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Foreword



Once again it is my pleasure to introduce the annual report of the Office of the Director of Public Prosecutions.

The year 2002 was an eventful one in the life of the Office, as it was the first full year in which the Solicitors' Division of the Office under the Chief Prosecution Solicitor, Ms. Claire Loftus, provided the Office with its solicitor service in the Dublin area.

This development saw the Office change from a small organisation of less than 40 staff to a much bigger body of 170 people divided between two locations, with the Solicitors' Division in Chapter House, Upper Abbey Street, the Directing Division in Merrion Street, and the Administration Division divided between the two. This location in two different buildings is not without its own problems. At the time of writing we are still exploring the options for moving the whole Office to a single location close to the Four Courts.

The incorporation of the solicitor service into the Office has led to a much more integrated service, with clearer lines of communication and a clearer understanding by all three divisions of the Office of their role in the prosecution service and within the criminal justice system as a whole.

At the time of writing one major element of the Report of the Public Prosecution System Study Group (the Nally Report) remains to be accomplished, the transfer of responsibility for the local State Solicitor service from the Attorney General to this Office. Talks are ongoing between all interested parties at present as to how this may be accomplished in the near future.

Once again the heart of this Report is the statistical information contained in it. The figures reveal a continuing rise in the number of files received by the Directing Division of the Office, of just under 10% for the year 2002. Figures for the outcome of cases are presented according to the year in which the file was first sent to the Office. As it can take a considerable

time for a criminal case to be completed it is only after about three years that reasonably complete figures about the outcome of cases become available.

As our IT systems are developed and refined much more detailed and sophisticated statistical information will be available in the future.

I want to thank again all those who were involved with the prosecution service in 2002. This Office has a considerable contact with the Garda Síochána and other prosecuting agencies, and could not bring its work to a proper conclusion without their support. Successful prosecution depends on good quality investigation. Essential professional services are also provided by the Forensic Science Laboratory and the State Pathologists. The Office also has regular interaction with the Courts Service. In recent years prosecutors have become more than ever aware of the place of the victim in the criminal justice system and the Solicitors' Division has worked closely with Victim Support to try to improve the service available to victims.

I would like to acknowledge the professional service my Office has received during this period from the members of the Bar and the local state solicitors who carry out court work on my behalf. Finally, I want to recognise the hard work, enthusiasm and professionalism of the staff of my own Office, in all three Divisions, who once again have striven to provide on behalf of the People of Ireland a prosecution service which is independent, fair and effective.

James Hamilton

Director of Public Prosecutions

October 2003

Part I
General Work of the Office

Chapter 1

Functions of the DPP

- 1.1 The office of Director of Public Prosecutions was established by the Prosecution of Offences Act, 1974, which conferred on the Director “all functions capable of being performed in relation to criminal matters” by the Attorney General immediately before the passing of the Act.
- 1.2 The principal such function is the power to prosecute criminal offences. The power to prosecute indictable offences (the more serious offences which are tried before a jury or in the Special Criminal Court) derives from Article 30 of the Constitution of Ireland. The power to prosecute summary offences derives from the Criminal Justice (Administration) Act, 1924. Only the Director may prosecute indictable cases, but summary offences may also be prosecuted by relevant Ministers, other prosecution agencies or by individuals acting as “common informers”.
- 1.3 For a more detailed description of the Director’s functions the reader is referred to the Statement of General Guidelines for Prosecutors published by the Director in 2001 and the Annual Reports of the Office for 1998 and 1999. These are available on the Office website at www.dppireland.ie.
- 1.4 The mission of the Director of Public Prosecutions and his Office, as set out in the Strategy Statement 2001-2003, is “to provide on behalf of the People of Ireland a prosecution service which is independent, fair and effective”.

Chapter 2

Divisions of the Office

2.1 The Office of the Director of Public Prosecutions has three main divisions: Directing Division; Solicitors' Division; and Administration Division. The Administration Division provides support and other services to both the Directing Division and the Solicitors' Division. The work of those two divisions is outlined hereunder.

Directing Division

2.2 The primary function of the Directing Division is to decide whether or not a prosecution should be brought. In carrying out this function the Office works closely with the Garda Síochána and with other investigative agencies including Government Departments, the Revenue Commissioners, Revenue Solicitor, An Post, The Competition Authority, the Health & Safety Authority, the Office of the Director of Corporate Enforcement as well as with other State agencies and local authorities on occasion. However, in making prosecution decisions the Director and his Office are independent of the investigative agency concerned.

2.3 There are a considerable number of ancillary tasks carried out by the Office in the exercise of its principal functions. They include the drafting or settling of documents necessary for the prosecution of requests for extradition into the State as well as the making of requests for international mutual assistance in criminal matters. The Office serves on committees and attends meetings relating to prosecutions and criminal law and procedure. It also organises prosecutorial conferences on an annual basis.

2.4 The Director exercises an important function concerning the prosecution of offences pursuant to the Offences Against the State Act, 1939. He has particular powers and duties as provided by sections 45 to 48 of that Act. These powers and duties concern the restriction in particular cases of the general constitutional right to trial by jury. In such cases persons may be tried in a non-jury Special Criminal Court rather than in the ordinary Courts and the Director has specified functions in

the issuing of directions and certificates where he forms the opinion that the ordinary Courts are inadequate to secure the effective administration of justice.

2.5 There are other functions concerning the prosecution of offences which are performed by the Director such as the issuing of consents enabling certain indictable offences to be dealt with summarily and the referral of cases heard on indictment to the Court of Criminal Appeal when the Director is of the opinion that a sentence was unduly lenient.

2.6 The Director also exercises certain other miscellaneous functions including functions in relation to election and referendum petitions and under the Companies Acts.

2.7 As part of his function in ensuring the proper conduct of criminal prosecutions the Director has the responsibility for the nomination and instruction of Counsel in the various trial Courts as well as the High and Supreme Courts and the Court of Criminal Appeal. The Office also determines and discharges the fees of Counsel who are instructed to act on behalf of the Director.

Independence

2.8 The independence of the Director of Public Prosecutions is a key value of the Office. The Supreme Court has recognised that the prosecutorial functions of the Attorney General, provided for in the Constitution, were to be exercised independently of Government. These functions were transferred to the Director of Public Prosecutions by the Prosecution of Offences Act, 1974.

2.9 Section 2 (5) of the Prosecution of Offences Act, 1974 states that "the Director shall be independent in the performance of his functions". Section 6 of the 1974 Act protects the Director's independence by obliging the Director and his officers to refuse to entertain a communication or representation if it constitutes an improper interference in the discharge of their functions.

Representations and Communications

2.10 It is unlawful to communicate with the Director for the purpose of influencing a decision to withdraw or not to initiate a prosecution, pursuant to section 6 of the Prosecution of Offences Act, 1974 or to communicate with the Director for the purpose of influencing a decision in relation to an application to the Court of Criminal Appeal for review of a sentence on grounds of undue leniency, pursuant to section 2(4) of the Criminal Justice Act, 1993. This prohibition does not apply to interested parties, who include a complainant, a suspect or accused, or their legal or medical advisor, social worker or a member of their family.

Solicitors' Division

2.11 As noted in the Annual Report for 2001, the Director of Public Prosecutions formally appointed his own Solicitor (the Chief Prosecution Solicitor) on 3 December 2001. This was in fulfilment of the recommendation set out in the Report of the Public Prosecution System Study Group of 1999. As part of that Report's recommendations a group of staff were transferred from the Criminal Division of the Chief State Solicitor's Office to the Office of the Director of Public Prosecutions to form the Division of the Chief Prosecution Solicitor. The staff complement of this Division now stands at 46 solicitors and 16 legal technical staff.

2.12 The work of the Solicitors' Division includes:

- Acting as solicitor for the Director and working with the Garda Síochána in the preparation and presentation of all indictable criminal prosecutions listed in Dublin. This includes trials in the Circuit Criminal Court, Special Criminal Court and the Central Criminal Court, and appeals after conviction and sentence to the Court of Criminal Appeal.

- Appearing on behalf of the Director in criminal prosecutions in the District Courts of the Dublin Metropolitan District and appeals therefrom to the Circuit Court. This role involves extensive advocacy. The work in this area includes the preparation of Books of Evidence for trials in the Dublin Courts.
- Acting as solicitor to the Director in all judicial reviews, habeas corpus applications, cases stated, bail applications, etc. in the superior courts, where the Director is a party.

2.13 The Solicitors' Division is divided into four legal operational sections:

- District Court Section
- Circuit Court Trials Section
- Judicial Review Section
- Superior Courts Section

The Superior Courts Section has responsibility for cases in the Central Criminal Court, the Special Criminal Court and for the preparation of Books of Evidence and trial work in corporate crime, competition cases and complex frauds including money-laundering prosecution. This latter function is intended to cater for the anticipated rise in prosecutions in such areas, having regard to the introduction of legislation recently, and the roles of the Competition Authority and the Office of the Director of Corporate Enforcement.

2.14 The Chief Prosecution Solicitor deals with all DPP business within the Dublin area. Outside Dublin, 32 local State Solicitors deal with prosecution business on contract to the State. The report of the Public Prosecution System Study Group in June 1999 recommended that the State Solicitor service be transferred from the Attorney General to the Director of Public Prosecutions. This is dependant on legislation, which is currently being drafted. However upon the transfer being effected, the Chief Prosecution Solicitor will be responsible for the administration of prosecutions nationwide.

2.15 As stated above, the work of the Division involves close interaction with the Garda Síochána and other specialised investigating agencies. The effective prosecution of offences at an operational level also depends on close co-operation with other stakeholders in the criminal justice system, including the Courts Service, professional witnesses, members of the Bar and victim representatives. The improvement of communications with all of these groups was identified as a major objective for 2002. The Chief Prosecution Solicitor can confirm that closer links with innumerable stakeholders have been developed, resulting in marked improvements in efficiency and service delivery. This work is ongoing.

Part II
The Year in Review

Chapter 3

Review of 2002

- 3.1 In the course of the last 12 months the Office of the Director of Public Prosecutions experienced the most fundamental structural and organisational changes since the establishment of the Office in 1975. This occurred as a result of a decision of Government, in November 1999, to implement the recommendations of the Report of the Public Prosecution System Study Group in order to improve the co-ordination and effectiveness of the prosecution system. The principal recommendation was that the criminal prosecution function of the Chief State Solicitor's Office (CSSO) should be transferred to the Office of the Director of Public Prosecutions (DPP). This entailed the creation of the post of Chief Prosecution Solicitor (CPS) within the Office of the DPP and the transfer of responsibility for the functions of the criminal divisions of the Chief State Solicitor's Office to the Director of Public Prosecutions.
- 3.2 Throughout 2000 and 2001 all available resources were utilised in preparations and planning for the transfer. The post of Chief Prosecution Solicitor (CPS) was filled; new office accommodation was acquired and fitted to accommodate the Solicitors' Division; competitions were conducted for the recruitment of 50 new staff in a range of grades; and 62 staff from the criminal division of the CSSO were transferred to the DPP's Office. By January 2002 the transfer was successfully completed with minimum disruption to services.
- 3.3 The challenges for the Office in 2002 therefore lay in the administration and management of a 240% increase in personnel; in ensuring the integration and effectiveness of the new expanded office; and in focusing on the development of the civil service modernisation programme within the re-structured organisation.
- 3.4 The Directing Division of the DPP's Office remained in our Merrion Street premises while the Solicitors' Division moved into new office accommodation in Chapter House, Upper Abbey Street. Administrative support services, such as the Human Resources Unit and sections of IT and Organisation & General Services Units which were originally housed in Merrion Street, also moved to Chapter House. This facilitated better integration of staff in the new organisation and ensured that both office premises were more effectively managed because of on-site office management and IT services in both locations.
- 3.5 The establishment of the new expanded Office in January 2002 presented an ideal opportunity for the Office to focus on implementation of those elements of the civil service modernisation programme which had been deferred during 2001 because of the necessity to concentrate available resources on the establishment of the new Office. Focusing on the implementation of the modernisation programme after the establishment of the new office also enabled us to take account of the new expanded office and include all our new staff members in the various modernisation initiatives.
- 3.6 The **Business Planning** initiative proved to be very timely given the establishment of the new Office. An Overarching Business Plan was completed in July 2002 with subsequent Unit Business Plans completed by September 2002. In order to deliver on our mission statement five main objectives were identified in our Overarching Plan:
- To ensure the proper functioning of the decision-making process in the prosecution system
 - To ensure that cases are prosecuted to the highest standards
 - To maintain and foster public confidence in the prosecution system
 - To contribute to the proper functioning and development of the criminal justice system as a whole

- To support the attainment of the Office's objectives through the effective and efficient management of our organisation and resources
- Unit Business Plans were developed to feed into these five objectives.
- 3.7 Following on from the Business Planning Initiative the **Performance Management Development System** (PMDS) was implemented. Staff members completed Phase I training by October 2002 with Phase II training due to be completed in March 2003. PMDS training accounted for a total of 265 training days for staff members in the year under review. Training requirements outlined in role profile forms will contribute to the development of a comprehensive training strategy for the Office in 2003. In tandem with PMDS training the Office continued its existing training & development programme through participation in conferences & seminars (142 training days); attendance at job specific training courses (141 training days) and general training courses (231.5 training days).
- 3.8 The new civil service **Human Resource Management System** (HRMS) was implemented in the DPP's Office in December 2002. This new IT system replaced the old Personnel Administration System (PAS). The objective of the new HRMS is to provide all civil service departments and offices with a common HR system containing the functionality and flexibility capable of meeting the needs of a changing civil service into the future. It is intended that the new HRMS will integrate with salary and time & attendance systems to reduce or avoid duplication of data input. When the system has been fully developed it will also assist in the overall management of the Office's staff resources and will be a pivotal support to the Strategic Management Initiative, particularly in relation to the PMDS and in the devolution of responsibility for a number of HR functions to line managers in the future.
- 3.9 During 2002 consultants were engaged to assist in the identification of the information needs of the office under Phase I of the **Management Information Framework** (MIF). The purpose of MIF is to provide managers with relevant and timely financial and non-financial performance information to support their resource allocation decision-making. Phase I involved a thorough business analysis of current procedures in the DPP's Office. Based on this analysis the MIF most appropriate to the needs of the DPP's Office will be designed. The Phase 1 Report is due to be completed in early 2003. The completion of this phase of MIF will facilitate the development of case management systems to deliver the non-financial information required for management purposes. It will also facilitate the purchase of a new financial system for the Office.
- 3.10 The fit-out of the new office in Abbey Street was a huge undertaking from an **Information Technology** point of view. Subsequent to the opening of the new office in January 2002 our IT services expanded and developed to cater for the increased maintenance requirements of the new office and the upgrading of the existing Office PC Network. Our internal information technology network was significantly enhanced during the year with the introduction of external desktop e-mail access to all staff in both locations; the provision of high-speed desktop internet access to relevant staff members; and the migration of external data transfer to the Government VPN. Such improvements have contributed greatly to a more effective and integrated communications network throughout the new expanded Office.

- 3.11 A number of internal databases were developed to provide for the information needs of internal staff members. Such databases provide accessible and timely information and facilitate more efficient and effective work practices. The introduction of the use of laptops during High Court Bail sittings by staff from the Solicitors' Division has proved to be a tremendous improvement in efficiency. Staff in court can now readily access file details to deal with queries and update the file registry with information on adjournments and other details. It is hoped to expand this service to other courts during 2003.
- 3.12 Our **Library and Information Service** continued to expand and enhance its print and electronic resources, services and facilities in 2002. The Libraries in both locations have a wide-ranging legal collection with particular emphasis on criminal law and human rights. An increased number of electronic legal information resources have been made available to library clients via their desktops, particularly Irish and criminal legal resources. The current awareness service was enhanced to comprise the abstracting of internal directions and judgments as well as regular bulletins of legal developments and literature and new titles in the library collection. An information training programme was commenced to assist users to exploit library resources and enhance their information retrieval abilities.
- 3.13 The most significant development in our library services during the year was the purchase of a Library and Document Management System. This is the first professional library management system to be implemented in the DPP's Office. Implementation commenced at the end of 2002 and is expected to be completed by the end of 2003. The new *Unicorn Library Management System* will offer enhanced access to the library collection of print and electronic resources. The *Hyperion Document Management System* will facilitate full-text searching of the library's judgment collection and electronic access to the judgments via the On-line Public Access Catalogue. The Office's library will be the first library in Ireland to implement the *Hyperion System*. The implementation of the new system will offer library users complete "one-stop-shop" access to all library resources from a single interface.
- 3.14 The establishment of a **Partnership Committee** in the new expanded Office in March 2002 contributed significantly to enhancing the integration process. Members of the Committee were drawn from both office locations and meetings took place on a monthly basis, alternating between the Merrion Street and Abbey Street offices. The Partnership process provided the ideal forum for addressing a number of issues in a consultative and inclusive manner. During the year the Committee organised a Health Screening Programme which was extremely successful with 124 staff members availing of the opportunity to participate in the programme. A Merit Award Scheme was introduced in the DPP's Office for the first time in 2002 and a sub-group of the Partnership Committee were asked to make recommendations on the most equitable manner of allocation of awards. In all 22 members of staff received awards for exceptional performance of duty. Sub-groups of the Partnership Committee were also established to look at expansion of Flexible Working Hours and their report is expected by mid 2003. The Partnership Committee were also consulted on a regular basis in relation to PMDS; Business Planning; development of e-mail and Internet Policy; and preparation of an Anti-Bullying & Harassment Policy.

3.15 During the first year of the establishment of the new Office great emphasis was placed on ensuring that internal structures and practices were in place and fully integrated in order to support the delivery of an effective and efficient prosecution service. Essential to the delivery of service is the importance of regular consultation and feedback from those to whom this Office provides a service. As part of our continued commitment to the **Customer Service Initiative** the DPP's Office organises two conferences each year for our stakeholders. In January 2002 the Annual State Solicitors Seminar took place in The Law Society of Ireland and provided an ideal opportunity for consultation, discussion and sharing of information between this Office and those involved in the State Solicitor Service. Presentations on the Criminal Justice Act, 1999; Disclosure; and developments in relation to Mutual Assistance were given at the seminar.

3.16 In May 2002 the Annual National Prosecutors Conference took place in the Royal Hospital Kilmainham. There were over 200 delegates at the conference including members of the Bar, the State Solicitor Service, members of the Garda Síochána, members of the judiciary and representatives from organisations within the criminal justice system and related agencies. The theme of this year's conference was *Expert Medical Evidence and the Criminal Law*. The conference was addressed by Dr. Roisin Healy, Consultant in Paediatric Emergency Medicine, Our Lady's Hospital for Sick Children; Ms. Rhonda Turner, Principal Psychologist in St. Louise's Unit, Our Lady's Hospital for Sick Children; Dr. Mary Holohan, Director of the Sexual Assault Treatment Unit at the Rotunda Hospital; Prof. John Harbison, State Pathologist; and Feichín McDonagh, Senior Counsel. The presentations were extremely informative and interesting from both a medical and a legal point of view. Apart from the benefits to be gained from sharing of knowledge the conference also provides a forum

for interaction between this Office and those to whom it provides a service. This facilitates exchange of views and feedback and enables us to continue to enhance and develop the service that we provide in consultation with the recipients of that service.

3.17 The first year of the establishment of the new expanded DPP's Office proved to be an extremely challenging year. It was a year in which tremendous progress was made towards providing a more integrated and efficient prosecution service through the transfer of the functions of the criminal division of the Chief State Solicitor's Office to the DPP and through the continued implementation of the civil service modernisation programme. Progress such as this is essential to achieving our ultimate goal of providing a prosecution service which is independent, fair and effective, and we will continue to be committed to delivering on that goal in 2003.

Chapter 4

Public Prosecution System Study Review Group

Introduction

- 4.1 The Public Prosecution System Study Group (PPSSG) was appointed by the Government in October 1998 under the auspices of the Office of the Attorney General. The Group was established to review the legal and organisational arrangements for the public prosecution system and was chaired by Mr. Dermot Nally, former Secretary to the Government. The PPSSG or Nally Group as it is more widely known submitted its report in June 1999. On 5 October 1999 the Government considered the Report and agreed and accepted its recommendations.
- 4.2 The principal recommendation of the Report was the transfer of functions of the criminal division of the Chief State Solicitor's Office from the Office of the Attorney General to the Office of the Director of Public Prosecutions. This transfer of functions took place on 3 December 2001 and the new Solicitors' Division of the Office is headed by the Chief Prosecution Solicitor.
- 4.3 When this transfer was effected, a Review Group as recommended at paragraph 5.11 of the Nally Report, was established to examine and report on the implementation of the other recommendations of the Report including the recommendation to transfer responsibility of the local State Solicitors to the DPP.
- 4.4 The Review Group was established in November 2001 and consisted of representatives from the Departments of Justice, Equality and Law Reform and Finance, the Offices of the Attorney General, the Director of Public Prosecutions and the Chief State Solicitor, the Courts Service and the Garda Síochána. The Group met regularly under the chairmanship of the Director and in November 2002 submitted their report to the Taoiseach.

4.5 This report outlined the current status of each of the recommendations in the Nally Report. Overall the majority of the recommendations have been implemented or are in the course of being implemented and the group have recorded this. The main recommendations covered the following areas:

- Use of independent barristers
- Delegation of Powers under the Prosecution of Offences Act, 1974
- Transfer of the State Solicitor Service from the Attorney General to the Director of Public Prosecutions
- Transfer and promotions of staff between Legal Offices
- Greater role for the Office of the Director of Public Prosecutions in Garda Training
- Preparation of Books of Evidence
- Recommendations in relation to the acquisition, analysis and dissemination of information

The current position with regard to the above areas is outlined in the remainder of this chapter.

Use of Independent Barristers

- 4.6 For the purpose of prosecuting cases in court, the Director does not employ his own barristers but uses barristers employed in private independent practice. The Nally Group felt that this practice should be continued as independent barristers have a broader focus as they also carry out defence work thus widening their perspective. It was noted by the Review Group that this practice has continued as recommended.

Delegation of Powers Under the Prosecution of Offences Act, 1974

4.7 The Nally Group recommended that consideration should be given by the DPP to the delegation to the Chief Prosecution Solicitor of power to take decisions on whether to prosecute specific categories of cases. The Review Group assessed this and felt that legislation was not necessary as the Chief Prosecution Solicitor would now be considered an officer within the meaning of section 4(1)(a) of the Prosecution of Offences Act, 1974, to whom functions may be delegated. While the Director now has that power he so far has not exercised this option. The Review Group was also satisfied that the transferred solicitors are also professional officers of the DPP within the meaning of the above section and legislation was not required to effect this.

Transfer of the State Solicitor Service from the Attorney General to the Director of Public Prosecutions

4.8 The Nally Group also recommended that responsibility for the local State Solicitor service should be transferred from the Attorney General to the Director of Public Prosecutions. A statutory amendment will be required in order to facilitate this recommendation. It is hoped that the amendment will be finalised by the end of 2003.

Transfer and Promotions of Staff Between Legal Offices

4.9 The Nally Group also recommended that “a common pool of staff, who would be entitled to apply for transfer and promotion among the various legal offices in accordance with accepted civil service procedures, should be established after appropriate consultations”. The Review

Group agreed that it would not be possible to put in place common transfer and promotion procedures covering every post in all legal offices involving both solicitors and barristers without legislative change. This is because, under existing law, a barrister may not be employed to do the work of a solicitor, except in the case of the Office of the Revenue Solicitor (section 86 of the Solicitors Act, 1954). However, it was agreed that procedures to establish a common pool could be put in place between offices with significant numbers of solicitors. To this end a joint proposal issued by the Chief State Solicitor’s Office and the Office of the Director of Public Prosecutions to IMPACT, the trade union representing solicitor and legal executive staff, is currently being discussed with that union. However, early indications are that it will take some further time before the details of the operation of the common pool are agreed.

Greater Role for the Office of the DPP in Garda Training

4.10 The issue of the DPP’s role in Garda training was also considered and it was felt that while the Nally Report was impressed by the training received by the Garda Síochána to ensure that Garda prosecutors are well equipped to cope with both practical and legal issues, it recommended that this training be further improved systematically. The Office of the Director of Public Prosecutions will increase its involvement in Garda training by involving solicitors from its Solicitors’ Division in training programmes and this process has already commenced.

Books of Evidence

4.11 The Nally Group recommended that a new process whereby the defendant could be apprised of the evidence against him should be identified, streamlining the current cumbersome procedure involving the book of evidence. Having considered this matter the Review Group formed the opinion that Books of Evidence continue to serve a useful purpose in the effective administration of trial preparation. The working group were unable to suggest any useful amendment to legislation at this time. The matter should, however, be kept under review. The system of preliminary examination has recently been amended by statute.

Acquisition, Analysis and Dissemination of Information

4.12 The Nally Group also made a number of other recommendations in relation to the acquisition, analysis and dissemination of information in the prosecution service including the publishing of reports by the DPP's Office and management information.

4.13 Since the Nally Report, the Office of the Director of Public Prosecutions has published four annual reports and is currently working on its third Strategy Statement for the period 2004-2006. In 2001 the Director also published a Statement of General Guidelines for Prosecutors. The purpose of this document was to set out in general terms, principles which should guide the initiation and conduct of prosecutions in the State, and to provide general guidance to prosecutors so that a fair, reasoned and consistent policy underlies the prosecution

process. A further objective of publishing this document was to contribute to an increased understanding of the prosecution process by the citizens on whose behalf prosecutions are brought. As recommended in the Nally Report the DPP's Office has established an IT Unit and a Library Service including a research unit. It has recruited a professional manager as Head of Administration and has also established a policy development unit.

4.14 The Nally Group recommended that the DPP's Office should be the focal point for the assembly and analysis of information on the operation of the prosecution system. However, the National Crime Council Report of September 2001 recommended that an expert group on crime statistics be established by the Department of Justice, Equality and Law Reform. The Review Group considered that while it is essential that there should be a focal point for the assembly and analysis of statistical information on crime statistics and co-ordination of the activities of the different agencies they did not express any preference as between the solutions preferred by the Nally Report and the National Crime Council Report. The Minister for Justice, Equality and Law Reform has recently established an Expert Group on Crime Statistics and the Director of Public Prosecutions has nominated one of his officers to be a member of the Group. The Minister for Justice, Equality and Law Reform has also decided to carry out biennial national crime victimisation surveys starting in 2004 and this is likely to impact on this recommendation.

4.15 The Nally Report recommended that existing and projected information technology systems in the legal offices and agencies should be developed in a co-ordinated way. To date a number of initiatives have taken place within the various organisations. A major project is required within the next three years to co-ordinate the systems within the Office itself, the Solicitors' Division having inherited a system from the Chief State Solicitor's Office which is not compatible with the system in the Directing Division. As a general comment, the Review Group felt that there is considerable scope to improve co-ordination and co-operation between the different agencies of the State working in the criminal justice field without compromising their independence. The possibility of establishing regular co-ordination meetings might be considered, possibly along the lines of the Criminal Justice Board in Northern Ireland.

Part III
Legal Developments

Chapter 5

Legal Issues Relevant to the Practice of Criminal Law

Introduction

5.1 Reflecting the dynamic nature of public law, this year has seen the development and refinement of a number of legal issues relevant to the practice of criminal law. This chapter intends to give a brief overview of some of the more pertinent judgments in areas that pertain to substantive criminal law and criminal procedure. It does not purport to provide a comprehensive, detailed or authoritative analysis and those who wish to develop a more detailed knowledge or understanding of the cases referred to, are advised to consult the judgments or reports themselves.

Among the many interesting cases decided in the course of 2002 were those dealing with the following issues.

Bias

5.2 Stemming from the maxim that justice must not only be done but must also be seen to be done, it has long been held that adjudicators must be both impartial and seen to be impartial, in making their decisions. There are a number of cases that have laid out the principles that apply in cases where judges may have conflicting interests. In *Director of Public Prosecutions v. Tobin* [2002] 1 ILRM 428, the Court of Criminal Appeal applied these principles to a case of potential jury bias. The issue arose when it transpired during deliberations that a juror had been the victim of offences similar to those the accused was on trial for. Fennelly J. concluded that a reasonable observer would consider that there was a danger that the jurors experience might undermine the provision of a fair trial and quashed the conviction. The nature of sexual offences being as they are, other jurors could be influenced by sympathy for the juror concerned.

Sentencing

5.3 In determining the appropriate sentence to be imposed on conviction, a number of factors must be considered by the trial judge, e.g. if the guilty party has any previous convictions; whether the guilty party pleaded guilty; or the offences committed and their effects.

A great deal of consideration has been given to sentencing where the convictions were for sexual offences where there was a delay between the commission of the offences and the trial. In *Director of Public Prosecutions v. P.H.* C.C.A. (22/02/02) the court held that the trial judge was bound to take into account the consequences of the offences on the three victims, which had been very serious for all of them. The judge was justified in significantly reducing the custodial sentence in reliance of the following factors: the age of the offender, his medical condition, his lack of previous convictions, his guilty plea (even though he denied guilt up to the day of sentencing), and the humiliation of being convicted of such serious sexual offences. In the similar case of *Director of Public Prosecutions v. J.M.* [2002] 1IR 363, Keane C.J. held that neither the age of the offender, of and by itself, nor the delay between the commission of the offences and the trial, would have justified the suspending of the sentence. However, in suspending the sentence, he did hold that the trial judge had given insufficient weight to mitigating factors, similar to the above, i.e. irreparable damage to the offender's standing in the community, the effects of the conviction on his children, the fragile state of his health, and his unqualified remorse.

Conversely, the Court of Criminal Appeal demonstrated its willingness to increase sentences in response to an appeal from this Office, in *Director of Public Prosecutions v. McKenna (No. 2)* [2002] 2 IR 345. In this case the Court held that the exceptional nature of the case (i.e. the depravity shown by the accused) was such that the trial judge should have exercised his discretion and imposed consecutive sentences, as the concurrency of the sentences imposed was excessively lenient.

In addition to these decisions on matters relating to the actual sentencing, two procedural matters have been clarified in criminal appeals. First, in *Director of Public Prosecutions v. McKenna* [2002] 1 IR 347, it was decided that an unsuccessful attempt to lodge a sentence review application constitutes the making of an application for the purposes of the review's time limit. This decision was based upon the assumption that, in the absence of legislation on the matter, the application was made by lodgment of the appropriate notice in the Court Office.

Second, in setting out the process for appellate courts to follow in appeals against sentence, the Supreme Court held in *Director of Public Prosecutions v. Cunningham* (08/10/02) that the original sentence must first be examined. Finding the original sentence to be wrong in principle, either for excessive severity or undue leniency, was necessary before the Court of Criminal Appeal could exercise its jurisdiction to consider an appropriate sentence for the appellant.

Decisions to Prosecute

5.4 As with all stages of the criminal process, the decision to prosecute must be made with respect for the general constitutional requirements of fair procedures. This was determined by the Supreme Court in *Eviston v. Director of Public*

Prosecutions [2002] 1ILRM 134. The court also upheld the prerogative of the Office to reverse a decision, if that decision was subsequently believed to be erroneous.

Disclosure of Documents

5.5 Even where public interest immunity exists concerning a document sought by the defence, when a document is referred to in affidavits and pleadings, it is liable to disclosure. This was decided by Hardiman J. in *T.H. v. Director of Public Prosecutions & Judge Smithwick* [2002] 1 ILRM 48. He held that the document in question has been referred to and summarised in an affidavit and that the status of a document had changed once it was deployed in the litigation, as such a deployment was inconsistent with assertions of either irrelevance or the deleterious effects of the disclosure of the document.

Drink Driving

5.6 The requirement to provide breath, blood or urine specimens when suspected of drink driving is one of the few statutory provisions requiring an accused to provide evidence against himself or herself. The accused must be informed of the obligation, and that failure to comply with it would be an offence. In two cases this year the Supreme Court has examined this requirement and how it must be communicated to those obliged to provide specimens. In *Director of Public Prosecutions v. Mangan* [2002] 1 ILRM 417, the Supreme Court held that the omission of the year of the Road Traffic Act, creating the obligation, when explaining the requirement, was immaterial. The appellant was in as good a position to know his obligations, as he would have been had the year of the Act been stated.

Similarly, in *Director of Public Prosecutions v. Murphy* H.Ct. (22/7/02), Ó Caoimh J. held that it was sufficient either to indicate that the person would be committing an offence or that they would be exposing themselves to penalties, if they did not provide a specimen. As a consequential disqualification from driving was not a penalty as such, there was no requirement to inform the person concerned that a disqualification order would be issued on conviction for failure to provide a specimen when required to do so.

In terms of the specimens received by operation of the above requirement, Carney J. held that a reading received from a breathalyser could be reduced by a fraction of that reading, in *Director of Public Prosecutions v. Curry* H.Ct. (14/03/02). He held that, while the statute requires that where the two readings taken were different the higher reading would be discarded; it did not exclude the possibility that the figure used in the prosecution of the offence could be lower than that recorded by the breathalyser and there was nothing to indicate that such a reduction was unlawful as it operated in favour of the accused.

Delay

5.7 The passage of time between the commission of an offence and its prosecution can give rise to the risk of an unfair trial. In the last few years a number of judgments concerning delay have set out the principles to apply in considering the effects of delay on rights of the accused. Recent cases have further refined the governing principles in this area. In *P.C. v. Director of Public Prosecutions* H.Ct. (02/02/02), O'Neill J. held that the lapse of an inordinate amount of time may give rise to an inference of prejudice such that a fair trial cannot be expected to ensue, and in circumstances of such inordinate delay a trial may be prohibited without the accused showing either actual or presumptive prejudice.

In a case where there had been delay both in the making of the complaint and in the prosecution of the complaint: *P.M. v. Director of Public Prosecutions* S.Ct. (07/06/02), Keane C.J. held that it was not necessary that the accused's defence be impaired for the accused to invoke the right to a reasonably expeditious trial. He also held that, where the violation of this right had not jeopardised the right to a fair trial but had caused unnecessary stress and anxiety, the court must engage in a balancing exercise between the right of the accused to be protected from stress and anxiety caused by an unnecessary and inordinate delay, and the public interest in prosecution. In doing so the court will consider the delay before and after the charging of the accused, and the nature of the offences charged.

Right of Access to a Solicitor

5.8 The right of reasonable access to a solicitor serves the function of ensuring that a person being detained is aware of his rights and is provided independent legal advice so as to be able to freely decide whether or not to make a statement.

In *Director of Public Prosecutions v. Buck* [2002] 2 IR 268, Keane C.J. held that, while the detention of the detainee might have been rendered unlawful if his right of access to a solicitor had been violated, it had been vindicated by the attendance of a solicitor, and therefore his detention was not unlawful. It was not material that he dispensed with the services of that solicitor after being advised that he did not have to make a statement. It was for the trial judge to decide that it was the receipt of this advice from the solicitor, rather than his being retained that constituted the fulfilment of his right of access.

In a similar decision, the Court of Criminal Appeal in *Director of Public Prosecutions v. O'Brien* C.C.A. (17/06/02) held that, where the detainee's right of access to a solicitor is initially violated but the detention is otherwise lawful, subsequent access to a solicitor is sufficient to render statements made after the solicitor's visit admissible.

In *Mart v. Minister for Justice* H.Ct. (19/04/02) Smyth J. determined that the right of access to a solicitor belonged to the person in custody and not the solicitor.

Irish Language

5.9 While the right of an accused person to use the Irish language is beyond doubt, the mechanics necessary to ensure that the whole process of the prosecution is fair was examined in *MacCarthaigh v. Minister for Justice* H.Ct. (14/05/02). In this case Finnegan P., in dealing with the applicant's argument that Article 8 of the Constitution provides for the right to have a transcript of the proceedings as spoken in court, held that the previous scheme of taking note of the evidence and the speeches and submissions as translated into English was inadequate and failed to comply with Article 8. However, he was not convinced that the interests of justice required the provision of simultaneous translation, determining instead that accuracy was more important than speed and that maintaining the necessary level of accuracy while translating simultaneously would require the translator to be provided with framework arguments in advance of the hearing. This would place an unacceptable fetter on the defence's entitlement to reserve its position.

International Human Rights Law

5.10 Unlike in some countries, in Ireland a distinction is made between the operation of international law and of domestic law. The two are considered to operate in separate spheres, meeting only when the legislature incorporates international legal measures into domestic law. In *Kavanagh v. Governor of Mountjoy Prison* [2002] 2 ILRM 81, the Supreme Court heard an appeal from the High Court's refusal to grant leave to seek judicial review. The judicial review was sought on the grounds that the conviction of the appellant violated Article 29.6, because the monitoring body of the International Covenant on Civil and Political Rights having heard a complaint from the appellant and having found Ireland to be in breach of the equal treatment provision in the covenant, by trying him in the Special Criminal Court. The Supreme Court followed authority in refusing to allow that Article 29.6 conferred individual rights. It was decided that the decision of the monitoring body could not be invoked to nullify a conviction without violating a number of other Constitutional provisions, e.g. Articles 15.2.2, 29.6 & 34.1.

Mandatory Injunction to Ensure Compliance with the Law

5.11 Failure to give evidence at an inquest when required to do so by the Coroner is an offence, carrying the penalty of a €6.35 fine. It is understandable that some people may not be cowed into submission by this fine, and in the case of *Attorney General v. Lee* S.Ct. (15/07/02), the wife of the deceased refused to give evidence at the inquest into his death. She was an essential and material witness, and the Attorney General applied for a mandatory injunction compelling her attendance. On her appeal against the injunction, the Supreme Court

upheld the injunction. Their decision was based on the determination that the fine provided by statute was inadequate and that the alternative procedure whereby the coroner could certify the defendant as being in contempt of court was constitutionally frail.

Proceeds of Crime

5.12 The proceeds of crime legislation and the continued and successful efforts of the Criminal Assets Bureau have been of huge significance in the fight against crime. Although the main weapon in the armoury of the Criminal Assets Bureau, the section 3 order, is entitled an interlocutory order, two recent cases have made it quite clear that it is such in name only. In *F.McK. v. A.F.* [2002] 1 IR 242, the Supreme Court held that, in proceedings pursuant to the Proceeds of Crime Act, 1996, commenced by plenary summons, the Rules of the Superior Courts (RSC) applied. Under Order 20, Rule 3 of the RSC there is an obligation to deliver a statement of claim, when requested to do so by the defence. That a statement of claim is not required to attain of an interlocutory injunction, was not relevant to a section 3 injunction, as this was final in nature even if interlocutory in name. In *McKenna v. E.H.* [2002] 1 IR 72, Finnegan J., held that injunctions granted per sections 2 & 3 were not merely interlocutory or interim, but were substantive in nature. He went on to hold that the Order 11 RSC procedure for service outside of this jurisdiction applied to injunctions issued pursuant to sections 2 & 3 of the Proceeds of Crime Act.

Judicial Review

5.13 The standard that must be met by an applicant for leave to seek judicial review is settled law, i.e. that the applicant has an arguable case.

In *Gordon v. Director of Public Prosecutions* [2002] 2 IR 369, the Supreme Court compared this with the standard a respondent must meet should they seek to have the applicant's leave set aside. The Court found that the respondent had a higher burden to discharge. The respondent had to prove that the applicant had an unarguable case. To allow a lower burden would permit such an application to operate as a pre-emptive hearing of the substantive matter, which was clearly undesirable.

The Supreme Court also examined the appropriateness of an application for judicial review on a *quia timet* (anticipatory) basis, while the matter was still before the lower court. In remitting the matter back to the lower court, the Supreme Court in *Mellettt v. Judge Reilly S.Ct.* (26/04/02), held that it was generally undesirable for the High Court to intervene by way of judicial review, at any stage in a criminal trial.

Bad Character Evidence

5.14 When a person is tried for an offence, the jury determines if the accused committed the offence on evidence relevant to that offence alone. Generally, evidence of the 'bad character' of the accused or of his previous convictions, will not go to the jury, as a means of safeguarding the accused from the prejudicial effect such information may have. There are however limited exceptions to this rule, i.e. if the accused attacks the credibility of a prosecution witness or gives evidence of his good character. In *Director of Public Prosecutions v. Ferris C.C.A.* (10/06/02), the Court of Criminal Appeal held that, when the accused calls other witnesses as character witnesses, rather than testifying to his own good character, the prosecution is not entitled to introduce bad character evidence.

Criminal Procedure – Trials on Indictment

5.15 Fennelly J., in *Conlon v. Kelly* [2002] 1 IR 10, held that section 6(1) of the Criminal Justice (Administration) Act, 1924, which allows the court to amend a defective indictment, did not extend to permitting counts from separate indictments, based on separate returns for trial, to be combined in one amended indictment. He inferred that section 6(1) operated when an indictment had already been framed, which follows a single return for trial, as envisaged by the Criminal Procedure Act, 1967. Additionally, he held that any change to an indictment that has been preferred requires statutory authority. In another case dealing with criminal procedure, *Zambra v. McNulty & Director of Public Prosecutions* [2002] 2 IR 351, the Supreme Court held that an order extending time for the delivery of a Book of Evidence was a sufficient step in the criminal proceedings to warrant a preliminary examination under the procedures set out in the Criminal Procedure Act, 1967 (see chapter 7 below) before the accused was sent forward for trial. The extension order was made pursuant to Order 24 Rule 10 of the Rules of the District Court, which the Supreme Court held was derived from section 6 of the Criminal Procedure Act, 1967, and therefore the extension order was a step under the 1967 Act. As that step had been taken, the scheme of preliminary examination was deemed applicable.

Criminal Procedure – Summary Trials

5.16 Murphy J., in *Director of Public Prosecutions v. McMahon* H.Ct. (27/06/02), held that while service on a solicitor on record for a party would normally be deemed adequate in civil matters, it was not adequate for the purpose of criminal matters. He held that, as the case involved criminal matters, and as in those circumstances the solicitor may not have been retained by the client at the time of service, service was inadequate and the District Court was not seised of the matter.

The obligation on the District Court to address the substance of submissions to the court, and to hear evidence if necessary, was stressed by O’Caoimh J. in *Director of Public Prosecutions v. Maughan* H.Ct. (22/07/02). He held that the District Court judge acted unreasonably and irrationally in dismissing the case before him because the prosecutor was reluctant to make written submissions, and that a failure to make written submissions did not entitle the District Court Judge to dismiss the claim.

Once the District Court has accepted jurisdiction and has begun to hear evidence of the commission of a hybrid offence being tried in the District Court, the court should proceed to a decision about the charges preferred, according to Murphy J. in *Director of Public Prosecutions v. O’Donnell* H.Ct. (24/07/02). In this case the District Judge was held to have acted in excess of and without jurisdiction in dismissing the charge after the District Judge decided that the accused should have been given the choice of whether he wished to be tried on indictment or summarily. Hybrid offences do not give the accused a right to choose a trial on indictment.

Transcript of Trial

5.17 In *Director of Public Prosecutions v. G.K.* (06/06/02), the Court of Criminal Appeal held that the refusal by the trial judge to provide the accused with the transcript of his original trial, when he was being retried for the same offences, violated his right to a fair trial. It was held that denying the accused the transcript essentially denied him the possibility of exposing any differences in testimony at the two trials and of testing the credibility of the witnesses. This impaired the capacity of the accused to defend himself in an unacceptable way, especially when the credibility of witnesses was of significance, as it was in this case.

Chapter 6

Forfeiture of Assets

6.1 The traditional focus of the criminal process, following conviction, has been to punish the offender, forfeiture of property to the Crown having been abolished in the nineteenth century. However, more recently there has been legislative recognition of the merit to the State of taking the profit out of crime. The existing provisions relating to forfeiture of the proceeds of crime may be divided into four categories.

Civil Forfeiture of the Proceeds of Crime

6.2 The relevant legislation empowers the High Court, when satisfied that certain property constitutes the proceeds of crime, to make an order initially freezing such property for a period of seven years and thereafter a “disposal” order directing the said property to be transferred to the State. This is a civil process whereby the court may make an order, if satisfied “on the balance of probabilities” that property is the proceeds of crime, and is directed primarily against property rather than a particular defendant. It is not necessary that the person from whom the property is seized has been convicted of a criminal offence. This system of forfeiture of assets is the responsibility of the Criminal Assets Bureau and the Director of Public Prosecutions is not involved in its operation.

Criminal Confiscation

6.3 The relevant legislation empowers a court of trial, following conviction and sentence, to assess the benefit or profit accruing to the convicted person from that offence and thereafter to make a confiscation order. The amount set by the court becomes a debt payable to the Director of Public Prosecutions. Provision is also made for the granting of a freezing order to avoid the dissipation of assets, and for the appointment

of a receiver or the imposition of a consecutive prison term in the event of non-payment. The provisions relating to drug trafficking offences are more onerous, the court of trial being mandated to make the enquiry in all cases, with the benefits being assessed not just for the particular offence but for all receipts in connection with drug trafficking over the previous six years. The legislation is primarily aimed at a convicted person and their profit from criminal activity, rather than specific property. Again the evidential proof on such issues is on the balance of probabilities.

Forfeiture of Instrumentalities

6.4 The forfeiture of instrumentalities (meaning property which has been used for the purpose of committing or facilitating the commission of an offence). There are numerous statutory provisions allowing a court following conviction to forfeit such property. Such provisions, while often specifically directed to a particular offence, as for instance in the forfeiture of a firearm under section 13 of the Firearms and Offensive Weapons Act, 1990 or proscribed publications under section 10 of the Censorship of Publications Act, 1929, can also have a general application, by virtue of section 61 of the Criminal Justice Act, 1994.

Compensation Payable to Victim

6.5 Compensation payable to the victim of an offence. Following a conviction a court, instead of or in addition to dealing with a convicted person in any other way, may make a compensation order requiring them to pay compensation in respect of any personal injury or loss resulting from that offence.

Conclusion

- 6.6 These provisions, while separate, are not mutually exclusive and the success of the Criminal Assets Bureau in operating the civil forfeiture model has tended to overshadow the three other remedies. Yet those other remedies can also be very effective. It is for this reason that the Office of the Director of Public Prosecutions has a particular interest in promoting the operation of the confiscation and forfeiture remedies.
- 6.7 Procedures have already been put in place both to heighten awareness and to promote effective implementation of these remedies, not only within the Office but also amongst those other agencies with which this Office deals. There is also ongoing co-operation between this Office and the Criminal Assets Bureau to ensure the most effective use of the legislative provisions in each particular case.
- 6.8 The Office will continue to promote the use of these particular remedies as the divestment of convicted criminals of accumulated assets, profits and instruments of crime has been demonstrated to be an effective deterrent to the commission of further criminal offences.

Chapter 7

Abolition of Preliminary Examination by the Criminal Justice Act, 1999

Introduction

7.1 The Criminal Justice Act, 1999 (“the 1999 Act”) brought about a significant change to Irish criminal procedure by abolishing the system of preliminary examination of indictable offences that had previously been regulated by Part II of the Criminal Procedure (No. 12) Act, 1967 (“the 1967 Act”). The preliminary examination system had been a long-standing feature of Irish and common law criminal procedure and essentially involved an initial examination of the evidence in an indictable case in the District Court to establish that the evidence was sufficient to justify the trial of the accused before a judge or jury. For that purpose, that evidence was set out in a series of documents, served on the defendant and filed in court. Those documents are known as the Book of Evidence. The threshold to be met was whether the evidence raised a *prima facie* case of an indictable offence against the accused. Once the District Court was satisfied that the prosecution had satisfied this test, the case was sent forward (or returned) for trial before a jury.

7.2 The 1999 Act substantially amended the legislation governing Preliminary Examinations up to that point. In summary, the new provisions abolished the preliminary examination procedure in the District Court. Instead, the role of the District Court in indictable cases was confined to establishing two matters: first, that a Book of Evidence had been served and, second, that the DPP had consented to trial on indictment. Once these two conditions are met, the District Court must send the case forward for trial. In place of the old Preliminary Examination, the 1999 Act established a new procedure whereby the defence could apply to the *court of trial* to have the case dismissed for want of sufficient evidence. In effect, the “Preliminary Examination”

was transferred from the District Court to the court of trial. The defence must apply for a dismiss, if such a hearing is desired, and the defence consider that the evidence is insufficient. Previously, (unless the defence waived the preliminary examination) this hearing took place in the District Court as a matter of course.

The Act came into operation on 1 October 2001 in virtue of S.I. 193 of 2001.

7.3 As with such legislation, the 1999 Act contained transitional provisions. Those provisions related to prosecutions already initiated at the time of commencement of the Act. Section 23 sought to differentiate between prosecutions to which the new provisions would apply and those prosecutions which would be dealt with under the old procedures because steps had already been taken. A difference of interpretation arose in relation to the phrase “steps... taken under part II of the Act of 1967...”. The matter was the subject of clarification by the Supreme Court in the case of *Zambra v. McNulty and Director of Public Prosecutions*, Supreme Court, Hardiman J. (27/06/02). The court held that an action undertaken by the judge pursuant to regulations under the Criminal Procedure Act, 1967 did constitute such a step. The decision necessitated a considerable number of applications for judicial review to the High Court seeking to quash orders of judges returning defendants for trial, which had been made following the application of what transpired to be the incorrect procedures. The effect of these applications was merely to require the prosecution to begin proceedings all over again if the wrong procedures had been adopted. This served to delay a number of cases but did not lead to any increase in the number of acquittals.

Part IV
Freedom of Information

Chapter 8

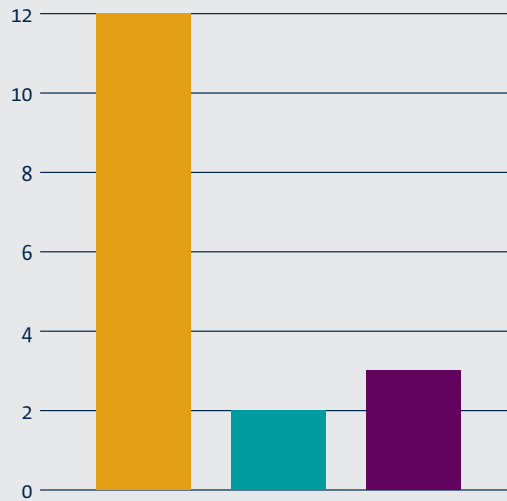
Freedom of Information

- 8.1 2002 was the fourth full year of operation of the Freedom of Information (FOI) Act, 1997 in the Office of the Director of Public Prosecutions. In total there were seventeen requests submitted to the office during this year. This number is consistent with the previous two years.
- 8.2 In 2002 sixteen of the seventeen requests received were refused, however in two of these cases the information was made available outside of FOI. Of the sixteen refusals, six internal reviews were sought and of those two were submitted to the Information Commissioner for an appeal of the decision. The Information Commissioner upheld the original decision in both cases. To date there has been no appeal to the High Court in either of these cases. A decision of the Information Commissioner is legally binding and can only be appealed to the High Court on a point of law.
- 8.3 During the year the Director revised the delegated authority of decision makers and reviewers. This means that there are now seventeen Deciding Officers and seven Reviewers in the Office, a Reviewer being of a more senior grade than a Deciding Officer. Training for these officers is ongoing and it is envisaged that all officers will complete training in early 2003.
- 8.4 The Office has also revised its Section 15 and 16 Reference Book and this is widely available in public libraries throughout the country and also on our website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept. It also explains that records held or created by this Office other than those relating to the general administration of the office are restricted under section 46 (1)(b) of the FOI Act. This in effect means that these records are not accessible under FOI.
- 8.5 This year 82% of all requests received were in relation to criminal case files and although this may seem very high the actual number of requests received by the Office is quite low by comparison to other departments. Therefore it would not appear necessary at this point to heighten public awareness of the section 46 exemption. This, however, will be kept under review and if the trend rises significantly the matter will be reconsidered.

A breakdown of the FOI requests received and decisions taken in the year 1 January 2002 to 31 December 2002 is shown in the chart below:

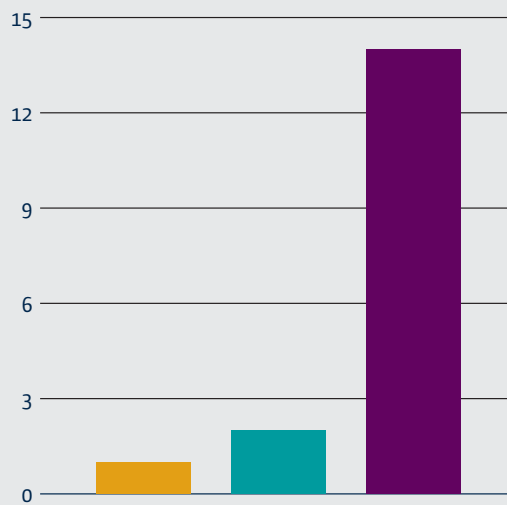
Requests Received

Members of the Public	12
Staff	2
Journalists	3
TOTAL	17



Decisions Taken

Requests Granted	1
Requests Withdrawn	2
Requests Refused	14
TOTAL	17



Part V
Statistics

Chapter 9

Prosecution File Statistics

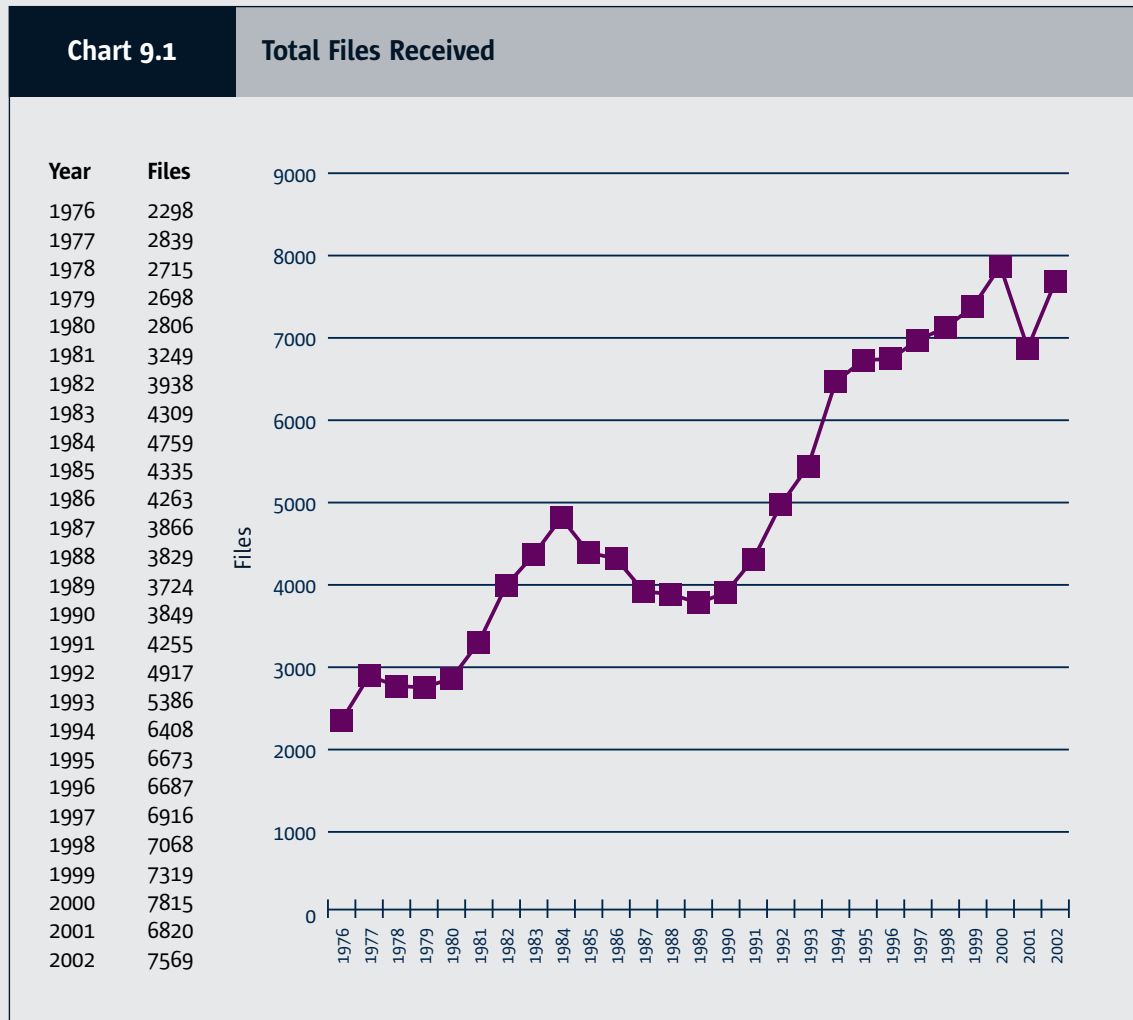
Explanatory Note in Relation to Statistics

The statistics outlined in this report have been compiled from data taken from our IT system. The system is continuously being developed in order to enhance the quality of the data produced. We have in most instances included updated versions of the data set out in the Annual Report 2001 in order to give a fuller account of the progress made during the year. Because of the continuous change in the status of data at any given time, e.g. files “under consideration” or cases “for hearing”, information given in this report will differ from that for the same year in last year’s report. In addition, data from two years may not be strictly comparable because as time goes on more cases are completed, so the information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated as of October 2003.

Directing Division

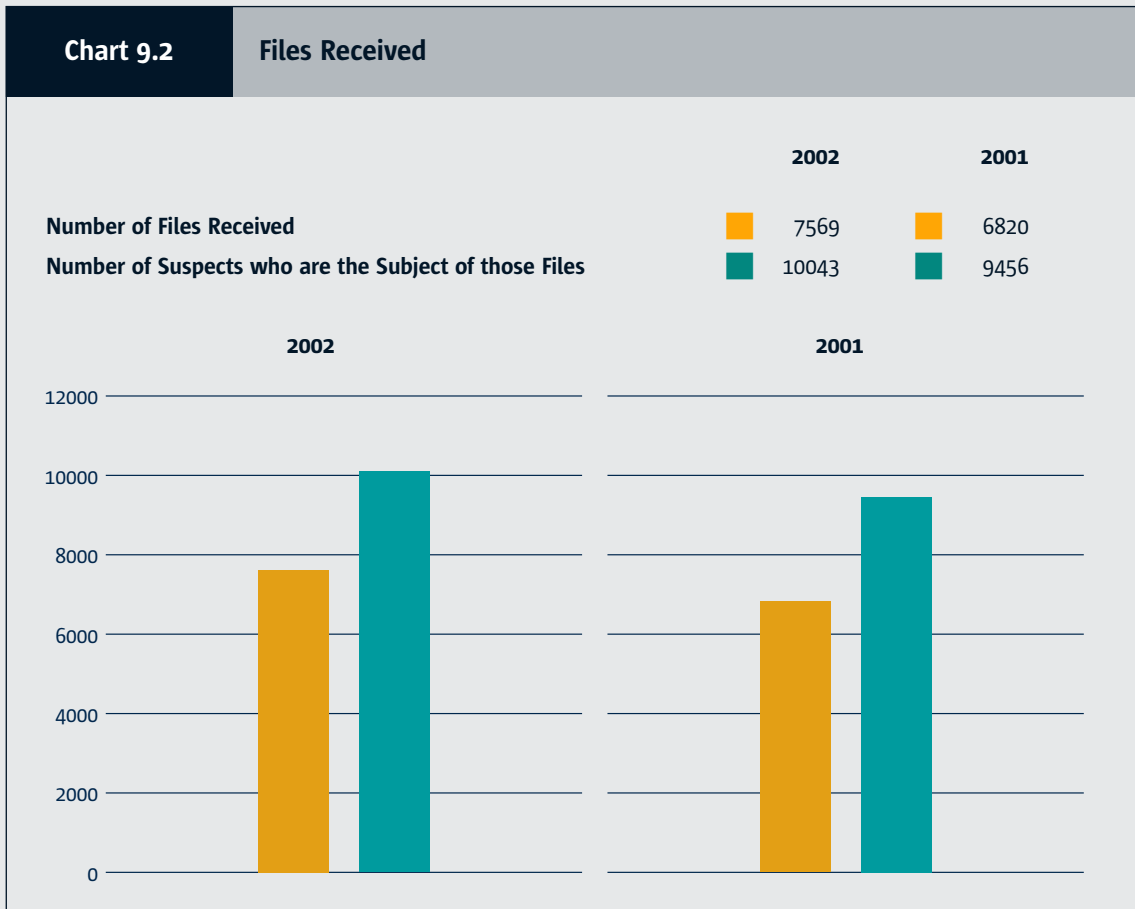
Chart 9.1 shows the number of files received by the Directing Division of the Office from 1976 to 2002. The vast majority of files relate to the investigation of crime. The remainder deal with general queries, matters for judicial review or requests for legal advice from the Garda Síochána or state solicitors. The caseload has increased generally on a year on year basis since the establishment of the Office, both in terms of numbers of files received and in the complexity of the issues which have to be addressed.

A significant drop of over 1000 files can be seen in the figures from 2000 to 2001. This is due to a change in administrative arrangements authorising the prosecution of certain offences by the Garda Síochána without the necessity for the prior submission of files to this Office for directions. As can be seen, the increase in the number of files received has resumed, notwithstanding those administrative arrangements. This suggests that the underlying trends are still upwards.



Files Received

This chart outlines the number of files received and the number of suspects who are the subject of those files. Many files relate to more than one suspect and to treat such a file as a single case can give a misleading impression of the workload of the Office. It is important, therefore, to look also at the total number of suspects as well as the total number of files.



Disposal of Files

The following charts show a breakdown of the disposal of files received in 2001 & 2002 (as of October 2003). The Garda Síochána and specialised investigating agencies submit files either directly to our Solicitors' Division or the Local State Solicitor for a direction whether or not to prosecute. Depending on the seriousness of the offence and the evidence disclosed in the file, a decision will be taken as follows:

No Prosecution: A decision not to prosecute is made. The most common reason not to prosecute is because the evidence contained in the file is not sufficient to support a prosecution. The figures, however, list all decisions not to prosecute.

Prosecute on Indictment: It is decided to prosecute in the Circuit, Central or Special Criminal Courts.

Summary Disposal: The offence is to be prosecuted in the District Court.

Under Consideration: Files in which a decision has not been made. This figure includes those files in which further information or investigation was required before a decision could be made. Further information is sought more often than not to strengthen the case rather than because of any deficiency in the investigation.

Non-Prosecution File: Typically these files relate to requests for legal advice from the Garda Síochána, state solicitors and other agencies.

NOTE: The figures for 2001 have been updated since the publication of last year's Annual Report. The reduction in the files "Under Consideration" figure compared with those given last year reflects developments on those files since then. Prosecutions on Indictment include those cases in which defendants elected for trial and cases where the District Judge refused jurisdiction, notwithstanding the fact that the Director initially elected for summary disposal. A non-prosecution file is reclassified as a prosecution file if a Garda file in relation to the same matter is subsequently received.

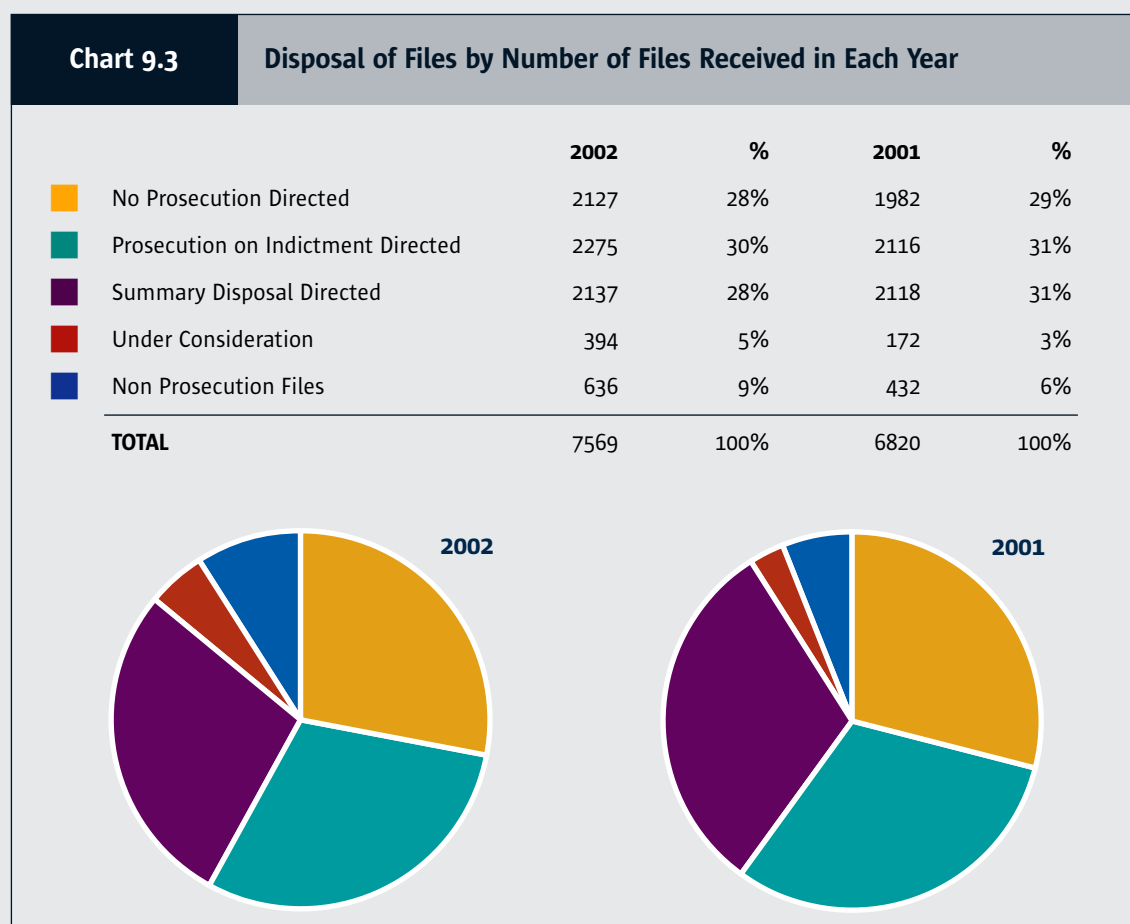





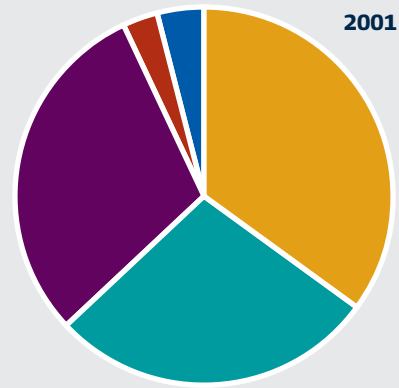
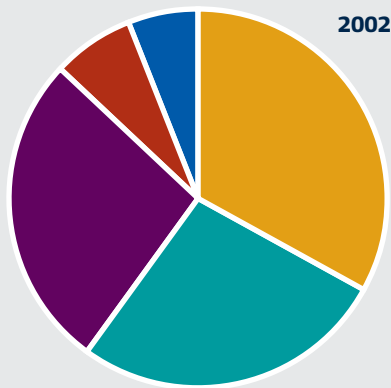


Chart 9.4

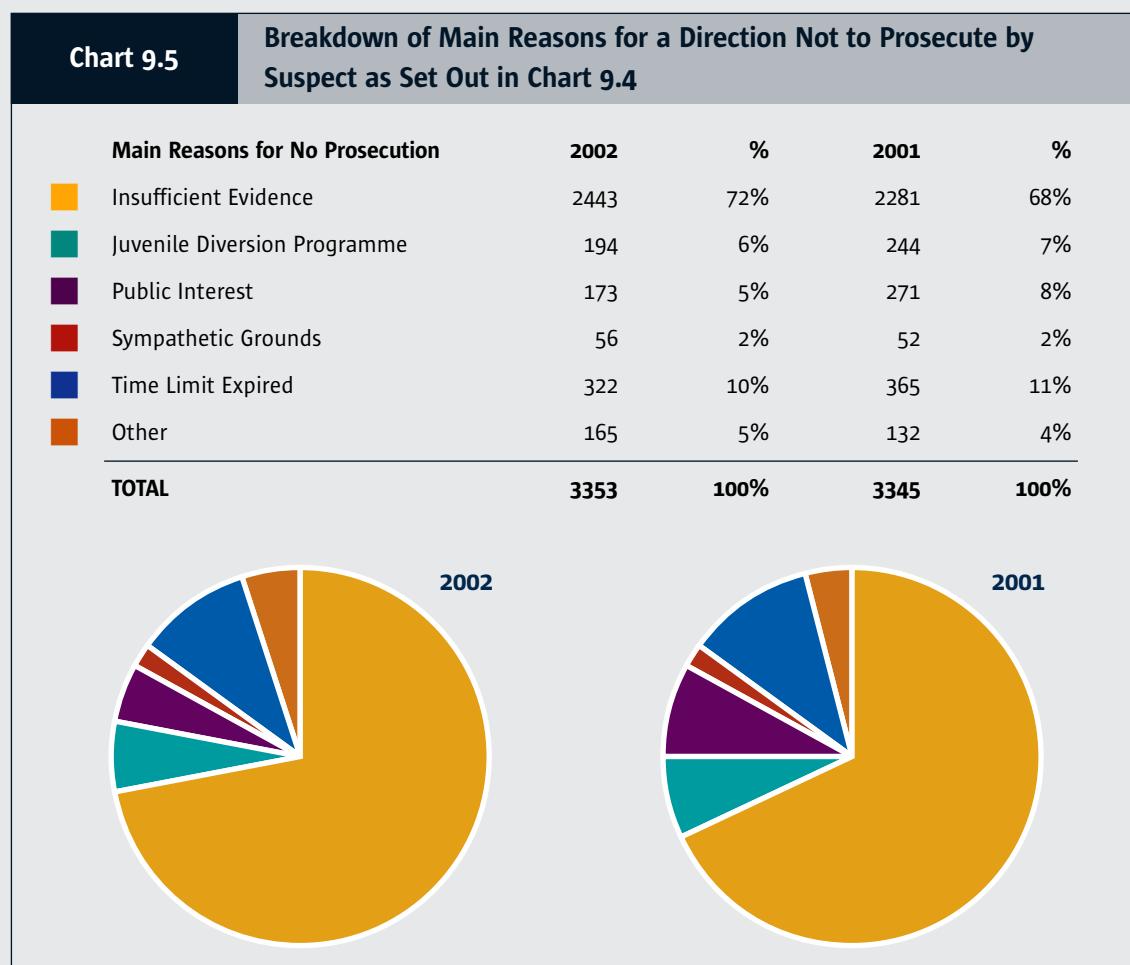
Disposal of Files by Number of Suspects Subject of Files Received

	2002	%	2001	%
 No Prosecution Directed	3353	34%	3359	35%
 Prosecution on Indictment Directed	2717	27%	2625	28%
 Summary Disposal Directed	2711	27%	2849	30%
 Under Consideration	727	7%	240	3%
 Other (including judicial reviews)	535	5%	383	4%
TOTAL	10043	100%	9456	100%



Breakdown of Main Reasons for a Direction Not to Prosecute by Suspect as Set Out in Chart 9.4

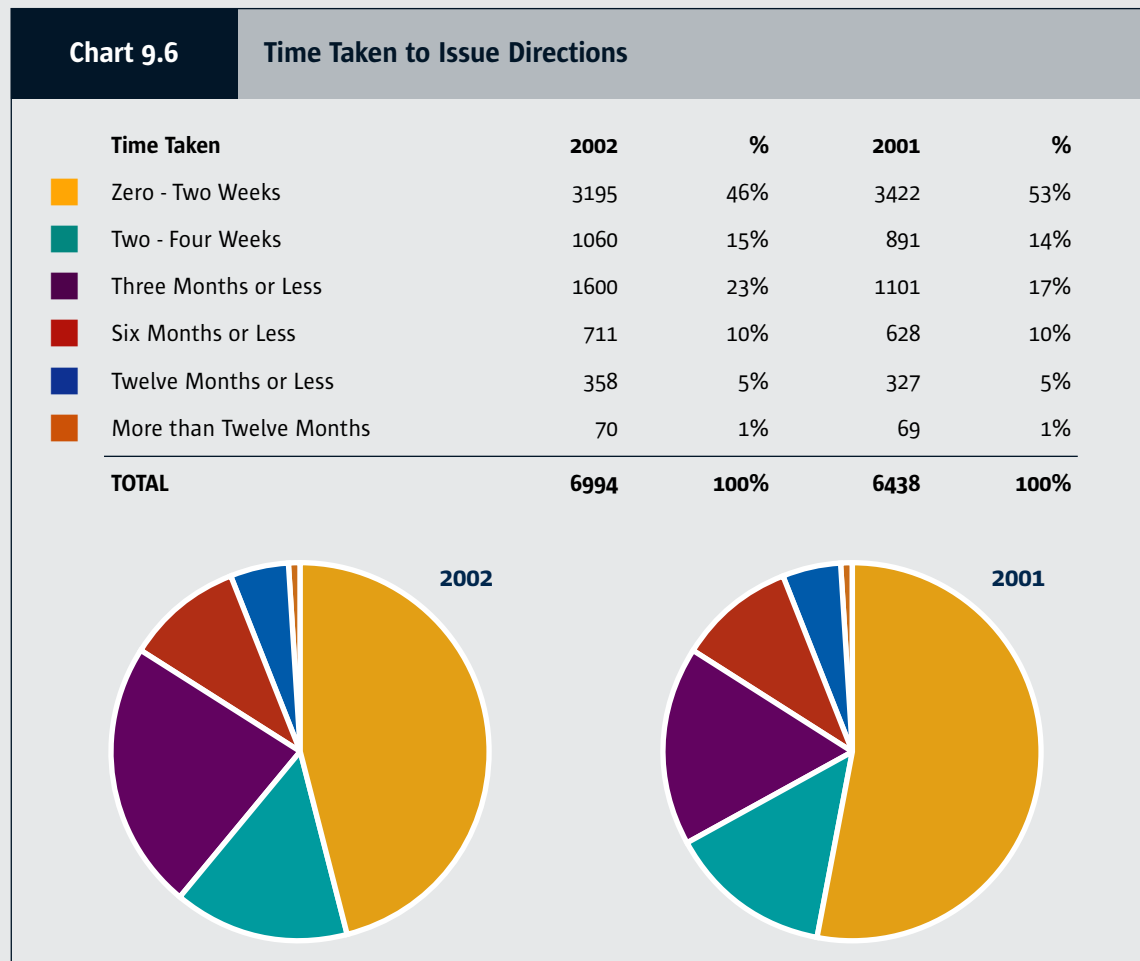
A decision may be made not to prosecute in relation to a particular file for a variety of reasons other than the main reasons set out in this chart (referred to as “other” below). Delay, the death or disappearance of the suspect, the death or disappearance of the complainant or the refusal of a complainant to give evidence are some examples.



Time Taken to Issue Directions

Chart 9.6 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution should be taken or not. In a number of cases further information or investigation was required before a decision could be made. Files vary in size, number of suspects and complexity. Further information may be sought to enhance the proofs in a case and does not necessarily imply any deficiency in the investigation.

In order to give a more accurate figure, the files in which further information has been sought but not yet provided, files which are still under consideration and files not relating to prosecutions have been excluded from the figures below. The total therefore is less than the total number of files received (7569 - as set out in Chart 9.1).



Case Results – Prosecutions on Indictment

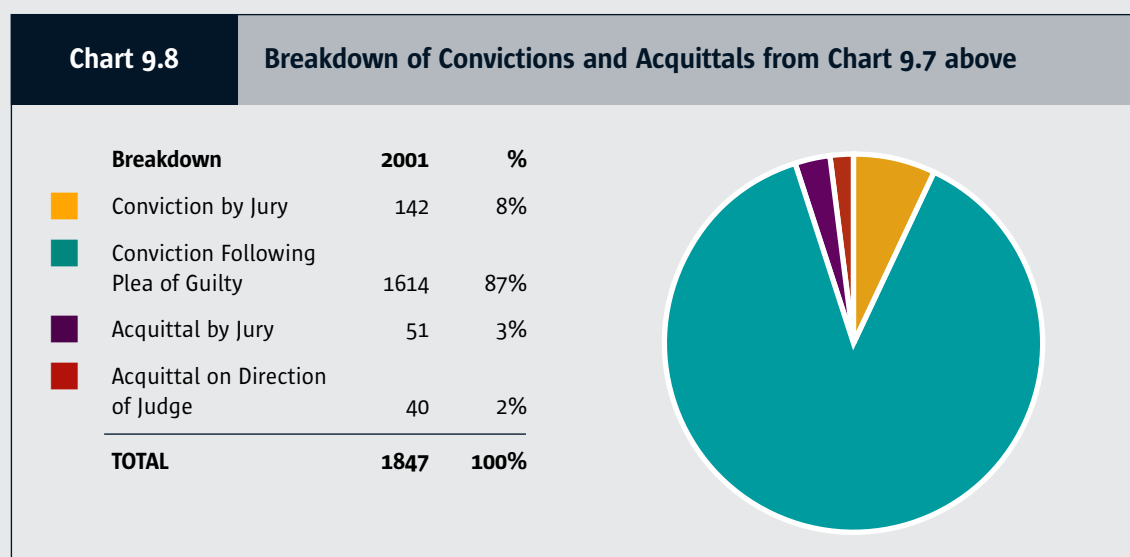
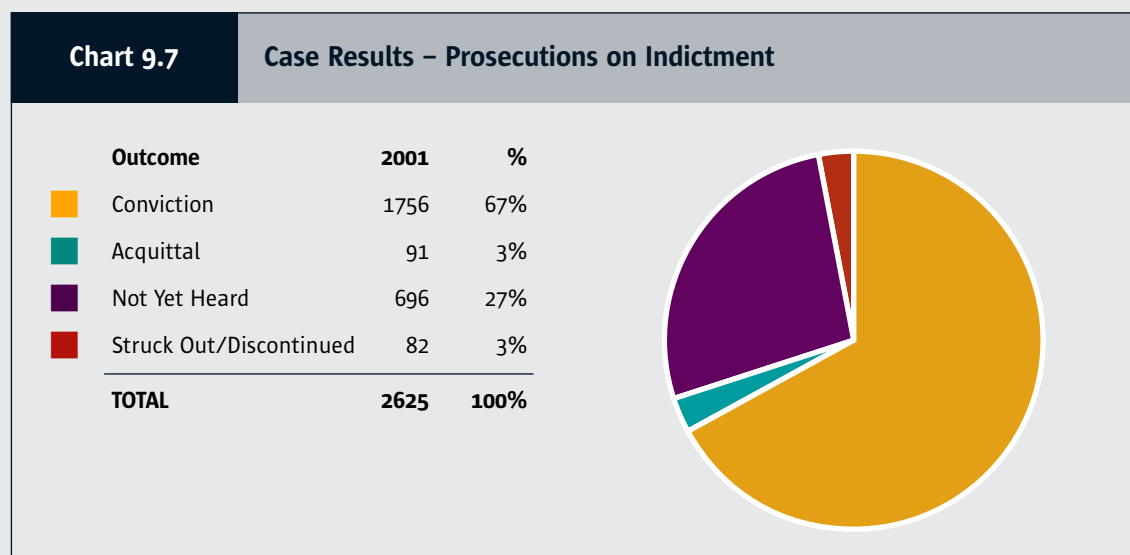
Chart 9.7 shows the results of prosecutions on indictment taken in relation to defendants in **2001** (as of October 2003). Figures have not been included for 2002 as the majority of these cases have yet to be dealt with by the courts.

The figures relate to:

Conviction: A conviction was obtained in respect of at least one of the charges brought in the case.

Acquittal: The defendant was acquitted on all charges.

Not Yet Heard: These are cases in which a decision to prosecute has been taken and the matter is before the courts.



“UNDUE LENIENCY” – REVIEWS

Section 2 of the Criminal Justice Act 1993

Section 2 of the Criminal Justice Act 1993 provides that the Director of Public Prosecutions may apply to the Court of Criminal Appeal to have a sentence imposed by the trial court reviewed, if it appears that the sentence imposed was unduly lenient.

Chart 9.9 below details the number of applications, and the results of those applications, heard since the introduction of the Act.

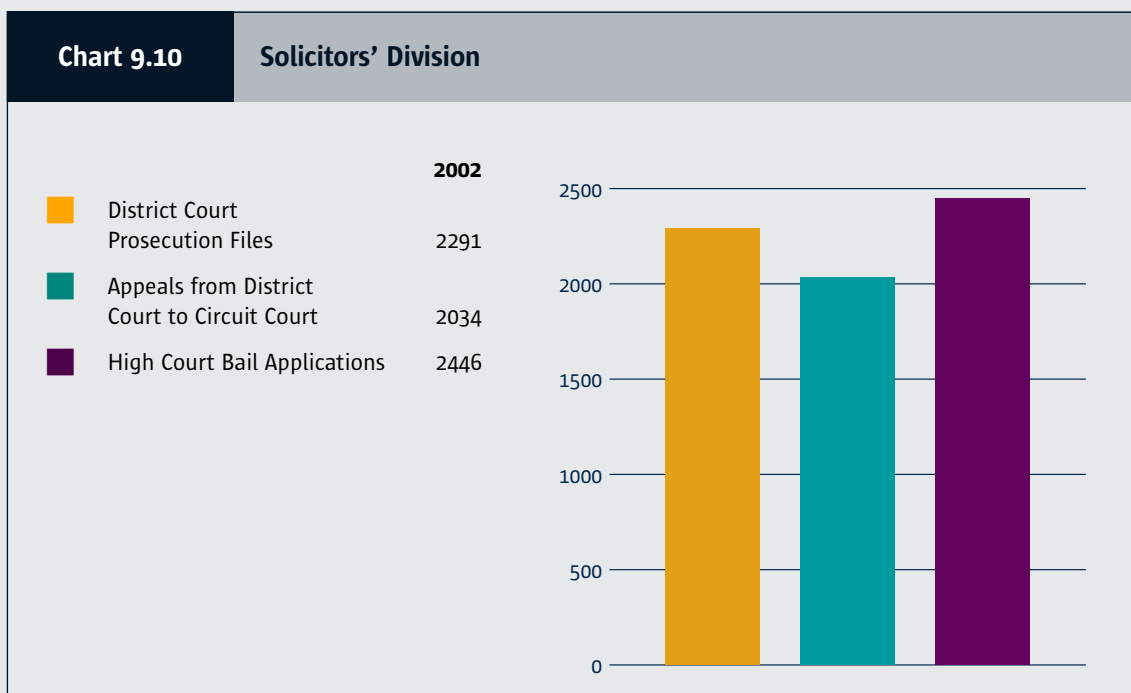
Year of Application	Number of Applications	Successful	Refused	Pending	Other **
1994	2	-	1	-	1
1995	2	-	1	-	1
1996	3	1	1	-	1
1997	4	2	2	-	-
1998	12	6	3	-	3
1999	34	17	16	-	1
2000	31	15	13	-	3
2001	23	15	3	2	3
2002	23	10	6	7	-

**** Other (includes applications struck out and withdrawn)**

Solicitors' Division

While the Solicitors' Division of the Office of the Director of Public Prosecutions provides a solicitor service to the Director and acts on his behalf, they also deal with a number of cases which do not require to be referred to the Directing Division for direction or decision.

Chart 9.10 represents the number of cases dealt with solely by the Solicitors' Division and includes District Court Prosecution Files; Appeals from the District Court to the Circuit Court; and High Court Bail Applications. The figure for District Court Appeals represents the number of files held (not the number of individual charges appealed). One defendant may have a multiplicity of charges under appeal.



Office Expenditure

Chart 9.11 shows the breakdown of office expenditure for 2002 & 2001.

Salaries & Wages: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2002 was 165.

Office Expenses: This relates to general office administration costs e.g. purchase and maintenance of office equipment, office supplies, library costs, office premises maintenance, travel and other incidental expenses.

Fees to Counsel: These are fees paid to the barristers who prosecute cases on behalf of the Director in the various criminal courts. Fees are set within the parameters set by the Minister for Finance.

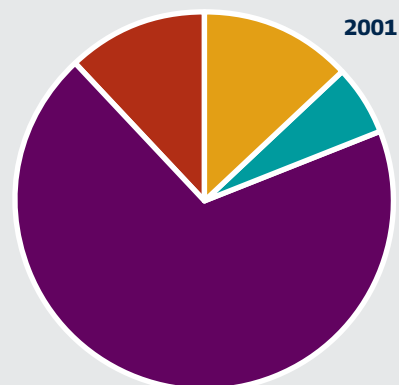
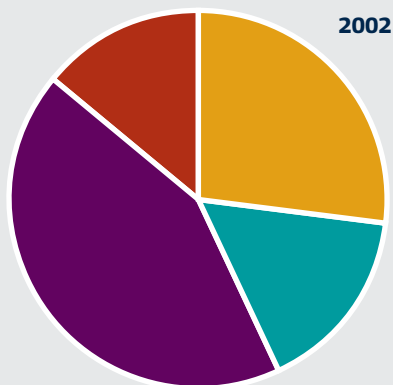
General Law Expenses: This refers to the payment of legal costs awarded by the courts in judicial review matters and other applications connected to legal proceedings against the Director.

NOTE: *The increase in the Salaries, Wages & Allowances for 2002 reflects the increase in staff in the Office of the DPP as a result of the transfer of the functions of the criminal division of the Chief State Solicitor to the DPP in January 2002. The increase in Office Expenses for 2002 reflects the cost of fitting out of the new office premises to accommodate the new Solicitors' Division of the DPP's Office.*

Chart 9.11

Office Expenditure

	2002		2001	
	€	%	€	%
Salaries, Wages & Allowances	6,345,508	27%	2,140,778	13%
Office Expenses	3,824,600	16%	942,146	6%
Fees to Counsel	10,034,317	43%	11,270,195	69%
General Law Expenses	3,231,258	14%	1,919,844	12%
TOTAL	23,435,683	100%	16,272,963	100%



Fees to Counsel

Charts 9.12 & 9.13 show a breakdown of expenditure on fees to counsel in the various criminal courts and by region in respect of the Circuit Criminal Court.

Fees paid to counsel in the Central, Special & Circuit Criminal Courts cover advising on proofs, drafting indictments, holding consultations, arraignments, presentation of the case and other necessary appearances e.g. for sentence.

Expenditure on fees in the High Court covers mainly bail applications and the preparatory work and hearings associated with judicial reviews.

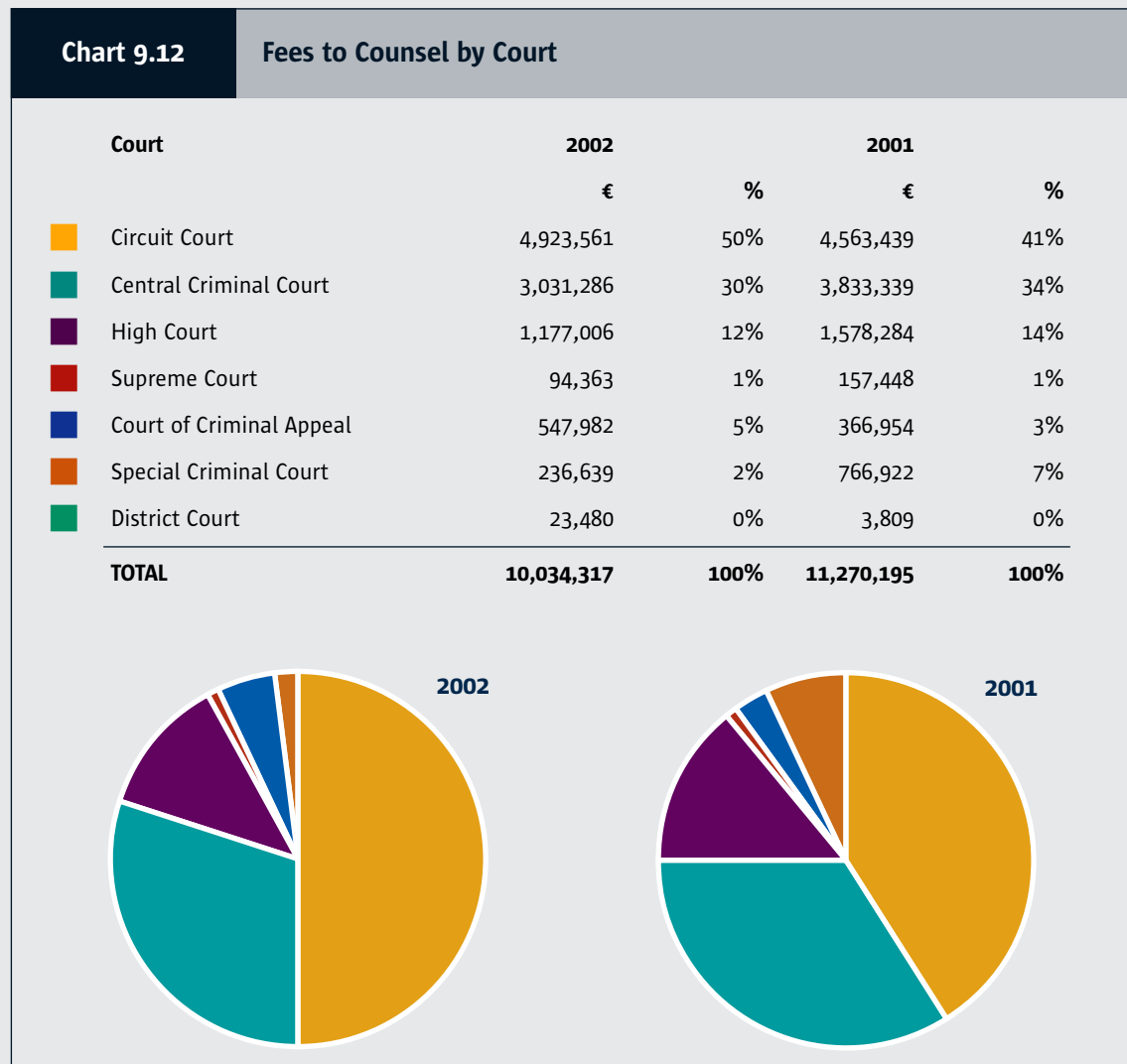
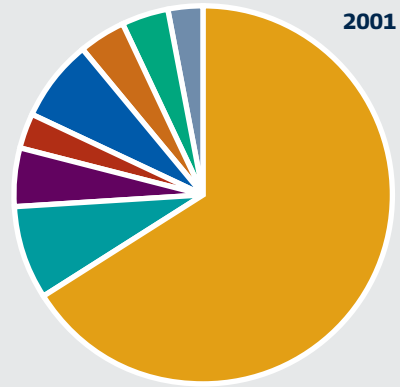
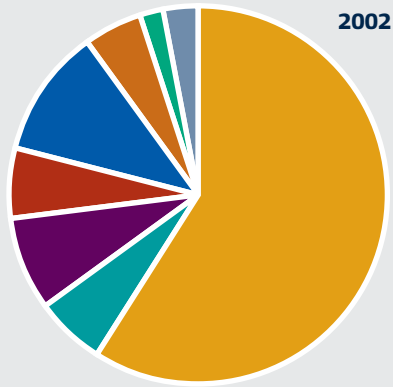


Chart 9.13

Fees to Counsel – Circuit Court

Court	2002		2001	
	€	%	€	%
Dublin Circuit	2,918,243	59%	2,972,457	66%
Cork Circuit	280,078	6%	373,303	8%
Eastern Circuit	392,516	8%	238,711	5%
Midland Circuit	272,795	6%	139,671	3%
South Eastern Circuit	549,324	11%	317,435	7%
South Western Circuit	223,562	5%	186,651	4%
Western Circuit	121,299	2%	204,428	4%
Northern Circuit	165,744	3%	132,053	3%
TOTAL	4,923,561	100%	4,564,709	100%



Chapter 10

Extract from Appropriation Account 2001

The following is an extract from the Annual Report of the Comptroller and Auditor General and Appropriation Accounts 2001.

Office of the Director of Public Prosecutions Vote 14

ACCOUNT of the sum expended, in the year ended 31 December 2001, compared with the sum granted and of the sum which may be applied as appropriations in aid in addition thereto, for the salaries and expenses of the Office of the Director or Public Prosecutions.

Service	Estimate Provision £'000	Outturn £'000	Closing Accruals £'000
Administration			
A.1. Salaries, Wages and Allowances	1,948	1,686	0
A.2. Travel and Subsistence	59	62	3
A.3. Incidental Expenses	185	270	40
A.4. Postal and Telecommunications Services	46	45	7
A.5. Office Machinery and Other Office Supplies	155	192	57
A.6. Office Premises Expenses	219	209	163
Other Services			
B. Fees to Counsel	9,000	8,876	1,505
C. General Law Expenses			
<i>Original</i>	<i>£680,000</i>		
<i>Supplementary</i>	<i>650,000</i>	1,330	969
Gross Total			
<i>Original</i>	<i>£12,292,000</i>		
<i>Supplementary</i>	<i>650,000</i>	12,942	12,852
		12,852	2,744
Deduct –			
D. Appropriations in Aid	5	36	0
Net Total			
<i>Original</i>	<i>£12,287,000</i>		
<i>Supplementary</i>	<i>650,000</i>	12,937	12,816
		12,816	2,744
SURPLUS TO BE SURRENDERED	£120,572	(€153,095)	

Chapter 11

Prompt Payments of Accounts Act, 1997

Operation of the Act in the Period 1 January 2002 to 31 December 2002

- 12.1 The Office of the Director of Public Prosecutions makes payments to suppliers after the goods or services in question have been provided satisfactorily and within 45 days of the supplier submitting an invoice. In the case of fees to counsel, while invoices are not generated, the practice of the Office is to pay counsels' fees within 45 days of receipt of the state solicitor's report in each case.
- 12.2 In the period in question, the Office made 39 late payments in excess of €317.43. The total value of these payments was €93,954.92. The total value of late payments in the year amounted to €95,159.81 out of total payments of €4 million and interest thereon came to €583.72.

Statement of the Accounting Officer

- 12.3 The Office of the Director of Public Prosecutions is one of the organisations which is subject to the terms of the Prompt Payment of Accounts Act, 1997. The Act came into force on 2 January 1998, and since that time the Office has complied with the terms of the Act.
- 12.4 All invoices from suppliers are date stamped on receipt. Invoices are approved and submitted for payment in a timely manner to ensure that payment is made within the relevant period. When the invoices are being paid the date of receipt and the date of payment are compared, and if the relevant time limit has been exceeded, an interest payment is automatically generated. In cases where an interest payment is required, the matter is brought to the attention of management so that any necessary remedial action can be taken.
- 12.5 The procedures which have been put in place can only provide reasonable and not absolute assurance against material non-compliance with the Act.

Barry Donoghue
Accounting Officer

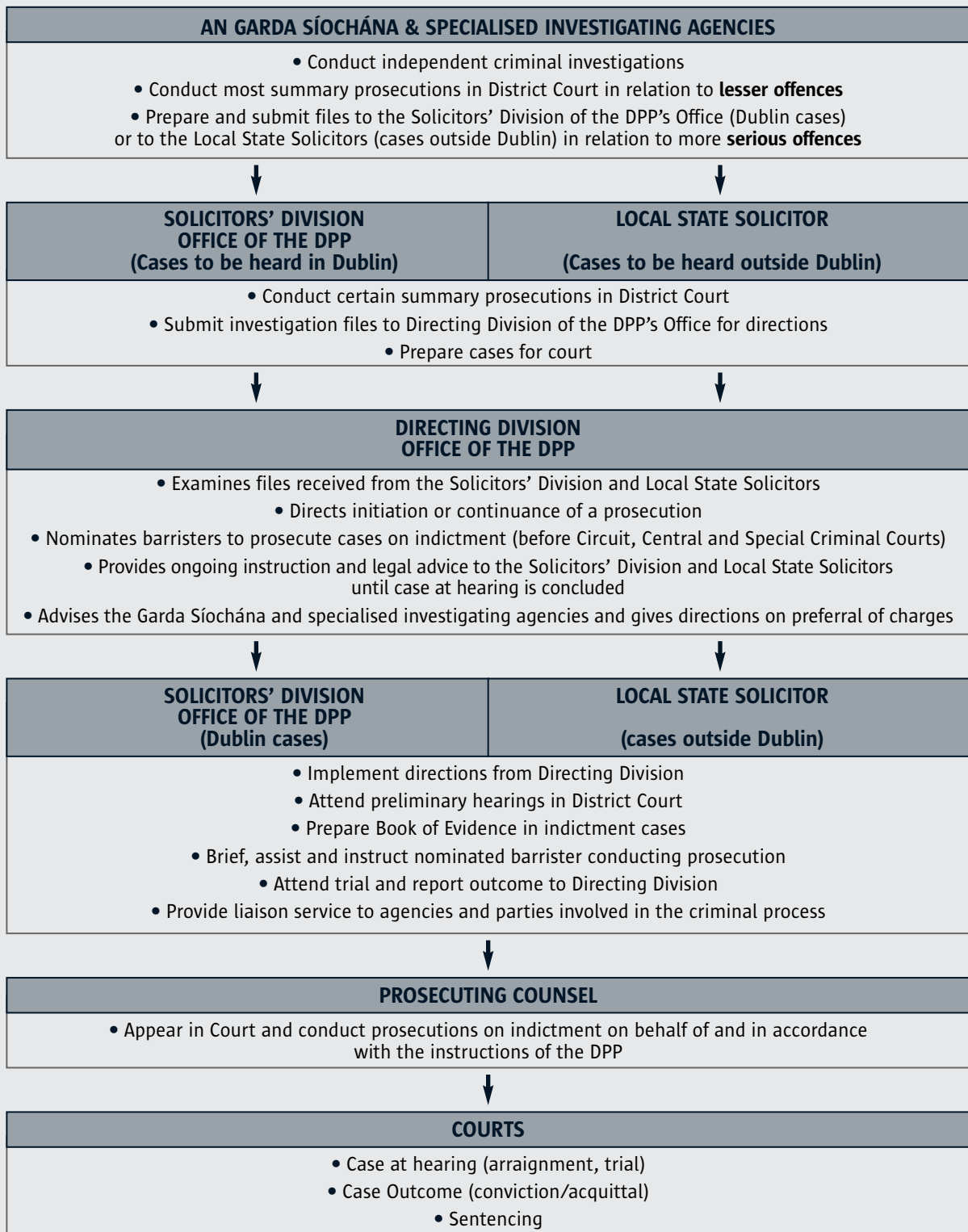
May 2003

Part VI

Charts

Chapter 12

Outline of the Criminal Prosecution Process



Chapter 13

Organisation Structure

