrange this for you. You may choose to have the pre-trial meeting a short while before the trial or on the morning the trial is due to begin.

If you would like a meeting and it has not yet been offered to you, you should tell the Garda looking after your case. The Garda will contact the DPP's office to arrange the meeting.

### **18. What happens at the pre-trial meeting?**

Pre-trial meetings allow the barrister and solicitor to explain to you what happens in court. However, strict rules prevent them from talking to you about what evidence you will give. This is so that nobody can suggest that someone told you what to say in court.

### **19. If I am a victim of a crime, can I see a written record of the trial?**

The written record of the trial is called a **transcript**. The prosecution and defence teams may get the transcript after the trial has ended and if there is an appeal. Only a judge can say whether you can see the transcript.

### **20. What happens if I do not want to be in the courtroom with the accused when I give my evidence?**

In most cases, you will have to give your evidence in the courtroom. In some cases, however, you may be able to give evidence by **videolink**, which

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is a live television link system. This has some benefits.

- You give your evidence to a camera in another part of the court building away from the courtroom.
- Lawyers can ask you questions as if you were actually sitting in front of them.
- Your evidence appears on a TV screen in the courtroom, but you will only see the person asking you questions.

### **21. Which witnesses can use videolink?**

In sexual or violent crime cases, witnesses under the age of 17 and those with a learning disability may use videolink to give their evidence unless the judge decides they must be in the courtroom.

If you are allowed to use videolink, a person from the Courts Service will help you while you are in the videolink room. If you want, you can ask to see this room before the trial so that you will be used to it when you need to give evidence.

Once you turn 18 and are an adult, you can use videolink only in special situations.

## **22. If I am a victim of a crime, can I get a lawyer to represent me in court?**

No, unless you are the victim of a sexual offence and the defence want to cross-examine you about your sexual history. They can do this only if they ask the judge for permission.

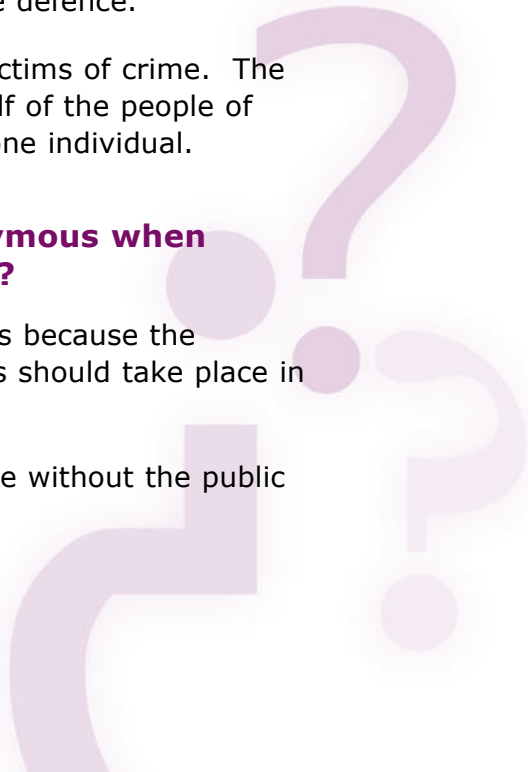
If you can have a lawyer represent you, the **Legal Aid Board** will provide one free of charge. The prosecution solicitor dealing with your case will arrange this for you. The lawyer will meet you before the defence applies to cross-examine you. The lawyer will also be in court when the judge gives his or her decision to the defence.

The DPP does not represent victims of crime. The DPP prosecutes cases on behalf of the people of Ireland, not on behalf of any one individual.

## **23. Can I remain anonymous when giving my evidence?**

Generally speaking, no. This is because the Constitution says that all cases should take place in public.

However, some trials take place without the public being present. These include:



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- rape and some sexual offence cases; and
- cases where the accused is under the age of 18.

When a trial takes place without the public being present, you give evidence in the courtroom. Generally, only the people directly involved in the case will be there.

Journalists may be in the courtroom. Usually, they cannot report the names of the accused or the victim or write anything that could help people find out their names. A journalist who breaks these rules is guilty of a criminal offence.

### **24. If I am prepared to let my name be made public so the guilty party will be named – can I do this?**

This is a complicated subject and it is not possible to give a full account of the law here.

In some cases, names cannot be made public at all. For example, in cases of rape the accused has the right not to let his or her name be made public unless he or she is convicted. This means that nothing can be said to identify the accused before the verdict. An accused person who is found not guilty may not be identified.

If the accused is convicted, some victims may want the name of the accused to be made public. But

often, if the convicted person is named, the identity of the victim will become known too. Despite this, some victims decide they want the convicted person named. If you want this to happen, you should tell the prosecution solicitor and the court.

If you are a victim, you should think carefully about what the naming of the guilty party will mean for you, your family and your future before you decide what to do. It may be a good idea to get your own legal advice.

**25. If I am a victim of a crime, how do the judge and jury learn about the effect the crime has had on me?**

It is important for a judge to know what effect a crime has had on a victim when he or she is deciding on a sentence. In cases involving sexual offences or violent crime, the judge can ask for a **Victim Impact Statement** once the jury has found the accused guilty. This statement describes how the crime has affected you and is still affecting you.

**26. If I am a victim of a crime, do I have the right to get compensation?**

By law, you may have a right to money for any personal injury or lost earnings that you suffered because of the offence. However, there are some limits.

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- It is up to the judge to order the accused or their guardian to pay you.
- The judge must first check whether they can afford to pay you. If they're unemployed, for example, the judge would see no point in ordering them to pay.
- The amount of money you get cannot be more than the amount you could have got from a civil claim in the same court.

The **Criminal Injuries Compensation Tribunal** may pay compensation for personal injury that is a direct result of a violent crime. Contact details for the Tribunal are on page 30.

### **27. Can the accused appeal the sentence handed down by the judge?**

Yes. How the accused does this depends on where the original trial took place.

If the trial took place in a District Court, the accused can:

- appeal the conviction or their sentence to the Circuit Court; and
- have a full re-hearing of the case, which means that you would have to attend court as a witness again.

If the trial took place in the Circuit Court, the Central Criminal Court or the Special Criminal Court, the accused can appeal the sentence or the conviction to the Court of Criminal Appeal. In this court:

- a Supreme Court judge and two High Court judges sit together to hear the appeal; and
- the judges read the transcript of the original trial instead of hearing evidence all over again.

Usually, if the accused has been sent to prison, he or she must remain in prison while waiting for the case to go to the Court of Criminal Appeal.

## **28. Can the DPP appeal the sentence?**

Yes, but only if the trial took place in the Circuit, Central Criminal or Special Criminal Court. The DPP cannot appeal a sentence of the District Court.

If he thinks a sentence is 'unduly lenient' – in other words, too light without a good reason – he can ask the Court of Criminal Appeal to review it. He must ask for a review within 28 days of the judge handing down the sentence. In some cases, the DPP can apply for more time to ask for a review but not more than 56 days.

## **29. Who can ask the DPP to appeal the sentence?**

By law, you can ask the DPP to appeal a sentence if you are:

- a victim of a crime;
- a family member of a victim of a crime;
- an accused person; or
- a family member of an accused person.

Doctors, lawyers and social workers can also ask the DPP to appeal a sentence for their clients.

## **30. How do appeal court judges review a sentence?**

The judges will read the written record of the trial to see the trial judge's reasons for giving a particular sentence. They will consider a sentence 'unduly lenient' only if they believe the trial judge made a mistake on a legal point.

Appeal court judges will not change a sentence just because they think the sentence was too light or because they would have given a different sentence. As a result, an appeal will only be possible in a small number of cases.

**31. Does the Office of the DPP have a complaints procedure?**

Yes. If you have any complaint about how we work, you can contact us at:

**Office of the Director of Public Prosecutions**

14-16 Merrion Street

Dublin 2

Tel: (01) 678 9222

Fax: (01) 661 0915



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**How to contact the Office of the DPP****Office of the Director of Public Prosecutions**

14-16 Merrion Street

Dublin 2

Tel: (01) 678 9222

Fax: (01) 661 0915

Website: [www.dppireland.ie](http://www.dppireland.ie)

**Chief Prosecution Solicitor**

Solicitors Division

Office of the Director of Public Prosecutions

90 North King Street

Smithfield

Dublin 7

Tel: (01) 858 8500

Fax: (01) 858 8555

Website: [www.dppireland.ie](http://www.dppireland.ie)

**Local State Solicitors**

Contact details for each of the local state solicitors around the country are available from our office at (01) 678 9222 and on our website at [www.dppireland.ie](http://www.dppireland.ie).

## **Other useful contacts**

### **Crime Victims Helpline**

Tel: 1850 211 407

Website: [www.crimevictimshelpline.ie](http://www.crimevictimshelpline.ie)

### **Victim Support Services**

Contact the Crime Victims Helpline (see above) for details of court support and other victim support services.

### **Courts Service**

Information Office

Phoenix House

15/24 Phoenix Street North

Smithfield

Dublin 7

Tel: (01) 888 6000

Fax: (01) 873 5250

Website: [www.courts.ie](http://www.courts.ie)



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**Department of Justice, Equality & Law Reform**

94 St. Stephen's Green

Dublin 2

Tel: (01) 602 8202

Fax: (01) 661 5461

Website: [www.justice.ie](http://www.justice.ie)

**Criminal Injuries Compensation Tribunal**

13 Lower Hatch Street

Dublin 2

Tel: (01) 661 0604

Fax: (01) 661 0598

**Legal Aid Board**

Quay Street

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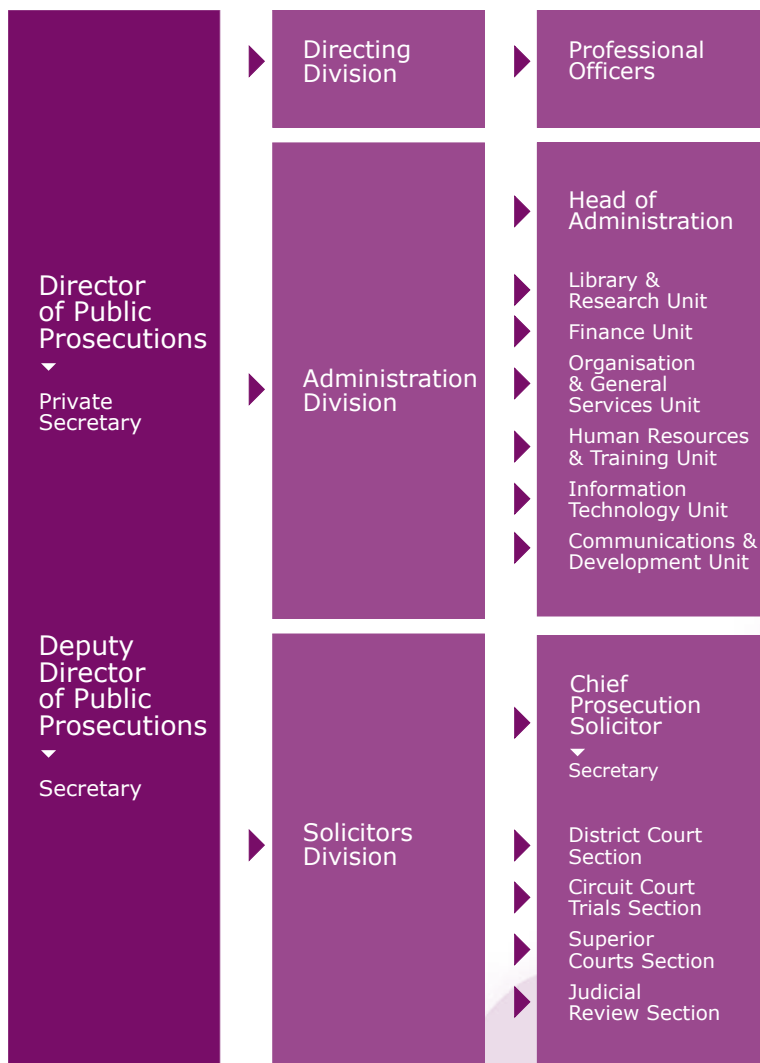
Co. Kerry

Tel: (066) 947 1000

Fax: (066) 947 1035

Website: [www.legalaidboard.ie](http://www.legalaidboard.ie)

## How the Office of the DPP is organised



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