

Office of the Director of Public Prosecutions

Annual Report 1999

Director of Public Prosecutions
Annual Report 1999

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Introduction

Last year the Office of the Director of Public Prosecutions produced an annual report for the first time. This marked an important step in explaining the workings of the Office to the general public. While I cannot give the public reasons for decisions not to prosecute in individual cases, that is all the more reason to ensure that the people are given as full information as possible about the general policy of the prosecution service which operates in their name.

I was appointed Director in September, 1999. This report covers only a short period during which I held office as well as part of the last year in office of my predecessor, Eamonn M. Barnes. The independence of the Office of Director of Public Prosecutions is, I believe, firmly established. That that is so is largely due to the work of Eamonn Barnes who served as Ireland's first Director for almost twenty-five years and who made it his principal objective to secure that independence.

This is an exciting time to take on the office of Director. Major organisational change is planned for the prosecution service, with the proposed transfer of responsibility for the solicitor service handling criminal cases from the Attorney General's Office. This will lead to a greater integration between the staff who work in my Office and the solicitors who act for us in court. It will provide a greater cohesiveness, coherence and consistency in the prosecution service as a whole.

Today's prosecutor operates in a very different world to that of twenty-five years ago. The prosecutor has to contend with a greater awareness of the rights and the needs of the victims of crime. There is a greater willingness on the part of victims to come forward and confront wrongdoers, even those who have abused positions of authority and power. There is an increasing demand to take white-collar crime seriously. There is a greater tendency for crime to operate across national borders which in turn requires an international response. The prosecutor today is subject to greater public scrutiny and has to be able to adapt to change.

There have been major developments in the criminal law in recent years, with further important changes on the way. These include the long awaited and very welcome reform of the law in relation to offences of dishonesty proposed in the Criminal Justice (Fraud Offences) Bill which was published in June.

Perhaps the most important change in the near future will occur when the European Convention on Human Rights becomes part of Irish law. When this happens the Irish citizen will be able to ask the Irish courts to enforce his or her rights under the Convention, as well as the rights he or she already enjoys under the Constitution of Ireland. It will be necessary for prosecutors at every stage of criminal proceedings to be familiar with the Convention. This will improve the quality of justice in Ireland. It should ensure that prosecutors have at all times in the forefront of their minds the need to respect the human rights of all those affected by the criminal justice system.

A difficulty in writing this Report is that some of its readers will be very familiar with legal matters and others will have little or no legal knowledge. The Report begins with a brief account of the criminal justice system of Ireland and the role of the Director and his Office in that system. This part of the Report is aimed principally at the lay person. To the lawyer I can only apologise if some matters have been over-simplified in an effort to keep the Report short and easy to understand.

I thought that in this Report it might be helpful to deal in a general way with some areas where prosecutorial decisions occasionally cause public controversy. Sexual and fatal road traffic offences are two areas of law of particular difficulty for the prosecutor. The Report cannot, of course, give a detailed account of the law in these areas. But an attempt has been made to give some indication of the difficulties prosecutors face in these areas and the criteria they adopt in reaching their decisions.

The Report also contains a chapter dealing with the subject of reviews of unduly lenient sentences. This is a relatively new function of the office which has given rise to some debate.

I see the provision of regular reports as an important part of the accountability that I owe to the general public. Likewise, the publication of general guidelines in relation to prosecution policy, which I intend to do by the end of this year, will mark an important step towards increased accountability. Last year, for the first time, the Office hosted a National Prosecutors' Conference which brought together all those involved in or interested in the operation of the prosecution service. I intend this to become an annual event and I believe it can play a part in increasing public awareness and understanding of the vital role the prosecution service plays in the criminal justice system.

Finally, I would like to pay tribute to a number of people, who have greatly helped me in my first year as Director. Firstly, the staff of this Office, for their dedicated, efficient and conscientious service. Secondly, the staff of the Chief State Solicitor's Office who have kept the prosecution system going through their hard work and dedication to duty despite serious problems of understaffing in recent years. Thirdly, the local state solicitors who represent the prosecution service in every part of the country outside Dublin with the highest professional standards. Fourthly, the members of the Garda Síochána who continue to provide essential assistance of the highest quality to this Office in performing its functions. Fifthly, the personnel in other state agencies who play a role in the criminal justice system and have various interactions with this Office. These include the Attorney General and his Office, the Forensic Science Laboratory, the State Pathologists, and the Department of Justice, Equality and Law Reform. Finally, I would like to thank the members of the Bar who act on behalf of the prosecution in court and without whose advice, assistance and professional expertise the prosecution service could not function.



James Hamilton
Director of Public Prosecutions



1.

THE CRIMINAL JUSTICE SYSTEM

- 1.1 Before describing the working of the Director's Office, it may be useful to set out briefly and simply the main features of the criminal justice system in Ireland. This account is not intended to explain every aspect of the system but only to give an outline for the general reader who is not familiar with the law.
- 1.2 Ireland operates an adversarial system of criminal justice. This is similar to the system operated in England, the United States, Canada, Australia and other common law jurisdictions. In this system, a criminal trial is a contest between the prosecutor, who seeks to establish the guilt of the accused, and the accused person, with the judge or jury deciding the questions which are in dispute. The prosecutor must satisfy the judge or jury beyond a reasonable doubt that the accused is guilty of the offence charged, and must prove every element of the case against the accused to this standard. Where legal questions arise the judge rules on legal questions but the jury decides on all disputed questions of fact and on the question of guilt or innocence. The accused is presumed to be innocent and this remains the case unless and until the jury decides beyond a reasonable doubt that the accused committed the offence with which he or she is charged. The accused is not required to give evidence. The accused is entitled to give no evidence and seek to argue that the prosecution has failed to prove its case to the necessary standard. While an accused may give evidence a jury is not entitled to infer guilt from a decision not to do so. There are some statutory exceptions which may allow inferences to be drawn from silence in certain cases but the fundamental rules are as stated above.
- 1.3 Criminal cases are divided into two types according to the procedures adopted. These are summary and indictable cases.
- 1.4 Summary cases are heard before a judge alone. This procedure is used for the less serious cases. The judge hears the evidence, decides on disputed questions of fact and of law, reaches a verdict and, where he or she convicts, passes sentence. The sentence cannot be more than one year's imprisonment in respect of any single offence, and two years imprisonment in total. Some indictable

offences may be dealt with in the District Court. However, if the District Court Judge is of the opinion that the case is not suitable for summary disposal (having regard to the District Court penalty or for other reason) the Judge will refuse jurisdiction and send the case to a higher court for trial. Summary trials are heard in the District Court, with the option for an appeal to the Circuit Court. Such an appeal takes the form of a complete rehearing. Summary trials are also subject to being reviewed in the High Court on the grounds that the trial court erred in its view of the law or exceeded its jurisdiction.

- 1.5 The more serious cases are heard on indictment, that is, before a judge sitting with a jury or in the Special Criminal Court. Most indictable cases are heard in the Circuit Court, but certain offences must be tried in the Central Criminal Court, as the High Court is called when it exercises its criminal jurisdiction. These offences include murder, rape and the most serious sexual offences. A trial on indictment involves, first of all, an appearance in the District Court where the accused must be served with certain documents. These include a statement of the charges, a list of the witnesses to be called, and a statement of the evidence to be given by them. When the case is ready, it is sent forward for trial to the Circuit Court or the Central Criminal Court. A jury of twelve citizens is chosen. The jury decides the questions of fact which arise in the case and whether the accused committed the offence. The judge presides over the trial and rules on questions of law. The accused will be convicted if the jury is unanimously satisfied of the accused's guilt beyond a reasonable doubt. If the jury cannot agree the judge may accept a majority verdict of not less than 10 to 2.
- 1.6 Certain trials take place in the Special Criminal Court. They differ from other trials on indictment in that there is no jury. There are three members of the Court who perform the function of assessing evidence and deciding questions of fact as well as the normal functions of the judge to rule on law.

This court has, since its establishment in 1972, always consisted of a serving or retired Supreme or High Court judge, a Circuit Court judge, and a District Court judge. The court hears all trials on indictment for offences scheduled under the Offences Against the State Acts, unless the Director of Public Prosecutions otherwise directs. Scheduled offences consist of offences under the Offences Against the State Acts themselves as well as explosives and firearms offences. The Director can also refer other cases to the Special Criminal Court where he certifies that the ordinary courts are inadequate to ensure the effective administration of justice.

- 1.7 Following a trial on indictment the accused may appeal against sentence or conviction to the Court of Criminal Appeal. This consists of three judges drawn from the Supreme and High Court. They do not rehear the case but they review the trial based on a reading of the transcript. They may set aside the jury's verdict and may order a retrial. The Director of Public Prosecutions has power to refer sentences to them for review on grounds of undue leniency. Occasionally there can be a further appeal from the Court of Criminal Appeal to the Supreme Court if a case involves a point of law of exceptional public importance.

COURTS EXERCISING JURISDICTION IN CRIMINAL MATTERS IN IRELAND

The District Court

The jurisdiction of the District Court is confined in the main to the summary trial of minor offences. The preliminary examination of indictable offences is also conducted in the District Court. The Criminal Justice Act, 1999 abolishes this function but at the time of writing the relevant provisions, which require a ministerial order to become effective, have not been commenced. The maximum sentencing jurisdiction in the District Court cannot exceed imprisonment for a period of one year in respect of a single offence or two years in respect of more than one offence. Fines, generally not exceeding £1,500 per offence, may be imposed. In the District Court a Judge hears cases without a jury.



The Circuit Court

The Circuit Court hears appeals from the District Court. A Judge hears these cases without a jury. The Circuit Court also hears with a jury all indictable offences except treason, murder, attempted murder, serious sexual offences and a small number of other offences which have not yet been prosecuted such as breaches of the Geneva Convention and genocide. These offences are tried in the Central Criminal Court.



The Special Criminal Court

The Special Criminal Court is a non-jury Court set up to try offences in certain extraordinary circumstances defined by law. It has jurisdiction over any offence referred to it in accordance with the Constitution and the law. It is comprised of three judges and sits without a jury.



The High Court

The High Court has jurisdiction by way of Judicial Review over all the foregoing Courts. It also has trial jurisdiction (when it is known as the Central Criminal Court) with a jury over the serious offences referred to above.



The Court of Criminal Appeal

The Court of Criminal Appeal hears appeals by a convicted person (on the transcript of evidence and, rarely, on additional evidence) from jury trials in the Circuit and Central Criminal Courts and from trials in the Special Criminal Court. It also hears appeals against severity of sentence, appeals against undue leniency of sentence and appeals based on newly discovered facts.



The Supreme Court

The Supreme Court hears appeals by a convicted person on points of law only from the Court of Criminal Appeal, from the High Court in Judicial Review cases and Cases Stated and also as an alternative to an appeal by a convicted person to the Court of Criminal Appeal. It also deals with questions of law referred to it, without prejudice to the verdict, relating to verdicts by direction of a trial Judge.



2.

THE PROSECUTION SYSTEM AND FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

- 2.1 The Director's functions are grounded in the Constitution of Ireland, 1937, and in Acts of the Oireachtas. Article 30.3 of the Constitution provides that all prosecutions, other than those brought in courts of summary jurisdiction, shall be prosecuted in the name of the people and at the suit of the Attorney General "or some other person authorised by law to act for that purpose".
- 2.2 The Prosecution of Offences Act, 1974 established the office of Director of Public Prosecutions and provided that the Director should perform all the functions capable of being performed in relation to criminal matters by the Attorney General immediately before that Act came into force.
- 2.3 In addition to the power to bring prosecutions in indictable cases, the Director of Public Prosecutions has acquired the Attorney General's powers, conferred by Section 9 (2) of the Criminal Justice (Administration) Act, 1924, to prosecute in all summary cases except those which are prosecuted by a Minister, Department of State or other person authorised by law. Persons authorised by law include members of the public acting as common informers.

The vast majority of summary prosecutions in the State are brought by members of the Garda Síochána without specific directions from the Director but acting in his name and with his authority.

- 2.4 In addition to the core function of deciding whether to prosecute, and taking responsibility for the conduct of prosecutions which are brought, the Director has a number of other important functions as follows:-
- (a) the Director also has an important role in relation to a wide range of offences which may be tried either summarily (before a judge sitting alone) or on indictment (before a judge and jury). In some cases the Director has a choice which option should be followed. Generally the Director's consent is required if such a case is to be dealt with summarily.
 - (b) the Director has powers and duties under the Offences Against the State Act, which include the issuing of directions that persons be charged in a Special Criminal Court rather than in the ordinary courts, and the certification that the

- ordinary courts are inadequate to secure the effective administration of justice in relation to particular cases.
- (c) various enactments provide that prosecutions for particular offences must be prosecuted by the Director or in some cases only with his consent. Such provisions exist for public interest reasons arising from the nature of the offences in question. Examples of offences where the Director's consent is required include offences relating to explosives, breaches of the Official Secrets Act, incest, marital rape, drug trafficking offences and offences involving bribery and corruption.
 - (d) the Director has power to seek a review by the Court of Criminal Appeal of sentences imposed in the Circuit Court, the Central Criminal Court or the Special Criminal Court on the grounds of undue leniency.
 - (e) the Director has power to grant certificates to enable convicted persons to appeal from the Court of Criminal Appeal to the Supreme Court where the case involves a point of law of exceptional public importance. (The Attorney General may also grant certificates in such cases).
 - (f) the Director has functions under the provisions of the Criminal Justice Act, 1994, both in the domestic and international spheres, in relation to orders of restraint and confiscation of criminal assets, to money laundering and to international mutual assistance in criminal matters.
 - (g) the Director has transferred to him, under the provisions of the Prosecution of Offences Act, 1974, all the functions previously capable of being performed by the Attorney General in relation to election petitions and referendum petitions.
 - (h) the Director has powers, under the Companies Acts, to seek the disqualification of persons from holding office in companies.
- 2.5 The prosecution of offences involves three principal functions, the investigation, the decision to prosecute or not to prosecute and the presentation of the prosecution case in court. The Director has no investigative function. In the Irish criminal justice system the investigation of criminal offences is the function of the Garda Síochána. There are specialised investigating authorities in relation to certain particular cases, such as revenue offences. Complaints of criminal conduct made to the Director cannot be investigated by him but can be transmitted to the Garda Commissioner for a decision as to whether or not an investigation is warranted. That decision is one for the Garda Síochána and not for the Director. However, while the Director has no investigative function, he co-operates regularly with the Garda Síochána during the course of criminal investigations, particularly in furnishing relevant legal and prosecutorial advice.
- 2.6 The manner in which the Director and his staff discharge one core function of deciding to prosecute or not to prosecute will be outlined later in this report. At this point, however, it is important to emphasise that the Director and his staff exercise this function only in a very small proportion of the total number of public prosecutions initiated annually. They do so in all the most serious cases, although by no means always before the prosecution has been initiated. If a case is being tried on indictment, the decision to prosecute must be either taken or confirmed by the Director's Office. The Office endeavours to ensure as far as possible that it examines the relevant Garda investigation file or otherwise considers the facts of such cases before any charge is preferred. Where charges will have been preferred by the Garda Síochána without reference to the Office the case will not go to trial without a decision by the Director to proceed. In addition, relatively serious charges can sometimes be disposed of in the District Court without having been referred to the Office at all. Finally, the vast majority of all criminal prosecutions are


prosecuted summarily and are initiated and prosecuted by the Garda Síochána in the District Court without any direct involvement of the Director's Office in the process.

2.7 The function of deciding to prosecute necessarily includes the power to decide not to prosecute. The Director's Office has no knowledge or means of knowledge of decisions by the Garda Síochána not to prosecute. It would become aware of such a decision only if for some reason it were made the subject of a complaint to it. For completeness in describing the system within which public prosecutorial decisions are made in the State, however, it is necessary to identify those areas in which, contrary to popular belief, the Director or his Office are not involved.

2.8 The third function of the prosecution system mentioned above, the presentation of the prosecution case in court, is implemented in the following manner. Summary prosecutions outside the Dublin Metropolitan District are normally presented by a Superintendent or an Inspector of the Garda Síochána. In particular cases e.g. cases of legal novelty or complexity or of special importance or where the identity or occupation of the defendant may make it desirable in the public interest, the State Solicitor will present the case or, occasionally, counsel may be retained. Within the Dublin Metropolitan District, while about 20% of summary prosecutions are conducted by a solicitor from the Office of the Chief State Solicitor, most prosecutions are prosecuted by members of the Garda Síochána. In prosecutions on indictment, the decisions of the Director's Office are implemented by the State Solicitor Service and, at the trial stage, by a combination of that Service and of counsel in private practice retained on a case by case basis. The State Solicitor Service consists of the Office of the Chief State Solicitor, which is answerable to the Attorney General, and of some 32 State Solicitors outside Dublin i.e. solicitors in private practice who undertake by contract with the Attorney General to perform certain services within their areas

including the work of the Director's Office. The State Solicitor Service implements the decisions of the Director in indictable cases at the preliminary District Court stage by the performance of certain functions, including in particular the preparation of what is popularly known as the Book of Evidence, by conveying the Office's instructions to the barrister or barristers retained to present the prosecution case, and by attending the trial.

2.9 The Public Prosecution System Study Group, under the chairmanship of former Secretary to the Government, Dermot Nally, has recommended that the criminal law sections of the Chief State Solicitor's Office and responsibility for the local State Solicitor Service should be transferred from the Attorney General to the Director of Public Prosecutions and the Government has decided to implement the Nally report. At the time of writing the process of identifying the resources required by the new office of Solicitor to the DPP is being carried out in conjunction with the Department of Finance with a view to establishing the new office in the near future.



3.

THE GENERAL WORK OF THE OFFICE

3.1 The fundamental function of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters in accordance with the legal provisions set out in Chapter 2 above. While that function is occasionally performed in conjunction with agencies other than the Garda Síochána, it is for clarity in this report considered generally in relation only to cases emanating from the Garda Síochána which account for over 95% of the casework of the Office. The other investigative agencies referred to include Government Departments, the Revenue Commissioners and the Revenue Solicitor, An Post, the Competition Authority, the National Authority for Occupational Safety and Health and local authorities.

3.2 The work of the Office includes:

- (i) the consideration of Garda criminal investigation files submitted to the Office
- (ii) the decision as to whether or not a prosecution should be initiated or as to whether a prosecution already initiated by the Garda Síochána should be maintained and the

advising of any further investigations necessary for the commencement or continuation of a prosecution

- (iii) the determination of the charges to be preferred and the consideration of any charges already preferred
- (iv) the determination of the proofs and other materials to be tendered to the court and to the accused, including issues regarding the disclosure to the defence of unused material
- (v) the giving of instructions generally regarding the conduct of the prosecution of criminal trials including the issuing of decisions regarding the many questions of law and of public policy which can arise in the course of criminal proceedings
- (vi) conferring as necessary with counsel, state solicitors, members of the Garda Síochána and persons giving scientific or technical evidence
- (vii) deciding whether appeals, including appeals by way of case stated, should be brought or contested and the prosecution or defence of proceedings for judicial review and habeas corpus arising out of criminal proceedings

- (viii) the referral of sentences considered to be unduly lenient to the Court of Criminal Appeal
- (ix) the consideration of complaints and allegations of the commission of criminal offences received from members of the public and, where appropriate, their transmission to the Garda Commissioner
- (x) the consideration of files submitted by the Garda Síochána Complaints Board
- (xi) the drafting or settling of documents necessary for the processing of requests for extradition into the State
- (xii) the drafting and making of requests for international mutual assistance in criminal matters
- (xiii) serving on committees and attending meetings relating to prosecutions and criminal law and procedure; identifying operational problems arising in the administration of the criminal law and assisting on request on matters relevant to proposed criminal legislation; lecturing at the Garda Síochána Training College

3.3 One important constituent element of the Director's functions regarding the prosecution of offences consists of his powers and duties under sections 45 to 48 inclusive of the Offences Against the State Act, 1939. In effect, these powers and duties involve the abrogation in particular cases of the general constitutional right to trial by jury. They include the issuing of directions under section 47(1) that persons be charged in a Special Criminal Court rather than in the ordinary courts, and the certification pursuant to section 46(2), 47(2) or 48 that the ordinary courts are inadequate to secure the effective administration of justice in relation to particular cases.

3.4 Various other functions regarding the prosecution of offences are performed by the Director. For example the issuing of consents enabling indictable offences to be dealt with summarily (Section 2 of the Criminal Justice Act, 1951 and

Section 13 of the Criminal Procedure Act, 1967), electing between summary and indictable procedures in the case of certain statutory offences, directing the initiation of certain types of prosecution which by law require the Director's consent such as prosecutions for corruption, incest, marital rape, prosecution under the Explosive Substances Act, 1883, the Official Secrets Act, 1963 and the Criminal Justice (Drug Trafficking Offences) Act, 1996, and the granting of certificates, pursuant to Section 29 of the Courts of Justice Act, 1924, to enable accused persons to appeal from the Court of Criminal Appeal to the Supreme Court on a point of law of exceptional public importance.

3.5 The Director now has functions under the provisions of the Criminal Justice Act 1994, both in the domestic and international spheres, in relation to orders of restraint and confiscation of criminal assets, to money laundering and to international mutual assistance in criminal matters.

3.6 The Director also exercises specific functions under legislation governing elections and referenda, particularly in relation to election and referendum petitions, and under the Companies Act.

3.7 The Director nominates and through the State Solicitor Service instructs counsel in the various trial courts, in the High and Supreme Courts and the Court of Criminal Appeal and in other courts in which counsel are retained on his behalf, and determines the amount of and discharges their fees.



4. INDEPENDENCE

- 4.1 The independence of the Director of Public Prosecutions does not exist for its own sake or as a good in itself. Like the independence of a judge, it exists to serve a purpose which is of the essence of the office, the calm, objective and impartial discharge of functions which involve very important issues of justice for those affected by them. The duty to safeguard independence arises solely from the constant need to serve that fundamental purpose.
- 4.2 The independence of the Director of Public Prosecutions has both a constitutional and statutory basis.
- 4.3 Its constitutional basis is found in a decision of the Supreme Court that the Attorney General, who formerly exercised the prosecutorial functions, which were transferred to the Director of Public Prosecutions by the Prosecution of Offences Act 1974, was independent in the exercise of those functions.
- 4.4 The statutory basis for independence is provided by s.2 (5) of the Prosecution of Offences Act, 1974. This section declares that "the Director shall be independent in the performance of his functions".
- 4.5 The independence of the Director of Public Prosecutions is an independence from improper interference or influence. It is designed to protect against improper interference in the discharge of the Office's functions. The most obvious examples of improper interference are attempts to influence the office not to initiate or continue a prosecution or alternatively to pressurise to prosecute. An important statutory provision in this regard is s.6 of the 1974 Act which obliges a prosecutor to refuse to entertain a communication or representation when it appears to breach its provision.



5.

THE DECISION TO PROSECUTE OR NOT TO PROSECUTE

5.1 The decision to prosecute or not to prosecute is the fundamental prosecutorial function and obviously has serious implications for those affected by it. Chapter 5 of the 1998 Annual Report contains a detailed analysis of the possible consequences and effects of the decision.

It is not proposed to reiterate what was said in the 1998 report but rather to emphasise the method by which the prosecution decision is reached.

5.2 The prosecutor should prosecute only where a prosecution would be in the public interest. This requirement is met where two conditions are fulfilled. The first is that there should be a credible and reliable *prima facie* case. By this is meant a body of evidence on which a jury, properly instructed on the law, could conclude beyond a reasonable doubt that the accused person is guilty of the offence charged. If there is not such a case a prosecution cannot be in the public interest. The second condition is that there should be no other consideration which would result in a trial not being in the public interest, even though there may be a *prima facie* case.

5.3 A decision as to whether a *prima facie* case exists involves questions of law and fact including issues of admissibility of evidence and quite often the weighing of the probative value as opposed to the prejudicial nature of some evidence. Often, before a decision can be made the prosecutor requests the Garda Síochána to conduct further investigations to clarify or deal with problems which have arisen in the evidence. An important point here is that the prosecutor cannot take into account inadmissible evidence when deciding whether or not a *prima facie* case exists.

5.4 The prosecutor when considering whether a *prima facie* case exists must also consider whether the evidence is credible and reliable. In deciding this the prosecutor will note the existence of any independent corroboration, inherent improbability, possible motives for a particular claim or assertion, the ability and competency of witnesses to give evidence and the circumstances in which a person first makes a complaint. This is not an exhaustive list of the matters considered by a prosecutor. Every case is different and must be approached on the basis of

its own particular facts and circumstances. On this issue the prosecutor may take into account available information even if under the rules of evidence it could not be tendered in court. Given the necessity for trying to ensure that innocent persons are not accused in the criminal courts, it is obviously necessary to go beyond a mere superficial decision as to whether or not a statement or group of statements amounted to a case to answer and address the question as to whether or not they are credible. Accusations can be and are made for all sorts of reasons. They can be unfounded or inaccurate without being deliberately so. They can sometimes be made maliciously. They can be the result of simple human error. Statements made cannot simply be accepted and acted upon at their face value without considering whether or not they are truthful and reliable. Prosecutors work daily in this exceedingly difficult area. Not to address this question of credibility and reliability would be a serious dereliction of duty.

- 5.5 If the prosecutor is satisfied that there is a credible and reliable *prima facie* case a decision to prosecute would generally follow. Obviously, if the prosecutor is not so satisfied a decision not to prosecute is made. It is possible for a decision not to prosecute to be reconsidered where further evidence or information has come to light since the initial decision was made. A decision not to prosecute is not always final, particularly when the reason for the decision is a simple lack of evidence.
- 5.6 Although some other jurisdictions have operated a 51% rule under which a case is not brought unless it is more probable than not that a prosecution will succeed, the Director's Office has never operated such a rule. The *prima facie* test does not require a judgement that a jury are likely to conclude that the accused is guilty, merely that they could so conclude. However, the prospects of success may be relevant to the more general question of whether a prosecution will be in the public interest. It is, for example, difficult to conceive of a

case where a prosecution which had virtually no chance of success could be regarded as in the public interest.

- 5.7 In a limited number of cases, despite the existence of a credible, reliable *prima facie* case, a decision may still be made not to prosecute. Such decisions are made where there is a consideration which would result in a trial not being in the public interest. This discretionary power is used infrequently. Examples of circumstances in which this power might be used would include cases where it would not be in the interests of a victim to proceed with a case, or, exceptionally for humanitarian reasons, for example because an accused is suffering from a terminal illness. Another example would be where immunity is granted to a participant in a crime whose evidence is vital to the case against another participant. In such cases there may be public interest considerations pulling in more than one direction – there will always be a public interest in seeing that a crime is punished, so a factor such as possible harm to a victim or serious illness of an accused is more likely to weigh against prosecution where the offence is a less serious one. There are some cases where, although there has been a breach of the law, it is technical in nature, and no real purpose would be served by a trial.
- 5.8 A particular example of a prosecution not being in the public interest is where the offender is under the age of 18 and complies with the other conditions required for application of the Juvenile Diversion Programme.

The Juvenile Diversion Programme has been in existence since 1963. In 1991 it was placed on a more formal footing with the establishment of a Garda National Juvenile Office. It provides for the cautioning of young persons, as an alternative to prosecuting them, where they have admitted to the commission of the offence(s) in question, have not been cautioned previously or in the particular circumstances of the case are considered to be

worthy of a second caution and, save in exceptional circumstances, have a parent or guardian who agree to co-operate with the Gardai in the implementation of the programme.

Where a caution is to be administered it will be of an informal or a formal nature. The latter is appropriate to the more serious offences and will result in supervision of the offender by the Gardai for a period of twelve months. The question of whether a formal caution procedure, as opposed to a prosecution, should be initiated for the more serious offences will be decided upon by the Director of Public Prosecutions Office after careful consideration of the matter by, and comprehensive advice from, the Gardai.

5.9 In addition to all of the foregoing considerations, prosecutorial decisions must be taken with absolute impartiality. This means not only that persons should not be immune from prosecution because of who they are or what they do, but that all persons are accorded the same measure of justice. In particular, no one should be prosecuted because of any anticipated public reaction to a decision not to prosecute. Nor indeed should a decision be made not to prosecute because of any anticipated negative reaction to a decision to prosecute.



THE EUROPEAN
CONVENTION
ON HUMAN RIGHTS

6.

REASONS FOR DECISIONS

- 6.1 Officers give reasons for their decisions to the Garda Síochána. Where the Garda or the State Solicitor recommends a prosecution and the Officer agrees reasons are generally not necessary. They are given, primarily, where a decision is made not to prosecute.
- 6.2 Where the investigation is carried out by an agency other than the Garda Síochána (for example, the inspectorate in a Government Department or a body such as the Health and Safety Authority, the Revenue Commissioners or the Competition Authority) that agency will be given reasons for decisions.
- 6.3 Reasons for decisions not to institute or discontinue criminal prosecutions are not given to the general public. This policy has been upheld by the Supreme Court in *H v Director of Public Prosecutions* [1994] 21.R.589 in the following terms (at p.603)
- “The stance taken by the Director of Public Prosecutions is that he should not, in general, give reasons in any individual case as to why he has not brought a prosecution because if he does so in one case he must be expected to do so in all cases. I would uphold this position as being a correct one.”
- In exceptional circumstances reasons of a procedural and/or administrative nature would be given to a court where they form the basis of a decision to discontinue proceedings.



7.

ACCOUNTABILITY

7.1 The Director of Public Prosecutions, and his Office, are accountable in a number of different ways.

7.2 In relation to the general administration and expenditure of the Office, there is a comparable accountability to that which exists in other branches of the public service as follows:-

- 1) The Deputy Director who is responsible for the management of the Office, is the Accounting Officer of the Office and appears before the Committee of Public Accounts in relation to the vote of the Office and its expenditure. The Office is subject to the normal governmental accounting procedures involving that Committee, the Comptroller and Auditor General and the Department of Finance.
- 2) Under section 3 (6) of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997, the Director and the Director's Office can be compelled to give evidence and to produce or make discovery of documents concerning the general administration of the Office and

statistics relevant to a matter referred to in a report of and published by the Director in relation to the activities generally of the Office.

- 3) The Office is subject to the Freedom of Information Act, 1997, in respect of records concerning the general administration of the Office

7.3 So far as concerns the substantive work of the Office, that of the direction and supervision of public prosecutions, there are also a number of ways in which the Director and the Office are accountable:-

- 1) To the courts. This can take a number of forms. The courts will review the substance of the decisions of prosecutors only where there is evidence that the decision was made in bad faith, or was made without lawful authority. A person who is prosecuted can ask the High Court to prohibit his trial if, for example, there has been an undue delay. Decisions to prosecute result in the preferral of charges which are publicly considered in the court. Finally, the solicitors and counsel who act for the Director have a duty to

the court as well as to the Director, as well as being answerable for their professional standards to their professional bodies, the Law Society and the Bar Council.

- 2) To the people. The Director brings prosecutions in the name of the people of Ireland. While he does not give reasons in relation to individual cases, it is the practice to give as much general information as possible. It is now the practice to issue an annual report, of which this is the second. The Director intends to publish general guidelines in relation to prosecutions before the end of 2000.
 - 3) Under the statutory mechanisms provided for in the Prosecution of Offences Act, 1974. Firstly, section 2 (6) of the Act provides for consultation between the Attorney General and the Director "in relation to matters pertaining to the functions of the Director". Secondly, section 2 (9) provides for a statutory committee consisting of the Chief Justice, a judge of the High Court and the Attorney General to enquire, on request by the Government, into the health, physical or mental, or into the conduct of the Director. Having considered the report of such a committee, the Government can remove the Director from Office.
 - 4) In addition to the statutory machinery described above, there is another form of very real accountability in place. The Director's Office constantly interacts, very many thousands of times every year, with the Garda Síochána and also, less frequently, with other state agencies. Any failure on its part to do its duty conscientiously and effectively would produce a strong and understandable reaction from the Garda Síochána or such other agencies which could have reverberations in government and other quarters, including the media, and which in turn could cause consideration to be given to the statutory accountability procedures. While not institutionalised in statute law, this is arguably the most effective accountability of all, particularly as the reasons for the decisions of the Office are given to the Garda Síochána and to other relevant agencies as described at paragraph 6.1 and 6.2.
- 5) To the victim. Although the victim is not the client of the Director – if the Director has a client, that client is the people as a whole – the Director and his Office have a special responsibility at all times to take into account the interests of the victim. While there is no direct accountability to the victim, concern for interests of victims is a priority for the Office. The Victims Charter, dealt with in more detail in chapter 12 below, provides a more formal mechanism whereby victims who are dissatisfied with the Director's decision may seek to have that decision reconsidered.
- 7.4 As can be seen from the above, there is very real accountability on the part of the Director and his Office. It is, however, frequently asserted that accountability is absent. The reasons for this assertion appears to be that the Director does not give reasons in public for decisions not to prosecute individual cases and that there is no accountability in Parliament by the Government or a Minister for the Director's decision in an individual case.
 - 7.5 The question of giving reasons in public for individual decisions is discussed in Chapter 6. So far as concerns the accountability for individual cases, the mechanisms for accountability referred to above can have application in relation to individual cases as well as generally. For example, if the Director were to act in bad faith in relation to a particular prosecutorial decision, then (a) the decision could be set aside by the High Court (b) the Attorney General could seek a statutory consultation about the matter (c) the statutory committee could be asked to enquire into the matter and (d) the Government could remove the Director from office.
 - 7.6 It is submitted that this system is the correct and appropriate way in which a Director of Public

Prosecutions who is independent from the political process should be accountable. It is not consistent with independence from the political process to have a system whereby the prosecutor has to answer to the Minister for any individual decision and the Minister has to answer in turn to Parliament. Such a system would not be a system independent of political and populist pressure. It would be a system where the prosecutor was always under pressure to make the popular decision whether it was right or not.



REPORT OF THE
PUBLIC PROSECUTION SYSTEM
STUDY GROUP

8.

REPORT OF THE PUBLIC PROSECUTION SYSTEM STUDY GROUP

- 8.1 In June, 1999 the Report of the Public Prosecution System Study Group was published. The Group was chaired by Mr. Dermot Nally, the former Secretary to the Government. The Report recommended a number of radical alterations in the way the prosecution system in this country operates. In particular, it recommended that the criminal division of the Chief State Solicitor's Office (which is at present part of the Attorney General's Office) be transferred to the Director of Public Prosecutions' Office to form a unit headed by a solicitor to the Director. This recommendation was stated to be subject to agreement on adequate staffing levels and appropriate staff structures. This reflected the fact that the Chief State Solicitor's Office has historically suffered significant under-resourcing. On 5 October, 1999 the Government approved in principle all of the recommendations of the Group, save one (concerning the method of appointment of county State Solicitors).
- 8.2 Progress in implementing the proposal has been slower than had been hoped as detailed discussions between the management and union side under the chairmanship of the Department of Finance have been taking place. At the time of writing those discussions have not reached fruition and a number of questions relating to staffing and grading issues are not yet agreed. The post of Solicitor to the DPP has recently been filled.
- 8.3 Organisational charts showing the present structure and the proposed future structure of the Office are shown at Appendix 3.



9.

ROAD TRAFFIC CASES

9.1 Decisions in relation to road traffic cases, particularly those involving a fatality, can cause special difficulty. A criminal charge arising from a road traffic accident requires, like any other criminal charge, to be proved beyond reasonable doubt. There may be no independent witnesses to the accident, or if there are, they may have no clear recollection of an event which lasted only for seconds. There may be confusion as to the position and relative speeds of the vehicles involved and, in the absence of any other evidence, it may not be possible to draw any inferences from what was discovered at the scene of the accident by the investigating Gardai. In addition, accidents can be caused by driving ranging from on the one hand, gross recklessness to, on the other hand, a pattern of normal driving but with momentary inattention on the part of the suspect driver immediately before the accident.

9.2 In fatal cases, where there is evidence that the suspect's driving was negligent to a very high degree a charge of manslaughter will lie. However, the most common offence preferred in cases of road traffic fatalities is dangerous driving causing death. Dangerous driving has been judicially defined by Judge Barra Ó Briain in a 1963 case as "driving in a manner which a reasonably prudent man, having regard to all the circumstances, would clearly recognise as involving a direct and serious risk of harm to the public" (see 97 I.L.T. & S.J. 219). Before such a charge of dangerous driving can be preferred there has to be clear evidence of dangerous driving and that the dangerous driving caused the death. It must always be remembered that the fact that a death has occurred does not in itself prove that it was caused by dangerous driving. In many fatal cases, too, the death of the victim has removed the only person who could contradict the account of the accident given by the other party.

- 9.3 If there is insufficient evidence to justify a charge of dangerous driving, the directing officer will then consider whether there is evidence that the suspect was driving without due care and attention (usually called careless driving). If this is the charge appropriate to the provable circumstances of the case, it will be preferred (unless a prosecution would not be in the public interest). As the offence is a purely summary offence and the charge will not reflect the fact that a fatality has occurred, it is understood that the family of the deceased may feel that the preferral of such a charge is an inadequate response to the death of their relative. However, it has to be said that it would be improper for a prosecutor to prefer a more serious charge if the objective evidence did not justify the preferral of such a charge.
- 9.4 In 1997 a new offence of reckless endangerment was created. This offence may apply in the area of road traffic offences if there is evidence of the requisite level of recklessness.



10.

OVERVIEW OF DECISIONS IN SEXUAL OFFENCE CASES

The Director of Public Prosecutions and his Office have explained on many occasions why the reasons for decisions not to prosecute in particular cases cannot be made public. This issue is fully addressed in Chapter 6 of this report.

It is in the area of sexual offences, perhaps, that prosecutorial decisions can be most controversial. While reasons cannot be given in individual cases, it was thought useful to look at the most common reasons why a decision would be made not to prosecute in a sexual abuse case.

With a view to doing this, a sample of 104 files received in the Office between July 1997 and June 1998 relating to complaints of sexual offences was examined. These files represent approximately 11% of the total number of such files sent to the Office in the period and the results of the survey do indicate some of the reasons why a prosecution is not taken. While the purpose of the exercise was to indicate the variety of circumstances which can arise and not necessarily to provide an accurate statistical sample there is no reason to suppose the sample was not in fact a representative one.

As will be seen in 3 cases it was considered that a prosecution was not in the public interest. One case involved consensual sexual intercourse with a 15 year old female. The offence came to light when other unrelated matters were being investigated. There had been no complaint by the female or her family. Apart from an age difference, there was no element of either exploitation or vulnerability. The second case involved an individual who had confessed prior to any complaint having been made which caused an investigation to commence. At the time the individual in question was receiving psychiatric treatment. The third case concerned a juvenile who was in the care of social services in another jurisdiction at the time when the file was received.

The Juvenile Diversion Programme is explained on page 15 of this report.

The case where an individual was cautioned other than under the Juvenile Diversion Programme involved a relatively minor complaint of indecency and where the culprits admission was made approximately nine months prior to the submission of the file with the result that the possibility of a prosecution was hanging over him for that period. The suspect was of course too old for the Juvenile Diversion Programme itself.

Sample of 104 Sexual Offence Files - July 1997 - June 1998

Number of cases in which prosecutions for sexual offence directed	55
Number of cases in which prosecutions not directed	49
<p><i>Breakdown of reasons where prosecution not directed:</i></p> <p>Where a prosecution was not directed, the reasons for the decision were as follows (where more than one reason applied the most significant is given):-</p>	
Parents not permitting child to give evidence	3
Injured party too young and no other evidence	2
Offence committed outside the jurisdiction	1
No evidence of identity of culprit	1
Injured party withdrew complaint or refused to make statement	9
Evidence otherwise insufficient	23
Complaint admitted to be false	2
Prosecution taken for assault (non-sexual)	1
Culprit cautioned under Juvenile Diversion Programme	3
Culprit cautioned otherwise than under Juvenile Diversion Programme	1
Prosecution not in public interest	3

In the other cases the recorded reasons are self-explanatory.

It is unfortunately not possible to go into detail in relation to those cases where the decision not to prosecute was based on the sufficiency of the evidence. It is of course necessary for the prosecution to prove its case beyond a reasonable doubt. Issues arising in these cases included the sufficiency of the evidence to establish that the act was committed, whether the evidence was sufficient to establish the absence of consent, where that was an issue, or indeed whether the evidence was sufficient to establish the identity of the culprit. Other factors relating to credibility that can arise relate to sobriety or the psychiatric condition of a witness, especially when the witnesses' evidence is contradicted by a witness not affected by such a condition. Clearly such factors may also have a bearing on the reliability or credibility of a suspect, but here we are concerned with decisions not to prosecute.



11.

REVIEWS OF UNDULY LENIENT SENTENCES

With the enactment of the Criminal Justice Act, 1993, the Director of Public Prosecutions was given a right to apply to the Court of Criminal Appeal to have a sentence imposed on a convicted person reviewed by that Court. Prior to the enactment of this Act the Director of Public Prosecutions, unlike a convicted person, had no right to appeal sentence.

Section 2 of the Criminal Justice Act, 1993, provides

- (1) If it appears to the Director of Public Prosecutions that a sentence imposed by a court ... on conviction of a person on indictment was unduly lenient, he may apply to the Court of Criminal Appeal to review the sentence.
- (2) An application under this section shall be made, on notice given to the convicted person, within 28 days from the day on which the sentence was imposed.
- (3) On such an application, the Court may either
 - (a) quash the sentence and in place of it impose on the convicted person such sentence as it considers appropriate, being a sentence which

could have been imposed on him by the sentencing court concerned, or

(b) refuse the application.

Since the introduction of the Act 53 applications have been filed with the Court of Criminal Appeal to review sentences which the Director of Public Prosecutions considers to be unduly lenient.

DPP –v- Byrne (1995) 1 ILRM which was heard by the Court of Criminal Appeal on the 7 November 1994 was the first application to be heard by the Court under Section 2 of the Criminal Justice Act, 1993. The Court stated that since this was the first case brought under the Act that it was appropriate for them to say something about how the Court thought the Section should operate. The principles laid down in this case have been followed in subsequent cases.

The Court held that since the Director of Public Prosecutions brings the appeal the onus rests on him to show that the sentence was unduly lenient. Secondly, the Court found that great weight should be placed on the trial Judge's reasons for

APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

Year of Application	Number of Applications	Withdrawn	Struck out	Pending	Number Heard	Sentence Upheld	Sentence Increased
1994	2	1	-	-	1	1	-
1995	2	1	-	-	1	1	-
1996	3	1	-	-	2	1	1
1997	4	-	-	-	4	2	2
1998	12	-	3	-	9	3	6
1999	31	-	-	24	7	2	5

imposing a sentence. Thirdly, the Court was of the view that it was unlikely to be of any help to ask if there had been a more severe sentence imposed would it have been upheld on appeal by an appellant as being right in principle. Finally, the Court was of the view that it was clear from the wording of the Section that, since the finding must be one of undue leniency, nothing but a substantial departure from what would be regarded as the appropriate sentence would justify the intervention of the Court.

Before an application is made to the Court of Criminal Appeal to review a sentence the Director of Public Prosecutions has to satisfy himself that the sentence imposed by the sentencing Court was unduly lenient. The application must be made, and notice of it given to the convicted person, within 28 days from the date of the sentence.

It should be pointed out that appeals may not be made in relation to a sentence imposed in the District Court or in relation to a sentence imposed by the Circuit Court when dealing with an appeal from a decision of the District Court.

There has been some judicial comment regarding the exercise by the Director of his power to bring applications to review sentencing in circumstances where the prosecution has not indicated its view on what the appropriate sentence might be. In not making submissions regarding sentencing the Director is continuing a long established practice in the Irish courts and one which is required by the present rules of the Bar. However, in light of these judicial comments the Director considered it appropriate to consult more widely with the judiciary and with the two branches of the legal profession as to whether a change in the present practice would be desirable. These consultations are ongoing. Since these consultations commenced, the Court of Criminal Appeal in the case of DPP -V- Patrick Furlong (unreported 3 July 2000) expressed the view that where a trial judge so requests it would be of assistance to the trial judge if the Director indicated to counsel whether he considered that a custodial sentence was appropriate. The Director is at present considering what practical arrangements would be required to give effect to the change in practice recommended in Furlong's case.

A number of comments may be made on the review procedure as follows:-

- 1) After a slow start, the number of cases in which reviews were sought grew rapidly in 1998 and 1999. This may reflect an initially cautious approach to a new jurisdiction. Steps have been taken to ensure that the question of whether a sentence is unduly lenient is considered by the legal team dealing with every case which ends in a conviction.
- 2) The review procedure enables the Court of Criminal Appeal to ensure the consistency of approach to sentencing. For many years a major source of dissatisfaction amongst the public has been perceived lack of consistency in sentencing, even though lawyers would point out that this perception was not always based on a detailed consideration of the individual cases concerned and would not always have been shared by those familiar with the details of the cases. The jurisdiction under the 1993 Act enables the Director at least to refer cases which he considers involve a "substantial departure" from the appropriate sentence to the Court of Criminal

Appeal, and enable that Court to set out clearly the principles which should apply for the guidance of the individual judge.

- 3) Of the total number of 24 cases heard up to December 1999, the sentence has been increased in 14 or over 58% of the total. Having regard to the very high onus which the Director has to discharge to show that the original sentence was wrong this would appear to indicate an appropriate use of the section on the Director's part.
- 4) The case-law which has been generated by the bringing of applications for review has been of considerable assistance in clarifying the law.

12.

THE VICTIMS CHARTER

In September 1999 the Department of Justice, Equality and Law Reform published a Victims Charter and guide to the criminal justice system. The Charter describes the criminal justice system from the perspective of a crime victim and sets out the rights and entitlements of a crime victim to the services provided by the various State agencies involved with crime victims. It includes statements from the Garda Síochána, the Courts, the Prison Service, the Probation and Welfare Service, the Coroner Service, Victim Support and from the State Prosecution Service which comprises the Office of the Director of Public Prosecutions and the Chief State Solicitors Office (which represents the Director of Public Prosecutions in a large number of prosecutions and related work).

It is stated clearly that a victim can expect from the Director of Public Prosecutions that his Office will:

1. Have regard to any views expressed by a crime victim when making decisions in specific cases whether or not to prosecute.
2. Examine a request for a review of the decision and in appropriate cases carry out an independent internal review.

3. Appeal a sentence to a higher Court, where it is considered that the sentence is excessively lenient.

The Office of the Director of Public Prosecutions under statute is independent in its function and is in general screened from communications which could influence the making of a decision to withdraw or not to initiate criminal proceedings or directing any particular charge in criminal proceedings. However since the establishment of the Office under the Prosecution of Offences Act 1974 the law has always permitted complainants in criminal proceedings to communicate (personally or through their legal or medical advisor or through a social worker or member of the family of the complainant) with the Office of the Director of Public Prosecutions. This is an entitlement which extends also to defendants in criminal proceedings. The entitlement is one which victims of crime have often had and continue to have resort to and as stated in last year's annual report of the Office of the Director of Public Prosecutions it has been the policy of this Office to give detailed and careful consideration to such communications. This will often require that a decision in a particular case be

reviewed or occasionally that matters brought to light through such communication be referred to the Garda Síochána for the purpose of further investigations. It is the policy of the Office to reply to such communications promptly.

The Director of Public Prosecutions welcomes the fact that this valuable avenue of communication has been so highlighted.

The Charter includes also clear commitments by the Chief State Solicitor's Office that it will:

1. Work with the Gardai to ensure that victims of crime are kept fully informed of developments in the prosecution of perpetrators of offences, especially those of a violent or sexual nature.
2. At the victim's request, facilitate a pre-trial meeting with a representative from the State Solicitors Office and Counsel to discuss the case, although it is pointed out that the State Solicitor will not discuss evidence with witnesses in advance of the case.
3. Commit itself to ensuring that victims will be treated with the utmost consideration and

respect and to explaining, wherever possible, the Court processes involved.

It has always been the practice of the Office to consider a request by or on behalf of a complainant for a review of a decision not to prosecute in a particular case. In appropriate cases the original decision will be reviewed by a more senior officer. However, it is not always possible to grant a review. For example, by the time the request for a review has been received in the Office the statutory time limit for prosecuting for the particular offence may have expired.

In 1999 the Office received 21 requests by or on behalf of a complainant for a review of a decision not to prosecute. A review was granted in 14 of those cases and in two of them the original decision was reversed (in one following receipt of further information from the Garda Síochána) and prosecutions were taken.

The total office staffing complement on 1 January 1999 was 33. This consisted of 15 legal professional officers (one serving on a half-time basis) and 18 staff involved in the delivery of administration services.



13.

ADMINISTRATION SERVICES

Administration services are provided through a number of small units with responsibility for the following operational areas within the Office :

Our **Registry Unit** is responsible for registration of new files received by the Office, for facilitating and monitoring file movement within the Office and for generating information on the status of workload obtaining at any given time.

During 1999 special priority was the establishment of an IT Unit. Through special assistance from the CMOD (Centre for Management and Organisation Development) unit of the Department of Finance a case information systems proposal which had been developed over a period of months was agreed and implementation commenced in late 1999. The new computerised system was piloted in January 2000 and development work is continuing under the control of our IT steering group.

Our **Personnel and Finance Unit** has responsibility for the human resource function within the Office, monitoring and control of office expenditure and matters relating to office accommodation.

Recruitment and retention of staff in the clerical grades has presented difficulties for the civil service as a whole in recent times. This was our experience also over the course of 1999 and into 2000. While these difficulties have eased through a variety of measures undertaken by the unit the retention of a strong experience base remains under threat due to the buoyancy in this sector of employment generally. This unit is also concerned with organisational change and development work which has increased following the establishment of a Management Advisory Committee (MAC) within the Office in September 1999.

Our **Fees Unit** has responsibility for the payment of fees to barristers engaged by the Director to prosecute cases on his behalf in the various criminal courts throughout the country. Fee payments amounting to £8.1m accounted for 81% of total office expenditure in 1999. The staff of the Fees Unit also provide support to the legal professional group through the maintenance, on a part-time basis of the office library.

A range of support services provided via our

Clerical Support Unit include word processing, secretarial, reception and telephonist services.

Future developments

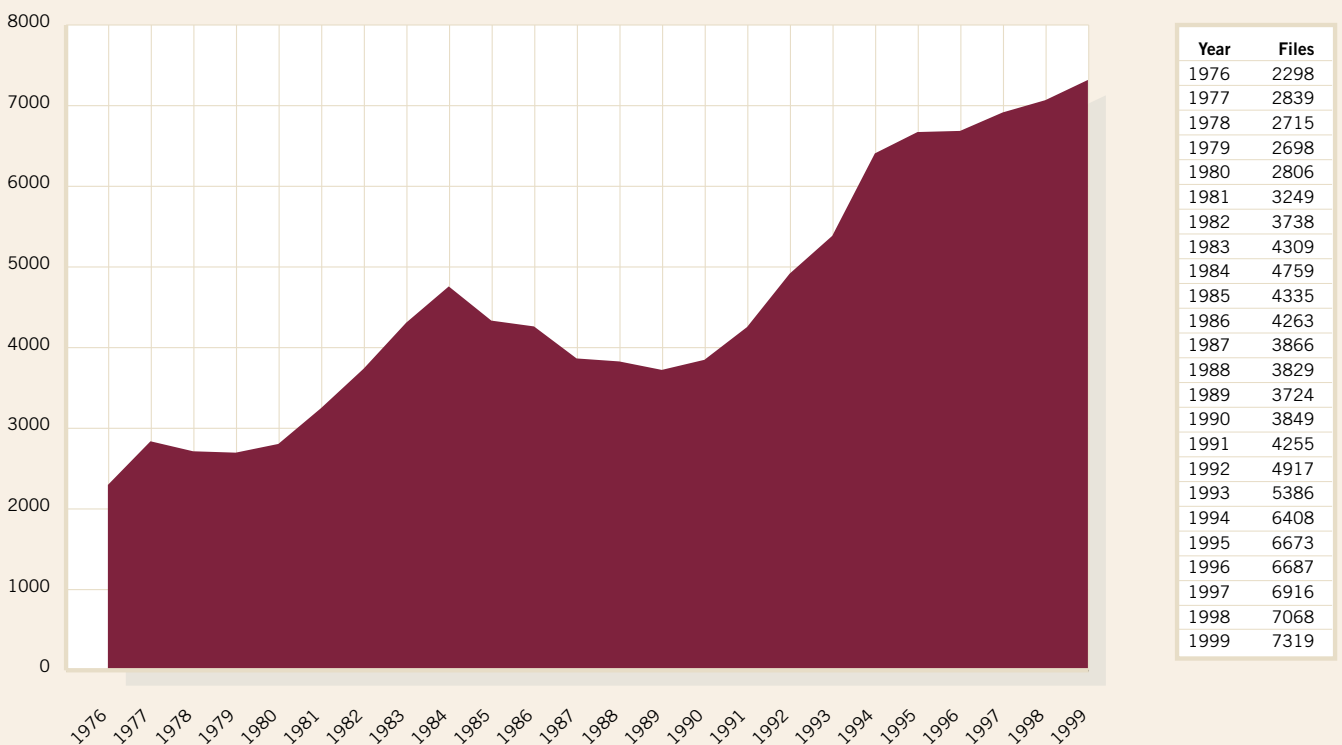
The implementation of the recommendations of the Public Prosecution System Study Group will have a profound effect on the structures and systems used to deliver the prosecution services. Revised structures will bring increased demands for new skills and management training. Greater use of information technology will be required to deliver improved levels of service between the various law agencies. Sanction has been received from the Department of Finance for the creation and staffing of a specialist unit to serve the developmental needs of the office in the technology area. These will include the promotion of improved communications and business links with other Offices and Departments working within the criminal justice system. A dedicated Library facility is planned to provide a range of modern legal information services to those working in the prosecution services. Other catalysts for change include the implementation of a Performance Management Development System for the Office and the development of new financial management systems. All of these developments will pose a significant challenge to the entire staff of the Office. We look forward to meeting that challenge in the years ahead.

APPENDIX 1: STATISTICS

1.1. Files Received

Chart 1 shows the number of files received by the Office from 1976 to 1999. The vast majority of files relate to the Garda investigation of a 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 on a year by 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.

Chart 1: Files Received 1976-1999

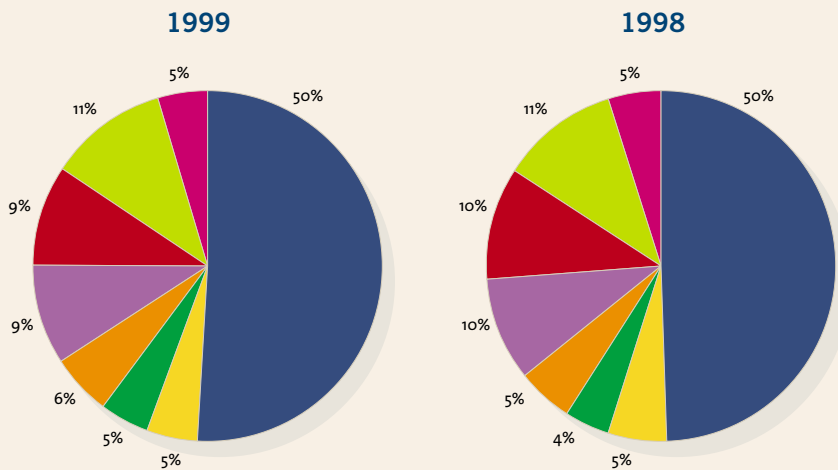


1.2. Files Received by Region

Chart 2 shows a breakdown of files received by region. Dublin and Cork are regions in their own right. Other regions are composed as follows:

Northern	Donegal	South Western	Limerick	Eastern	Louth
	Leitrim		Clare		Meath
	Cavan		Kerry		Kildare
	Monaghan				Wicklow
Western	Galway	South Eastern	Laois	Midland	Sligo
	Mayo		Carlow		Roscommon
			Wexford		Offaly
			Waterford		Westmeath
			Tipperary		Longford
		Kilkenny			

Chart 2: Files Received by Region



CIRCUIT	1999	1998
Dublin	3728	3497
Midland	338	346
Eastern	807	774
South Eastern	679	732
Cork	675	675
South Western	413	366
Western	335	295
Northern	344	383
	7319	7068

1.3. Disposal of Files

Chart 3 shows a breakdown of files disposed of in 1998 and 1999. The Garda Síochána send files to the Office via the State Solicitor Service 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:

Prosecute on Indictment: The offence should be prosecuted in the Circuit, Central or Special Criminal Courts.

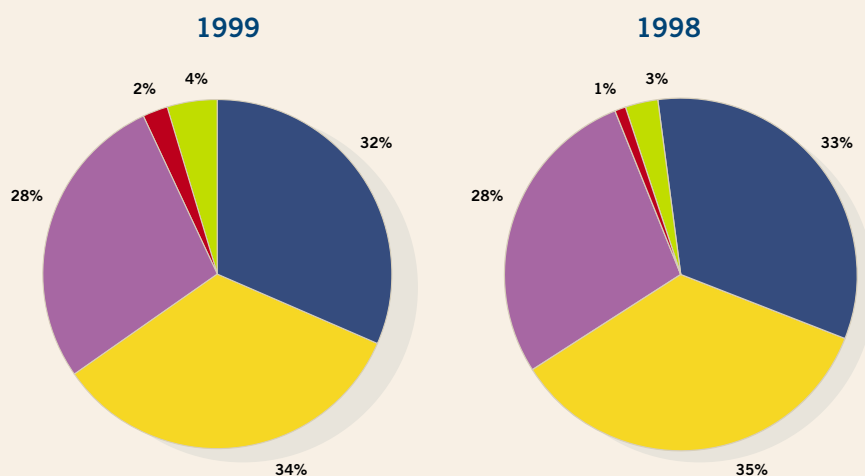
Summary Disposal: The offence should be prosecuted in the District Court.

No Prosecution: The evidence contained in the file is not sufficient to support a prosecution.

Non-Prosecution File: Typically these files relate to requests for legal advice from the Garda Síochána or state solicitors, legal procedures, applications for judicial review and other matters of general interest to the Office e.g. law conferences, seminars.

Note: The figures for 1998 have been updated since the publication of last year's Annual Report. The reduction in the files 'Under Consideration' figure reflects the number of directions taken in those files. Summary disposals include those cases in which defendants elected for trial and cases where the District Justice refused jurisdiction, notwithstanding the fact that this Office initially elected summary trial. A non-prosecution file is reclassified as a prosecution file when a garda investigation file is furnished.

Chart 3: Disposal of Files

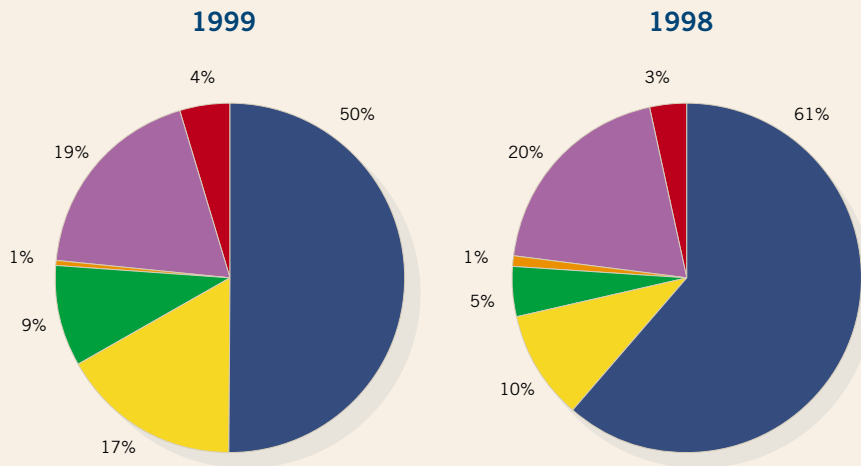


DIRECTION	1999	1998
Prosecute on Indictment	2306	2323
Summary disposal	2472	2503
No Prosecution	2031	1980
Under Consideration	170	26
Non Prosecution files	340	236
	7319	7068

1.4. Time Taken to Issue Directions in 1998 and 1999

Chart 4 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 and complexity. Further information is sought more often than not to enhance the proofs in a case rather than because of any deficiency in the investigation. The average time taken to issue a direction in completed cases in 1999 was 11 days.

Chart 4: Time Taken to Issue Directions



Time Taken	1999	1998
Two weeks	3667	4335
Four Weeks	1220	713
More than 4 weeks	685	327
Under Consideration	34	69
Further Information Sought	1373	1382
Non-prosecution files	340	242
	7319	7068

1.5. Case Results -Prosecutions on Indictment

Chart 5 shows the results of prosecutions on indictment taken in relation to files received in 1998.

Conviction: A conviction was obtained in respect of one or more of the defendants in the case.

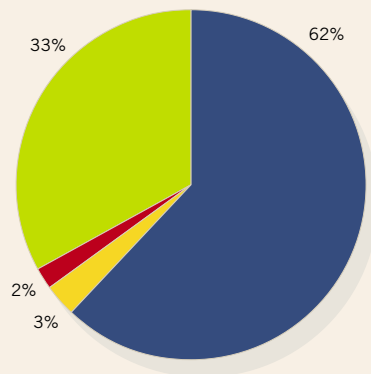
Acquittal: The defendants in the case were acquitted.

Other Disposals: These are cases which were struck out or discontinued e.g. where state witnesses were unavailable.

For Hearing: These are cases in which a decision to prosecute has been taken and the matter is before the courts.

Figures have not been included for 1999 as the majority of these cases have yet to be dealt with by the courts.

**Chart 5: Case Results - Prosecutions on Indictment
1998**



Outcome	1998
Conviction	1,439
Acquittal	82
Other disposal	39
For hearing	763
	2,323

1.6. Office Expenditure for 1998 and 1999

Chart 6 shows the breakdown of office expenditure for 1998 and 1999.

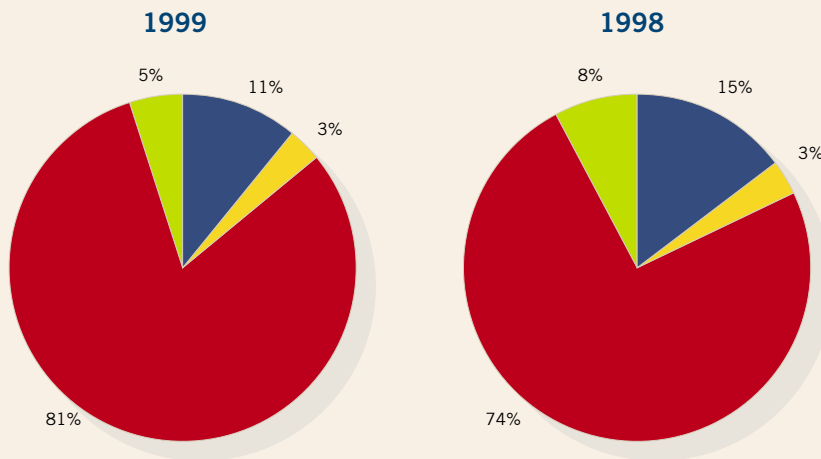
Fees to Counsel: These are fees paid to the barristers who prosecute cases on behalf of the Director in the various criminal courts. See note on next page relating to Counsel's fees.

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.

Salaries and Wages: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 1999 was 33.

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.

Chart 6: Office Expenditure



Category	1999	1998
Salaries Wages & Allowances	1,089,000	1,085,000
Office Expenses	315,000	239,000
Fees to Counsel	8,113,000	5,500,000
General Law Expenses	496,000	574,000
	10,013,000	7,398,000

1.7. Fees to Counsel

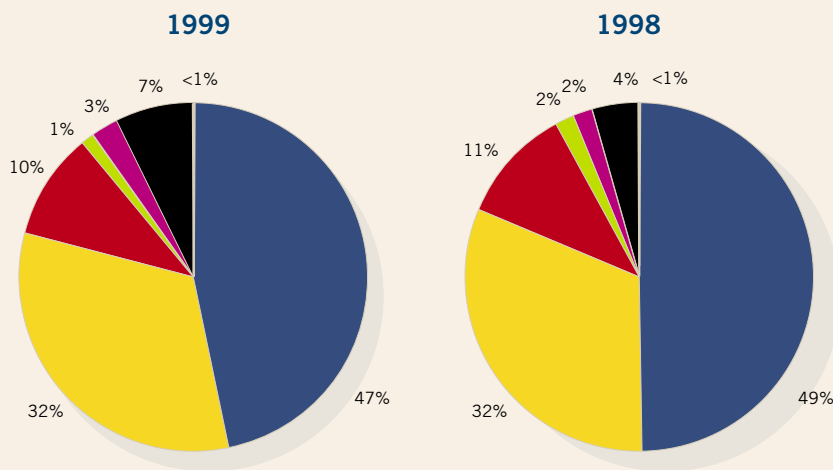
Charts 7 and 8 show a breakdown of expenditure on fees to counsel in the various criminal courts and by region in respect of the Circuit Criminal Court.

Fees paid to counsel in the Central, Special and 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.

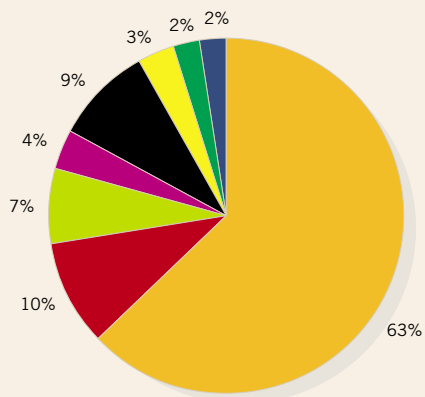
Note: The increase in fees to counsel in 1999 over 1998 reflects a full review of fee rates conducted in March 1998 and the greater complexity and length of criminal trials.

Chart 7: Fees to Counsel by Court

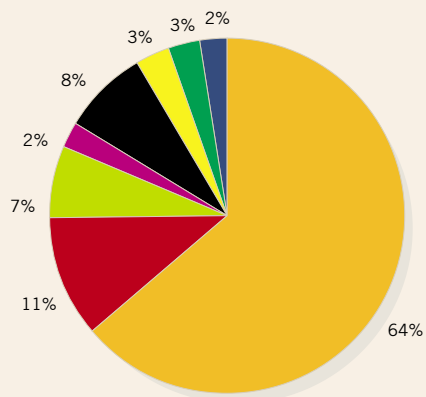


Fees Paid by Court	1999	1998
Circuit Court	3,791,000	2,736,000
Central Criminal Court	2,624,000	1,737,000
High Court	805,000	590,000
Supreme Court	95,000	97,000
Court of Criminal Appeal	207,000	98,000
Special Criminal Court	589,000	238,000
District Court	2,000	4,000
	8,113,000	5,500,000

Chart 8: Fees to Counsel Circuit Court
1999

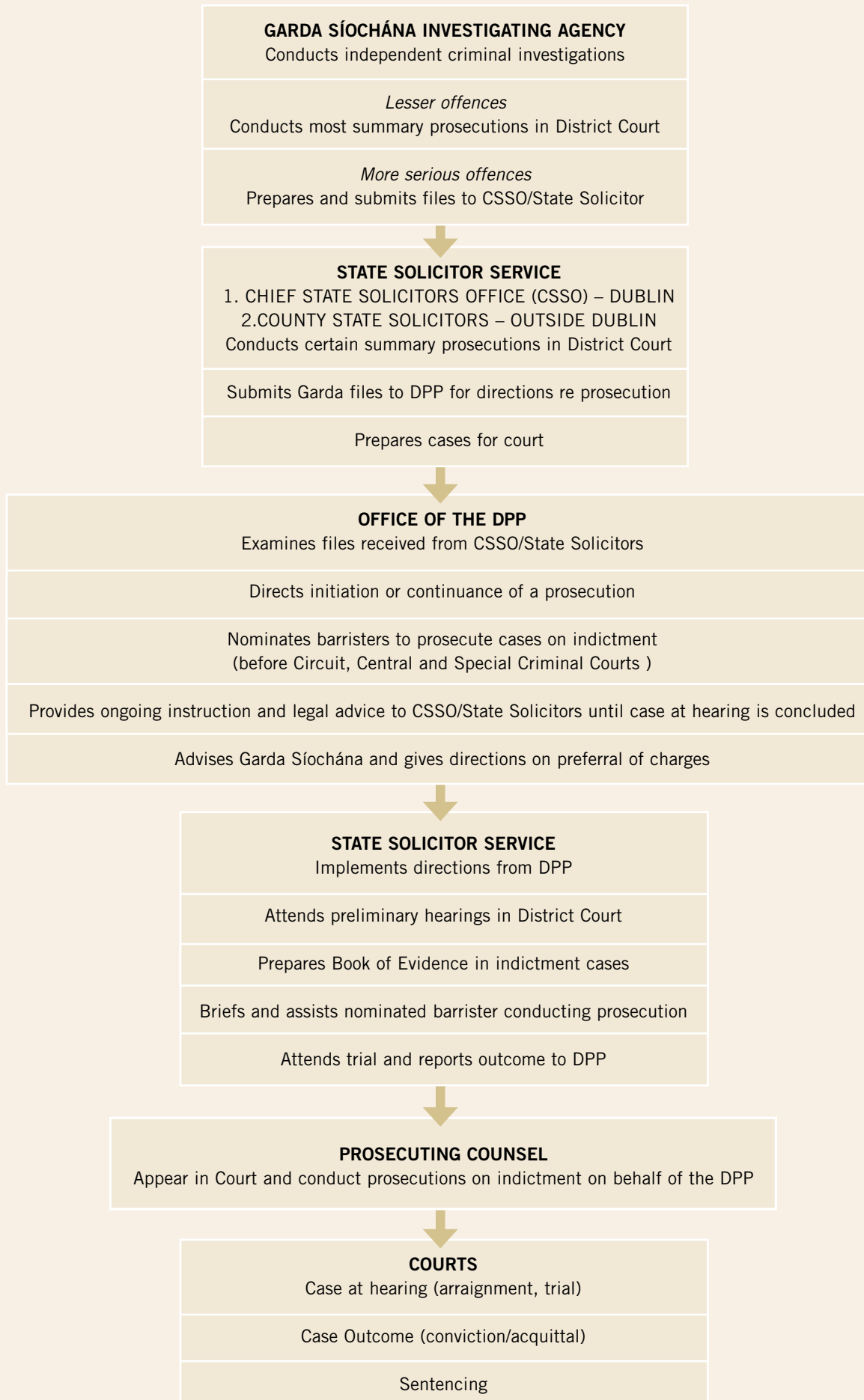


1998



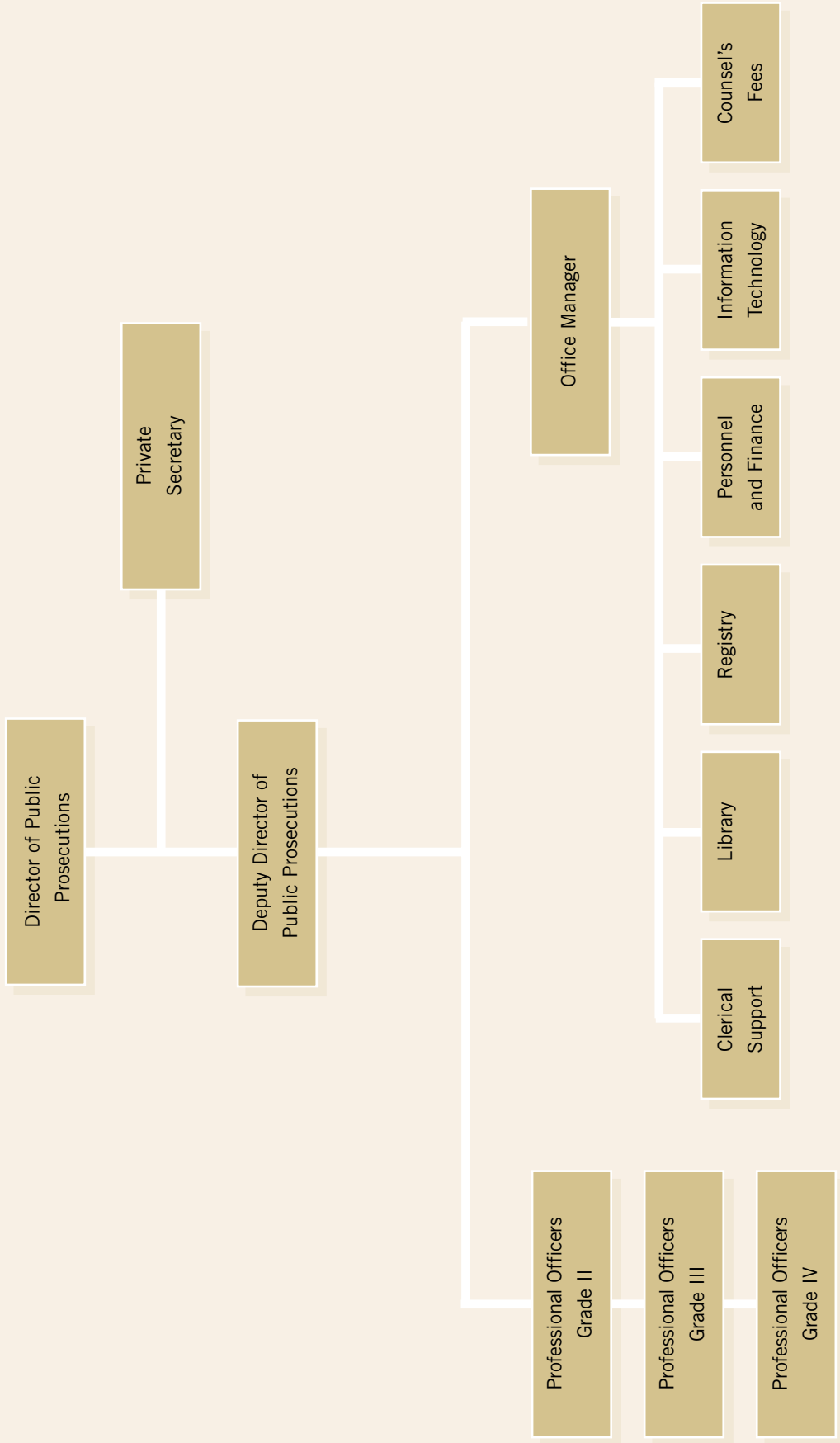
Fees Paid by Circuit	1999	1998
Dublin Circuit	2,382,000	1,744,000
Cork Circuit	365,000	303,000
Eastern Circuit	259,000	179,000
Midland Circuit	137,000	64,000
South Eastern Circuit	338,000	214,000
South Western Circuit	127,000	85,000
Western Circuit	91,000	79,000
Northern Circuit	92,000	68,000
	3,791,000	2,736,000

APPENDIX 2: OUTLINE OF THE CRIMINAL PROSECUTION PROCESS

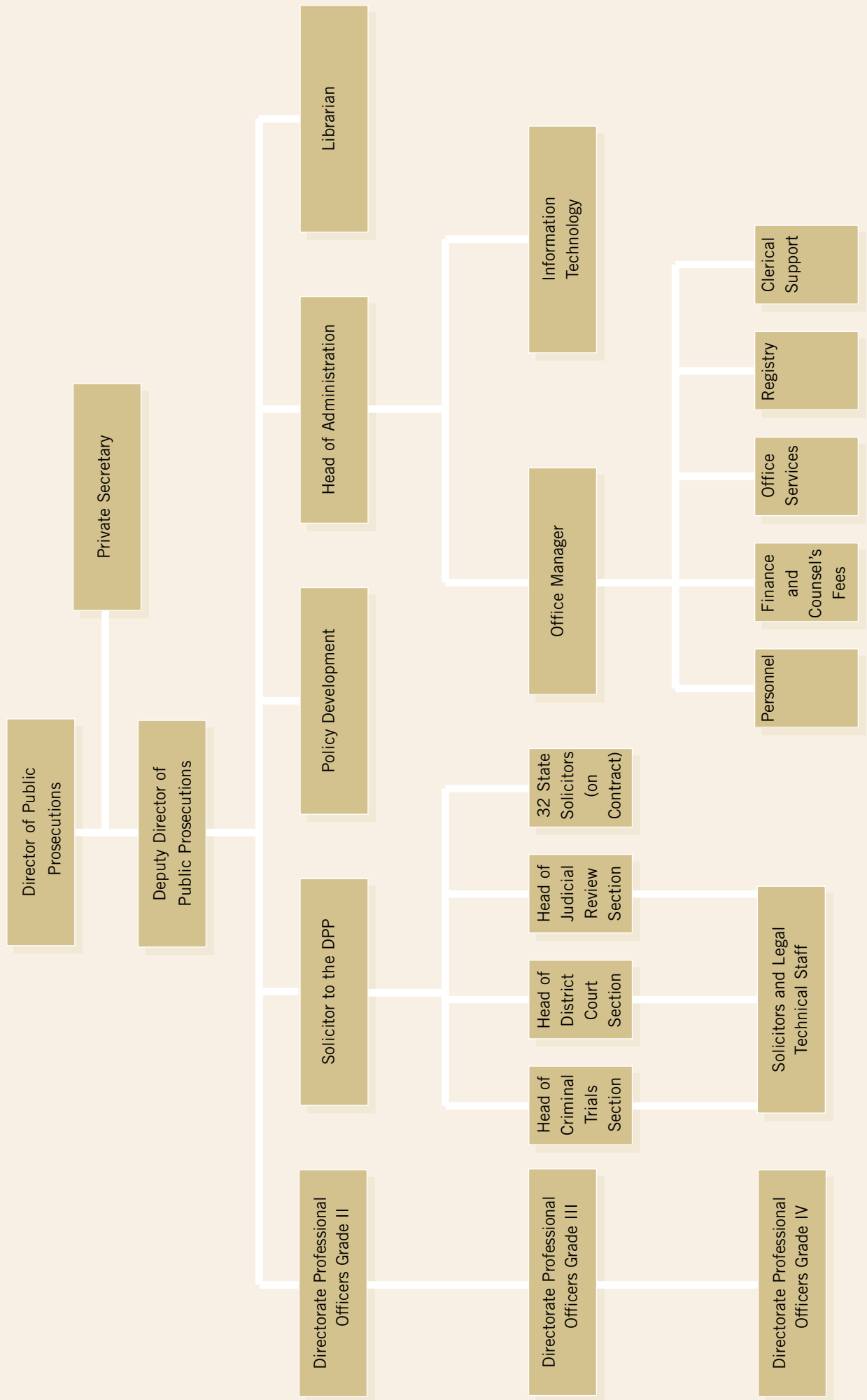


APPENDIX 3:

ORGANISATIONAL STRUCTURE AT PRESENT



INTENDED ORGANISATIONAL STRUCTURE AFTER NALLY IMPLEMENTATION



APPENDIX 4:

EXTRACT FROM THE APPROPRIATION ACCOUNT 1998

The following is an extract from the Annual Report of the Comptroller and Auditor General and Appropriation Accounts 1998.

Office of the Director of Public Prosecutions Vote 14

ACCOUNT of the sum expended, in the year ended 31 December 1998, 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 of Public Prosecutions.

Service	Estimate Provision £,000	Outturn £,000	Closing Accruals £,000
ADMINISTRATION			
A.1. Salaries, Wages and Allowances	1,020	1,015	-
A.2. Travel and Subsistence	23	17	-
A.3. Incidental Expenses	85	79	(3)
A.4. Postal and Telecommunications Services	35	28	-
A.5. Office Machinery and other Office Supplies	57	54	-
A.6. Office Premises Expenses	74	60	18
OTHER SERVICES			
B. Fees to Counsel	5,414	5,500	1,232
C. General Law Expenses	681	574	540
<hr/>			
Gross Total	7,389	7,327	1,787
Deduct:-			
D. Appropriations in Aid	5	12	-
<hr/>			
Net Total	7,384	7,315	1,787
<hr/>			
SURPLUS TO BE SURRENDERED		£68,943	€87,540

APPENDIX 5:

FREEDOM OF INFORMATION ACT, 1997

The Freedom of Information Act, 1997 has been law since 21 April 1997 and became operational on 21 April 1998. The FOI Act allows for access by the public to information held by public bodies which is not routinely available through other sources.

Access to information under the Act is subject to certain exemptions and restrictions.

The restriction provided for at section 46 of the Act is of particular significance to this Office. Section 46 (1) (b) specifies that the Act does not apply to a record held or created by the Director of Public Prosecutions or his Office, other than a record concerning the general administration of the Office. This means that our records which concern criminal case files are outside the scope of the Act.

The number of requests received in the year 1 January 1999 to 31 December 1999 was 21. A breakdown of the decisions reached on those requests is shown in the table below:

1 January 1999 to 31 December 1999

Total Requests	21	100%
Access Granted/Part Granted	4	19%
Refused/Records restricted under Sec. 46 (1)(b)	12	57%
Refused/Did Not Exist	2	10%
Handled outside the Act/Withdrawn	3	14%

APPENDIX 6:

PROMPT PAYMENT OF ACCOUNTS ACT, 1997

Operation of the Act in the Period 1 January 1999 to 31 December 1999

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.

In the period in question, the Office made 3 late payments in excess of £250. The total value of these payments was £8,860. The total value of late payments in the year amounted to £8,983 out of total payments of £10.01 million and interest thereon came to £74.05.

Statement of the Accounting Officer

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.

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.

The procedures which have been put in place can only provide reasonable and not absolute assurance against material non-compliance with the Act.

The procedures described above operated in a satisfactory manner in the period under review. No remedial action has been required.

Barry Donoghue
Accounting Officer
September 2000