

Oifig an  
Office of the



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

**Annual Report 2012**

This Report is also available in the Irish Language

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## FOREWORD

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I am pleased to present the Annual Report for 2012 which was the first full year of my tenure as Director.

2012 was an important year for the Office on a number of levels, all affecting the way we will do our business in the future.

Firstly, I am very pleased to say that in 2012 we acquired a single headquarters building for the Office adjacent to the Criminal Courts of Justice - a goal that we have been working towards for many years. This has already yielded benefits for the Office although the full strategic advantages will be realised only when those parts of the premises which are currently occupied by other agencies are vacated, thus allowing the remainder of the staff to transfer into the headquarters at Infirmary Road. I remain optimistic that this will happen in the short term.

Secondly, on 25<sup>th</sup> October 2012 a European Union Directive dealing with Victims of Crime was finalised. The Government has three years from that date to transpose this Directive into domestic legislation.

As I pointed out in the foreword to the 2011 report, the most significant implication of this Directive for the work of my Office is that victims will be given the right to receive reasons for decisions not to prosecute in most cases, subject to certain limited exceptions. The right to receive reasons will apply in a range of offences of a comparatively serious nature from assault, robberies, burglaries, harassment, right through to very serious offences of rape, child sexual abuse and murder.

We have already commenced work on examining the resource and other implications for the Office and the prosecution of crime generally of the Victims Directive. In that regard it should be noted that a great many prosecution decisions are in fact made by the Garda Síochána without reference to the Office, under my delegated authority. Because of the limited resources of the Office and the need to fully prepare for the transposition into Irish law of



the Directive, I do not anticipate an expansion of the current reasons project in fatal cases to other areas of decision making in the near future. I will review the situation when the implications of giving effect to the Directive for both ourselves and the Garda Síochána have been fully analysed.

As reported elsewhere in this report the Office continues to work with various agencies in the criminal justice system to improve the delivery of services to victims of crime. I was very pleased that in 2012 the Office entered into a Protocol with the Dublin Rape Crisis Centre for access to relevant documents that they hold which are required for the purposes of disclosure in criminal proceedings. Such protocols, which of course operate on the basis of the consent of the victim, help to clarify the respective positions of the Office and the agency assisting victims and have in my view streamlined the whole disclosure process.

The third area which had a significant impact on the way the Office does its business was the recent introduction of practice directions in the Circuit Court. I welcome the various initiatives introduced by the judiciary in conjunction with the Courts Service aimed at improving pre-trial preparation.

The pre-trial procedures introduced in Dublin and on certain Circuits outside Dublin are aimed at ensuring that certain pre-trial issues are addressed well in advance of the trial. I anticipate the benefits to be fully felt in the coming legal year.

I do share the concern of the judiciary that the backlog in the Court of Criminal Appeal means that undue leniency reviews and other forms of appeal against conviction and sentence have been considerably delayed. I welcome the commitment of the judiciary and the Courts Service to alleviate this backlog in the short term by a number of additional sitting days prior to the beginning of the new legal year in October. The longer term problem of delays, both at Court of Criminal Appeal level and to a more significant extent at Supreme Court level, will, hopefully, be addressed in the medium term. I note the referendum on a Court of Appeal which is due to take place next month.

While overall the number of prosecution files submitted to my Office during 2012 has decreased, this fall-off partly related to summary cases involving offences that are prosecuted in the District Court. The files submitted in more serious offence categories, which also fell in numbers from 2011, continue to increase in complexity and size. Some of these cases can, on an individual basis, be extremely resource intensive.

In addition to work on criminal prosecution cases, staff in my Office also deal with other matters requiring professional input and advice. These include such matters as requests for legal advice from An Garda Síochána or local State Solicitors; assessment of draft domestic and EU legislation; policy related matters; requests for mutual legal assistance; participation in cross-organisational working groups and committees dealing with reform and improvement of the criminal justice system. Some of these areas of work are becoming more demanding year on year, particularly in the area of international co-operation and EU legislation. For example, requests for mutual legal assistance dealt with by my Office more than doubled in the last three years.

I want to take this opportunity to say something generally about the risks of pre-trial publicity interfering with the right of an accused person to a fair trial. The media and commentators have a high degree of responsibility to ensure that not only do they not commit a contempt of court by publishing or broadcasting prejudicial material but also that such publicity is not the cause of a trial being postponed for a long period, or even indefinitely. These risks increase as any trial date approaches.

Finally, I want as ever to thank the various groups who contribute to the operation of an effective prosecution service. I want to thank the very dedicated staff in my Office, the State Solicitors around the country and the many members of the Bar who contribute towards the provision of a prosecution service on behalf of the People of Ireland with a high degree of commitment and professionalism. This is against a backdrop of successive cuts to salaries and fees, some very recently indeed.



Claire Loftus  
Director of Public Prosecutions  
September 2013

## **MISSION STATEMENT**

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To provide on behalf of the People of  
Ireland a prosecution service that is  
independent, fair and effective

# PART 1:

## GENERAL WORK OF THE OFFICE

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# 1.1 GENERAL WORK OF THE OFFICE

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**1.1.1** The fundamental function of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters.

**1.1.2** The majority of cases dealt with by the Office of the Director of Public Prosecutions are received from the Garda Síochána, the primary national investigating agency. However, some cases are also referred to the Office by specialised investigative agencies including the Revenue Commissioners, Government departments, the Health & Safety Authority, the Competition Authority, the Office of the Director of Corporate Enforcement, the Garda Síochána Ombudsman Commission, the Environmental Protection Agency and local authorities.

**1.1.3** The Office of the Director of Public Prosecutions has three divisions:

The Directing Division determines, following an examination of an investigation file, whether there should be a prosecution or whether a prosecution commenced by the Garda Síochána should be maintained. The direction which issues indicates the charges, if any, to be brought before the courts. In some cases further information and investigation may be required before a decision can be made. To prosecute there must be a *prima facie* case - evidence which could, though not necessarily would, lead a court or a jury to decide, beyond reasonable doubt, that the person is guilty of the offence.

The Solicitors Division, headed by the Chief Prosecution Solicitor, provides a solicitor service to the Director in the preparation and presentation of cases in the Dublin District and Circuit Courts, the Central Criminal Court

and Special Criminal Court, the Court of Criminal Appeal and the High and Supreme Courts. Outside the Dublin area 32 local state solicitors, engaged on a contract basis, provide a solicitor service in the Circuit Court and in some District Court matters in their respective local areas.

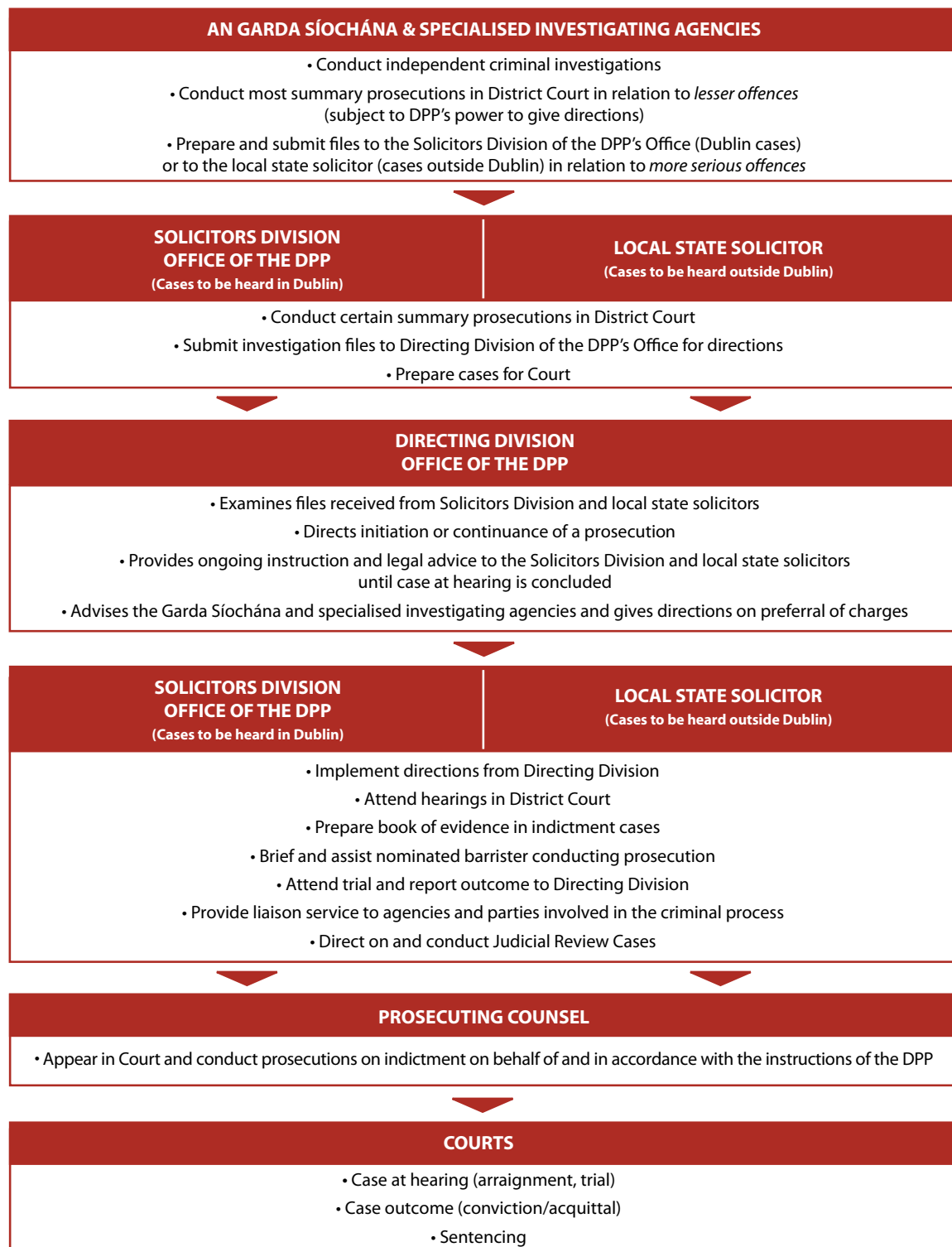
The Administration Division provides the organisational, infrastructural, administrative and information services required by the Office and also provides support to both the Directing and Solicitors Divisions.

The three divisions are supported in their work by:

- the Prosecution Policy Unit which develops prosecution policies and advises on legal policy documents referred to the Office for consideration.
- the Library and Research Unit which provides information, know-how and research services for both legal and administration staff.

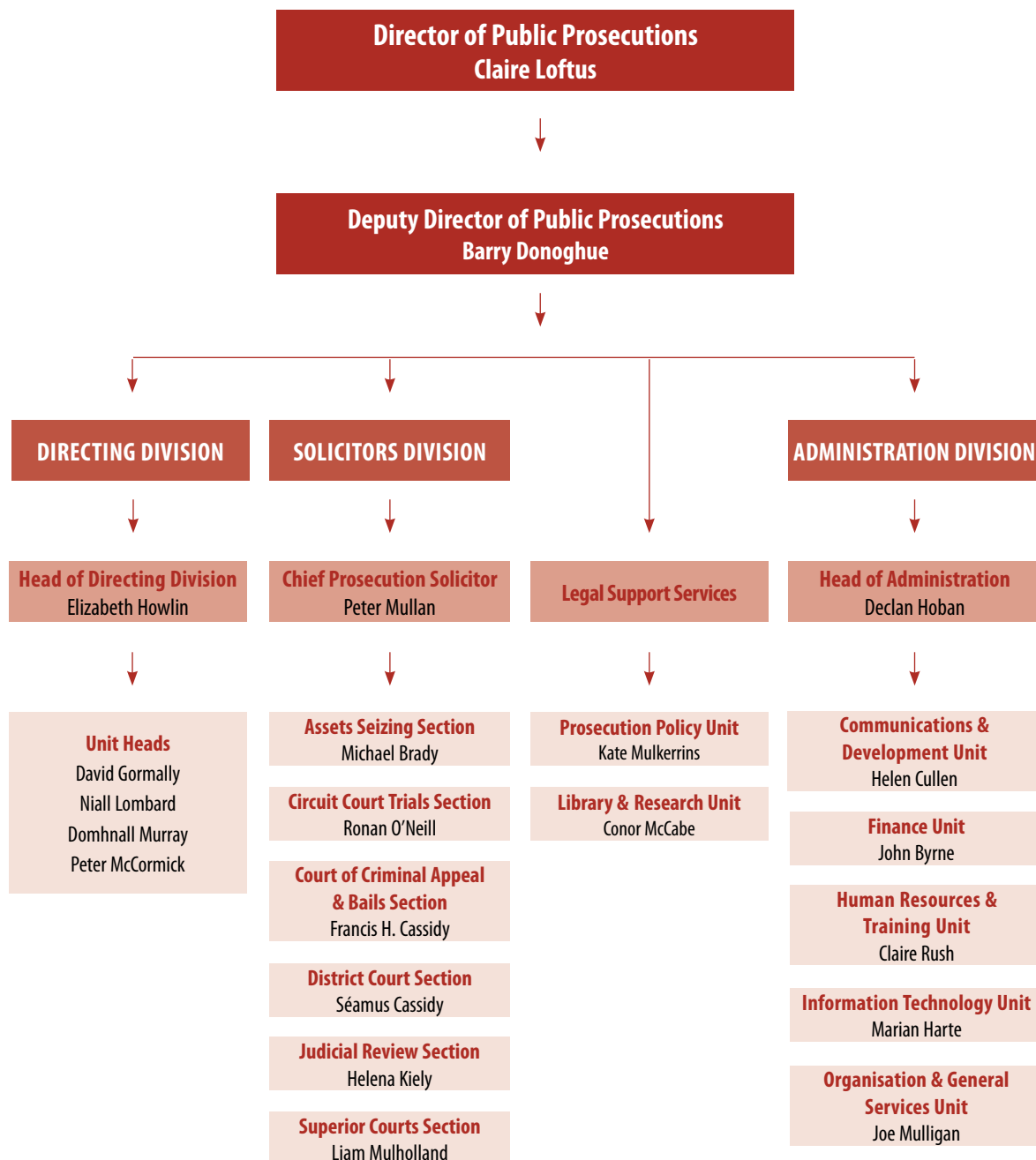


# 1.2 OUTLINE OF THE CRIMINAL PROSECUTION PROCESS



# 1.3 ORGANISATION STRUCTURE

(AS OF JUNE 2013)



# PART 2:

## YEAR IN REVIEW

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# 2.1 YEAR IN REVIEW

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## Introduction

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- 2.1.1** In 2010 the Office published a Strategy Statement setting out key objectives and performance indicators for the three year period 2010 - 2012. The year under review was the third and final year of the implementation of that strategic plan.
- 2.1.2** A key focus of the plan was to ensure best use of available resources in providing an effective and efficient prosecution service in light of the economic climate prevailing during that three year period. Statistics relating to processing of prosecution files and outcomes of cases in court are set out in chapter 4 of this report. This chapter outlines the management and governance structures that underpinned and facilitated the provision of the prosecution service during 2012.

## Strategic Management

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- 2.1.3** In common with all public sector organisations, the Office of the DPP must operate within the Employment Control Framework Ceiling set by Government. In January 2012, our maximum permissible staff numbers were again reduced – on this occasion from 195 to 192 full time equivalents. The total staff complement at 1 January 2012 was 194.5 fulltime equivalents. By 31 December 2012 this number had decreased to 191.4.
- 2.1.4** In addition to directly employed staff the Office engages the State Solicitor service on a contract basis. This comprises 32 solicitors in private practice who are contracted to the Office of the DPP to represent the Director in Circuit Courts outside Dublin.
- 2.1.5** The Office also draws from panels of barristers who are briefed on a case by case basis to prosecute cases on behalf of the Director in the various criminal courts.
- 2.1.6** The total cost of running the prosecution service for 2012 was €38.8m. Fees paid to counsel who prosecute cases on behalf of the Director in the various courts account for 32% of this amount. Another 32% was paid in salaries and wages to staff in the Office. The State Solicitor Service accounted for 16% of this amount and a further 13% represented the amount paid in legal costs awarded by the courts.
- 2.1.7** The overall cost of running the prosecution service in 2012 increased by approximately €2.1m compared to the previous year. Three main factors contributed to this. An increase of €2.46m in the amount paid in respect of law costs awarded against the Office and an increase of €0.58m in respect of Office expenses, which arose from a move of part of the Office from Merrion Street to Infirmary Road, resulted in a total increase of €3.04m. This was offset by a decrease of €1.22m paid in fees to counsel.
- 2.1.8** The increase in the amount paid in respect of law costs awarded against the Office in 2012 was due in particular to expenditure of approximately €2m incurred in three exceptionally expensive cases. The cost of these cases masked an underlying reduction in the amount paid over recent years. The reduction has been driven by a Costs Settlement Policy implemented by the Office which involves negotiating with the defence in cases where costs fall to be paid with a view to settling the question of costs without the necessity of having the

matter determined by the Taxing Master. This, together with a change in the profile of cases coming before the High Court, has resulted in a reduction in the average cost per case. The overall average fell from €35,562 in 2009 to €23,877 in 2012. The Costs Settlement Policy has also resulted in court time savings by reducing the number of court dates and hearings.

**2.1.9** The rate of fees paid to prosecution counsel was reduced by a total of 26% over the period March 2009 to October 2011.

**2.1.10** The Office of the DPP has availed of efficiencies and economies of scale deriving from contracts entered into by the National Procurement Service in relation to the purchase of goods and services. In 2012 twelve (12) such contracts across a range of goods/services were availed of, covering supply of gas and electricity, mobile phone services, ICT equipment and consumables, foreign travel, stationery and office supplies.

**2.1.11** The Office continued its drive to enhance the efficient provision of services through the use of technology. In the final quarter of 2012 we completed work on the automation of payment of fees to counsel in Central Criminal Court cases and the system is now fully operational. This automation of Central Criminal Court fees will enable us to process payment of fees to counsel in a more timely and efficient manner.

**2.1.12** Improving business processes is another key focus for us. For many years the Office has been seeking to relocate to a single headquarters building which can accommodate its three divisions. The fact that the two legal divisions of the Office worked in separate locations inevitably led to duplication and inefficiencies that could be avoided if the two divisions were located in one building. During 2012 the Directing Division and some sections of the Solicitors Division moved to our new headquarters building on Infirmar Road together with some Administration Units. This marked the first phase of the transition to a single headquarters building. The Office

is working with OPW on plans to move the remaining sections of the Solicitors Division and Administrative Units, currently accommodated in North King Street, to Infirmar Road. When all divisions are located on the site it will facilitate streamlining of work practices and more efficient use of resources.

**2.1.13** The Office continued to implement the initiative introduced in 2010 to devolve prosecutorial decision-making in certain categories of cases from staff in the Directing Division to solicitors in the Solicitors Division. This initiative reduces duplication of effort. In 2012 a total of 191 judicial review applications were directed on by the Judicial Review Section without reference to the Directing Division. This compares to 127 applications in 2011 - an increase of 50%.

**2.1.14** During 2012 the Office participated in and contributed to a Working Group to identify and report on efficiency measures in the Criminal Justice System in respect of the Circuit Court and District Court. This group was established in November 2011 at the request of the Chief Justice, Mrs. Justice Denham and the Minister for Justice and Equality, Mr. Alan Shatter TD. The workings of the group culminated in the signing of Practice Directions for the Circuit Criminal Court in Dublin, and the Midlands and South Eastern Circuits. The purpose of the Practice Direction is to avoid unnecessary delays; to identify cases in which a plea could be entered at an earlier stage; and to facilitate commencement of trials on the trial date.

**2.1.15** The Practice Direction in Dublin came into effect on 1 January 2013. It is aimed at re-calibrating the work practices of all criminal lawyers in Dublin. There are two major changes to the way cases are dealt with:

- i) On the day of return for trial from the District Court, cases will be assigned a specific first mention date for a Friday not less than 3 weeks later, to which the accused will be remanded from the District Court. On that date, the court will fix a date for arraignment not less than 8

weeks later, by which time all usual pre-arraignment matters must be dealt with and a plea must be entered or a trial date requested.

- ii) A pre-trial hearing will take place at least four weeks prior to the trial date. Since October 2012 the Circuit Court in Dublin has been fixing (in anticipation of the Practice Direction) a pre-trial hearing date when a trial date is fixed. This in essence requires both the prosecution and the defence to more or less be at the same stage of preparation for a trial as they actually would be on the morning of a trial.

It is anticipated that the implementation of these Practice Directions will result in substantial savings for those involved in the prosecution of criminal cases.

- 2.1.16** The Civil Service Performance Management & Development System (PMDS) continued to play a key role in providing both managers and staff of the Office with an opportunity to evaluate performance against agreed targets. This assisted in ensuring that files were dealt with in a timely manner and agreed deadlines were met. The system also promoted staff development through mentoring and structured training programmes.

- 2.1.17** The Staff Mobility Programme, first introduced in 2010, offers staff opportunities to expand their work experience, in addition to providing the Office with a means of sharing knowledge and expertise across the two legal divisions of the Office. During 2012 twelve (12) staff transferred internally under the programme. Six (6) of these internal transfers were cross-divisional. This programme has proved to be a very successful initiative for both management and staff across the Office.

## Legal Environment

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- 2.1.18** The legal environment in which we operate is continuously evolving. The Office must constantly keep abreast of legal developments, both nationally and

internationally, and take account of the ongoing increase in complexity of criminal law and practice.

- 2.1.19** One of the key objectives for this Office in delivering a quality prosecution service is to ensure that staff understand the law and context of operation of the Office. While the overall training budget for the Office has been reduced considerably in the last few years, it is imperative that we ensure the continued professional development of staff.

- 2.1.20** Solicitors in the Office reached the Law Society's Continuing Professional Development (CPD) requirement in 2012. A total of 2,380 CPD points in all were accumulated. This represents an increase of 20% on the number of points awarded in 2011. This was in part due to the increase in the number of internal section meetings which were restructured to include a training element which qualified for CPD points. The Office continued to utilise internal legal expertise to facilitate training, thereby reducing expenditure on external training providers.

- 2.1.21** A total of €268,472 was invested in staff training during 2012 - representing 2% of payroll costs. This comprised an allocation of €27,294 on legal-specific training, while €43,997 was invested in attendance at seminars, conferences and training courses.

- 2.1.22** The Office organised two Legal Network Meetings for staff in the two legal divisions of the Office. These meetings are held in-house and facilitated by both internal and external lawyers with expertise in particular areas of criminal law. This year the topics covered were Current Developments in Cybercrime and a Criminal Law Update.

- 2.1.23** The Annual State Solicitors' Seminar was hosted by the Office in January 2012 and the 13th Annual National Prosecutors' Conference in May 2012. Both these events have proved to be extremely beneficial in providing opportunities for staff of this Office and those involved in the prosecution of crime on a national level to come together

on an annual basis to discuss topical issues and new legal developments. They are also a very cost effective means of providing customised Continuing Professional Development training to the broader cohort of prosecutors.

- 2.1.24** A Knowledge Management Group was established in the Office during the year to examine how legal information is currently disseminated to staff and to consider how the Office can enhance provision of and access to legal knowledge resources. The Group is chaired by the Deputy Director and comprises staff from the two legal divisions, together with staff from Policy Unit, Library & Information Service, and the Communications & Development Unit. Arising from the Group's deliberations the Office has embarked on the development of an Office Intranet which will provide a single central location for staff to easily access all information that they need to do their work.
- 2.1.25** The Prosecution Policy Unit continued work on the development of policy guidelines on specific legal issues. It also contributed to the development of internal guidelines which will provide a comprehensive resource for professional staff and will ensure a consistency of approach in dealing with particular areas of criminal law.
- 2.1.26** The Unit continued to undertake a number of internal research projects with a view to informing future internal Office policy and procedures. These included a review of pending judicial review cases; a review of files involving a specific offence category; and working with An Garda Síochána on collating and updating the Garda Charging Manual.

## Governance

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- 2.1.27** One of the factors that underpins the reliability of the information provided by the Office of the DPP is the extent to which we have developed internal control and governance procedures. The Office

places great importance on having an Audit Committee with independent members, to plan and oversee internal audits.

- 2.1.28** The Committee held three meetings in 2012. Four Internal Audit Reports were completed during the year. Areas covered in the reports were: Review of Systems of Internal Control; Payroll; Data Protection; and Procurement. There were also two progress reports completed on the status of recommendations from previous internal audit recommendations. All reports, together with the Audit Committee's Annual Report to the Office Management Advisory Committee, were forwarded to the Comptroller & Auditor General. The Office Risk Registers were also updated in 2012 and presented to the Audit Committee for comment.

- 2.1.29** In May 2012 the Office submitted a progress report to the Implementation Body set up by Government in July 2010 to oversee and verify progress by public sector organisations in implementing the provisions of the Public Service Agreement (Croke Park Agreement). Progress focused mainly on streamlining services through devolution of decision-making across the legal divisions of the Office; reduction in legal costs through implementation of a robust costs settlement policy; and efficiencies availed of through the National Procurement Service.

- 2.1.30** The 2<sup>nd</sup> Irish Language Scheme for the Office of the DPP came into effect in April 2010. Progress in relation to delivery on the commitments set out in the Scheme is monitored by Oifig an Choimisinéara Teanga. In his report in April 2012 on this Office's compliance with the Scheme, An Choimisinéara Teanga was satisfied that *"continuous and satisfactory progress is being made by the Office of the Director of Public Prosecutions in implementing the second language scheme ..... Overall it is clear to us that the Office of the Director of Public Prosecutions accommodates the Irish language in its activities, via the Language Scheme...."*

## Interaction with Other Agencies

**2.1.31** The Office of the Director of Public Prosecutions is one of a number of agencies working within the criminal justice system. It is essential to the work of this Office that we continuously strive to enhance relationships with individual stakeholder groups and develop initiatives to improve delivery of service.

**2.1.32** On a daily basis the Office of the Director of Public Prosecutions works with a number of investigative agencies from whom we receive investigation files. The vast majority of these files are submitted to this Office by An Garda Síochána. We have a close working relationship with An Garda Síochána and interact with them on an ongoing basis in the area of legal developments. Staff from this Office also deliver training to members of An Garda Síochána on a variety of legal topics on an annual basis.

**2.1.33** In the interests of ensuring a more effective and efficient prosecution service our Prosecution Policy Unit continued during 2012 to engage with a number of agencies on the development of service level agreements. The agreements assist in streamlining the submission of materials to this Office in relation to the prosecution of criminal offences and the disclosure obligations arising in such prosecutions.

**2.1.34** In November and December 2012 agreements were finalised with the Dublin Rape Crisis Centre and the Garda Síochána Ombudsman Commission respectively. Other agencies involved in this initiative are the Health & Safety Authority; the Sexual Violence Centre Cork; and One in Four.

**2.1.35** A group comprising representatives from this Office, An Garda Síochána and the Victims of Crime Office met on a number of occasions during the year to work on the development of a user-friendly guide to assist victims of crime in the preparation of Victim Impact Statements. By year end much progress had been made and the guide was published in July 2013. This

collaborative approach involving the three agencies proved to be very beneficial and will ultimately provide victims of crime with very useful information in a clear and concise format.

**2.1.36** The Office continues to facilitate students from a number of our national universities under the Student Internship Programme and other programmes, including the University of Tulsa Summer School and the NUI Galway Clinical Placement Programme. The Office's Student Internship Programme is jointly co-ordinated and managed by the Prosecution Policy Unit and the Library and Information Service in association with the National University of Ireland Galway, University College Cork, University College Dublin and Trinity College Dublin. A total of 6 students took up placements of varying lengths in the Office during the year. These initiatives provide the students with valuable practical work experience and also enable the Policy Unit to enhance its research capacity.

**2.1.37** The Office also participates in the training of trainee solicitors. During 2012 staff from this Office delivered 82 hours training to students in the Law Society of Ireland on a variety of topics including District Court Practice and Procedures; Advocacy; File Preparation; Road Traffic Acts; Evidence; Disclosure; and Sentencing.

**2.1.38** We continue to participate in and contribute to various inter-agency groups including: the Criminal Law Committee of the Law Society of Ireland; Advisory Group on Interviewing of Suspects; the DPP/Garda Liaison Group; the Advisory Group on Crime and Criminal Justice Statistics; various Courts Service User Groups; the Intergovernmental Support for Victims of Crime Project Advisory Group; the Criminal Justice Act Steering Group; the Victims Services Liaison Group; the Working Group to identify and report on efficiencies in the Criminal Justice System of the Courts; and the Expert Group - McFarlane Article 13 ECHR Implementation.



**2.1.39** The Office contributed to the development of criminal law at an international level and participated in a number of initiatives involving international organisations. We also continued to contribute to the work of international bodies and organisations including EUROJUST; GRECO; OLAF; Eurojustice; the International Association of Prosecutors; the International Society for the Reform of Criminal Law; and the International Bar Association.

**2.1.40** The Director, Claire Loftus, was invited to take over the role of President of the Consultative Forum of Prosecutors General and Directors of Public Prosecution of the member states of the European Union for the duration of the Irish Presidency of the European Union. The Presidency ran from 1 January 2013 to 30 June 2013. Preparations for this prestigious event began in 2012 and culminated in a meeting of the Consultative Forum in The Hague in April 2013 which was hosted by the Director and attended by prosecutors from the EU member states.

### Public Expectations of Service

**2.1.41** Since the Office implemented the policy on giving reasons for decisions not to prosecute in fatal cases we have dealt with 41 requests for reasons. A more detailed breakdown of this figure is given on page 43.

**2.1.42** In late 2012 an EU Directive establishing standards on the rights, support and protection of victims of crime was adopted by the Council of the European Union. The directive must be transposed into Irish law by 2015. There are a number of provisions in the directive, including the right of victims to receive information in relation to any decision not to prosecute the suspect. Further expansion of the reasons policy will now be examined in light of the EU Directive.

**2.1.43** The Office website ([www.dppireland.ie](http://www.dppireland.ie)) provides information on the work of the Office and in relation to the criminal justice system generally. In 2012 there were 27,916 unique visitors to the website, representing a 20% increase on the previous year. The

total number of visits to the site was 43,520, 61.5% of which were by new visitors. Apart from the Contacts page, the section of the site that attracted most visitors during 2012 was the Brief Guide to the Criminal Justice System.

**2.1.44** The Victims' Charter published in July 2010 by the Victims of Crime Office, Department of Justice & Equality, sets out the rights and entitlements of victims to services provided by various State agencies, including the Office of the DPP. The Charter clearly states the services that victims of crime can expect from this Office.

**2.1.45** During 2012 this Office, in compliance with the Victims Charter, delivered the following:

- When requested by a victim, we reviewed decisions we had made in relation to prosecution cases whenever possible;
- The Office dealt with 8 requests for reasons for decisions received from victims' families during 2012;
- Through induction training and mentoring programmes, the Office ensures that all staff are aware of their obligations to treat victims/witnesses with respect and take account of their personal situation, rights and dignity;
- In 2012 the Office developed Guidelines on Dealing with Victims which were circulated to all staff and to State Solicitors;
- Staff in the Office of the DPP continuously work with the Garda Síochána to ensure victims are kept informed about their case;
- Pre-trial meetings between victims and the prosecution team were offered in all appropriate cases in Dublin Circuit and Central Criminal Court cases during 2012;
- Applications for review of sentences considered to be unduly lenient were lodged in 21 cases during 2012.

**2.1.46** The 2<sup>nd</sup> Irish Language Scheme for the Office was published in April 2010 and is available on our website at [www.dppireland.ie](http://www.dppireland.ie). The scheme builds on the commitments set out in the previous scheme published under the Official Languages Act 2003. All publications produced by the Office are bilingual and the Office website is fully bilingual. During 2012 the Office dealt with 10 High Court cases in the Irish language and 3 Supreme Court cases. The Irish Language Officer also received requests for translation in relation to 4 letters, 8 e-mails and 3 case related documents. There were no telephone calls received during the year that required to be dealt with by staff on our in-house Irish Language Panel.

## 2.2 OFFICE EXPENDITURE

Chart 2.2.1 shows the breakdown of office expenditure for 2012, 2011 and 2010.

**Salaries & Wages:** This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2012 was 194.5.

**Office Expenses:** This relates to general office administration costs including purchase and maintenance of office equipment, office supplies, library costs, office premises maintenance, travel and other incidental expenses. Increased expenditure in 2012 arose primarily from costs associated with moving to new accommodation.

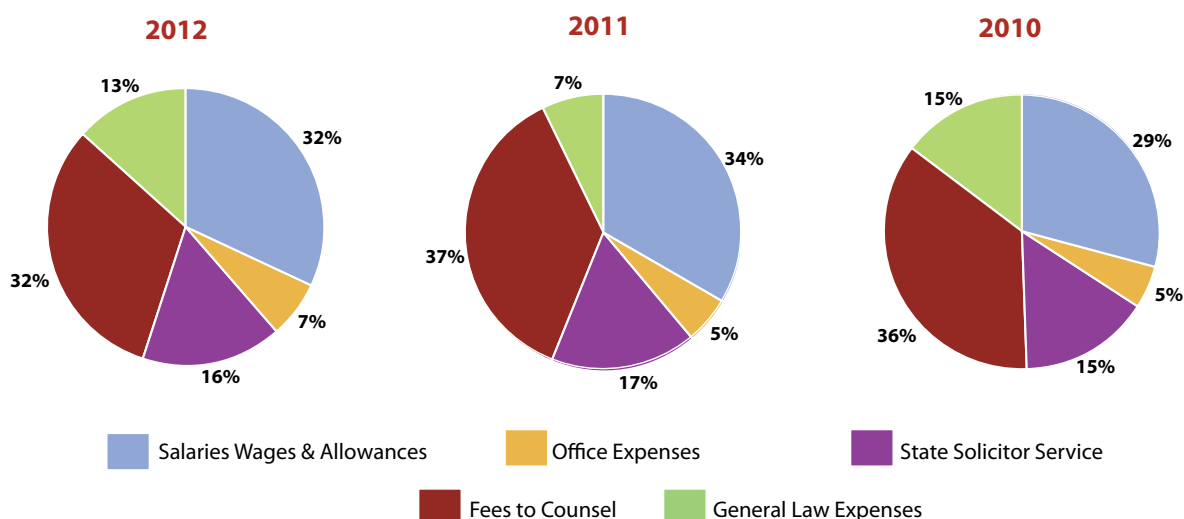
**State Solicitor Service:** This refers to payment of salaries and expenses to the 32 State Solicitors in private practice who are contracted to this Office to represent the Director in courts outside Dublin.

**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 Public Expenditure and Reform.

**General Law Expenses:** This refers to the payment of legal costs awarded by the courts in legal proceedings against the Director. Expenditure in 2012 included costs of €2.046 million incurred in settling three exceptionally expensive cases.

CHART 2.2.1: OFFICE EXPENDITURE

	2012 €	%	2011 €	%	2010 €	%
Salaries Wages & Allowances	12,433,570	32%	12,357,035	34%	12,082,779	29%
Office Expenses	2,581,245	7%	1,994,473	5%	2,085,318	5%
State Solicitor Service	6,436,710	16%	6,302,448	17%	6,321,857	15%
Fees to Counsel	12,277,163	32%	13,501,066	37%	14,734,046	36%
General Law Expenses	5,118,017	13%	2,622,289	7%	6,078,790	15%
<b>TOTAL</b>	<b>38,846,705</b>		<b>36,777,311</b>		<b>41,302,790</b>	



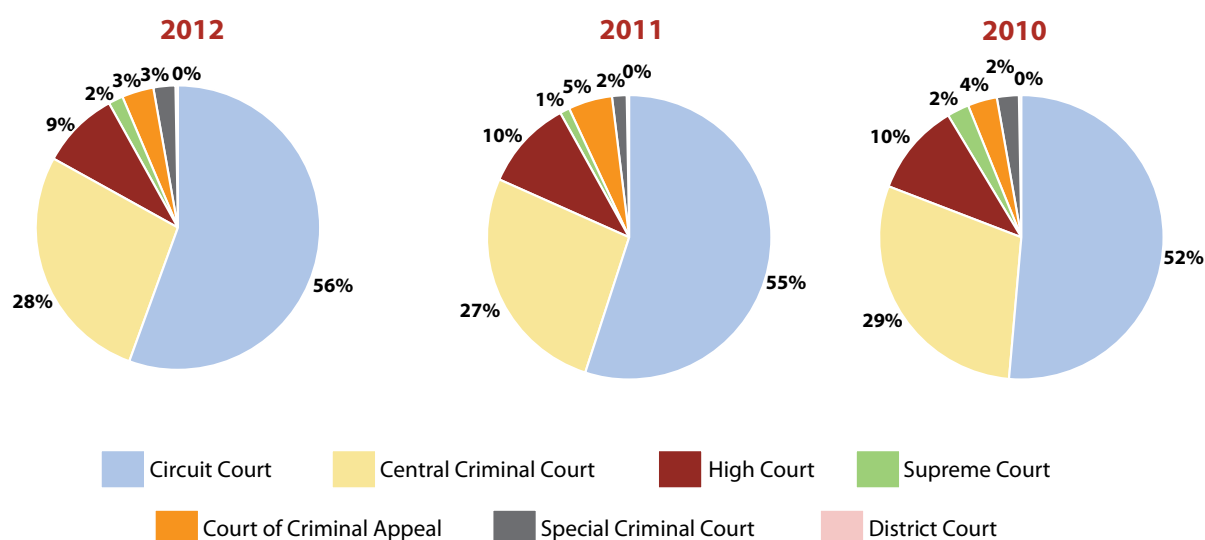
Charts 2.2.2 & 2.2.3 show a breakdown of expenditure on fees to counsel in the various criminal courts and by region in respect of the Circuit Criminal Court.

Fees paid to counsel in the Circuit, Central & Special 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.

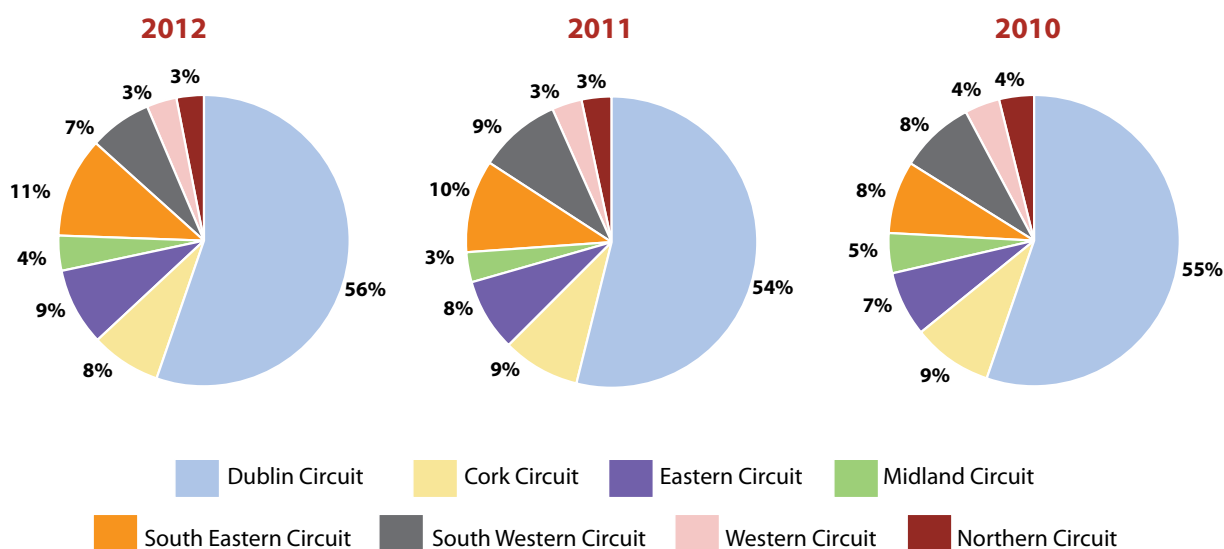
**CHART 2.2.2: FEES TO COUNSEL PAID BY COURT**

	2012 €	%	2011 €	%	2010 €	%
Circuit Court	6,832,055	56%	7,440,212	55%	7,596,660	52%
Central Criminal Court	3,389,493	28%	3,614,669	27%	4,338,447	29%
High Court	1,097,662	9%	1,389,815	10%	1,542,024	10%
Supreme Court	207,376	2%	124,711	1%	362,573	2%
Court of Criminal Appeal	415,389	3%	695,512	5%	518,596	4%
Special Criminal Court	324,105	3%	228,126	2%	341,533	2%
District Court	11,083	0%	8,021	0%	34,213	0%
<b>TOTAL</b>	<b>12,277,163</b>		<b>13,501,066</b>		<b>14,734,046</b>	



**CHART 2.2.3: FEES TO COUNSEL PAID BY CIRCUIT**

	2012 €	%	2011 €	%	2010 €	%
Dublin Circuit	3,793,304	56%	4,012,452	54%	4,202,177	55%
Cork Circuit	516,238	8%	638,650	9%	692,302	9%
Eastern Circuit	587,581	9%	607,674	8%	539,473	7%
Midland Circuit	268,423	4%	244,022	3%	346,800	5%
South Eastern Circuit	764,846	11%	767,844	10%	603,052	8%
South Western Circuit	478,994	7%	675,173	9%	630,816	8%
Western Circuit	230,683	3%	257,192	3%	305,835	4%
Northern Circuit	191,986	3%	237,205	3%	276,205	4%
<b>TOTAL</b>	<b>6,832,055</b>		<b>7,440,212</b>		<b>7,596,660</b>	



# 2.3 EXTRACT FROM APPROPRIATION ACCOUNT 2011

Account of the sum expended in the year ended 31 December 2011, 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		2011 Estimate Provision €'000	2011 Outturn €'000	2010 Outturn €'000
<b>ADMINISTRATION</b>				
<b>A.1.</b>	Salaries, Wages and Allowances	13,717	13,230	12,928
<b>A.2.</b>	Travel and Subsistence	119	101	97
<b>A.3.</b>	Training and Development and Incidental Expenses	1,115	850	937
<b>A.4.</b>	Postal and Telecommunications Services	294	241	270
<b>A.5.</b>	Office Equipment and external IT Services	917	438	494
<b>A.6.</b>	Office Premises Expenses	820	509	523
<b>A.7.</b>	Consultancy services and Value for Money & Policy Reviews	40	25	-
<b>OTHER SERVICES</b>				
<b>B.</b>	Fees to Counsel	14,000	13,501	14,734
<b>C.</b>	General Law Expenses	6,500	2,622	6,079
<b>D.</b>	Local State Solicitor Service	6,355	6,303	6,322
	<b>Gross Expenditure</b>	<b>43,877</b>	<b>37,820</b>	<b>42,384</b>
	<i>Deduct -</i>			
<b>E.</b>	Appropriations-in-Aid	614	1,043	1,031
	<b>Net Expenditure</b>	<b>43,263</b>	<b>36,777</b>	<b>41,353</b>
<b>Surplus to be Surrendered</b>			<b>€6,485,688</b>	<b>€1,887,211</b>

## 2.4 PROMPT PAYMENT OF ACCOUNTS ACT, 1997

### Late Payments in Commercial Transactions Regulations 2002

#### OPERATION OF THE ACT IN THE PERIOD 1 JANUARY 2012 TO 31 DECEMBER 2012

- 2.4.1** 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 30 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 counsel's fees within 30 days of receipt of a case report form in each case.
- 2.4.2** In the period in question, the Office made 3 late payments in excess of €317.50. The value of these payments was €1,866. The total value of late payments in the year amounted to €6,065 out of total payments of €2.84 million and interest thereon came to €948.22.

#### Statement of the Accounting Officer

- 2.4.3** The Office of the Director of Public Prosecutions is one of the organisations which are subject to the terms of the Prompt Payment of Accounts Act, 1997 and the Late Payments in Commercial Transactions Regulations 2002. The Act came into force on 2 January 1998, and since that time the Office has complied with the terms of the Act.
- 2.4.4** 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.

- 2.4.5** 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 2013

# 2.5 KEY OUTPUTS

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**2.5.1** The fundamental function of the Office of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters. The majority of cases dealt with by the Office are received from An Garda Síochána, the primary national investigating agency. However, some cases are also referred to the Office by specialised investigative agencies including the Revenue Commissioners, Government departments, the Health & Safety Authority, the Competition Authority, the Office of the Director of Corporate Enforcement, the Garda Síochána Ombudsman Commission, the Environmental Protection Agency and local authorities.

**2.5.2** The high level goal of the Office is to provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective. To do this the Office must ensure that criminal investigation files submitted to the Office are dealt with in a timely manner in accordance with the published *Guidelines for Prosecutors*.

**2.5.3** In 2011 the Estimates for a number of Votes were restructured on a Strategic Programme basis so that they included certain performance information regarding the outputs and impacts of Programme expenditure. The purpose of the restructuring was to hold public sector organisations accountable for the proposed allocation and effective utilisation of public funds.

**2.5.4** This Performance Budgeting approach was adopted by the Office of the Director of Public Prosecutions in the preparation of Estimates 2012-2013. Charts 2.5.1 and 2.5.2 overleaf set out the key outputs for the Office together with the context and impact indicators.

**NOTE:** Statistics quoted in the charts reflect the work done on prosecution files and legal proceedings during the years specified whether the files were received in those years or in previous years. For this reason the statistics quoted are not directly comparable to statistics quoted in Part 4 of this report which are compiled on the basis of the year the file was received in the Office.



**CHART 2.5.1: KEY OUTPUTS**

Public Service Activity:	2012 Outputs	2013 Output Targets
Issue directions in relation to suspects on files submitted by investigation agencies	Directions issued in relation to 13,177 suspects (13,500 - 14,000*)	Issue Directions in relation to 13,000 - 14,000 suspects
Deal with court proceedings on indictment arising out of directions to prosecute	Dealt with 3,554 new court proceedings against suspects together with ongoing prosecutions (3,500 - 4,000*)	Deal with 3,500 - 4,000 new court proceedings against suspects together with ongoing prosecutions
Directly deal with Dublin District Court prosecution files	Dealt with 1,398 files (1,500 - 2,000*)	Deal with 1,400 - 1,900 files
Handle District Court appeals, including appeals in cases prosecuted by the Garda Síochána under delegated authority	Dealt with 2,433 appeal files (2,000 - 2,500*)	Deal with 2,000 - 2,500 appeal files
Deal with High Court Bail applications and Judicial Review cases	Dealt with 2,418 Bail applications and 293 Judicial Review cases (250 - 300*)	Deal with about 2,500 Bail applications and 250 - 300 new Judicial Review cases

\* 2012 Output Target

**CHART 2.5.2: CONTEXT & IMPACT INDICATORS**

Context & Impact Indicators	2010	2011	2012
Staff employed at year end	194.4	194.5	191.4
Average time per suspect within which directions are issued (from receipt of prosecution files)	2 weeks - 44% 4 weeks - 61% 3 months - 84%	2 weeks - 44% 4 weeks - 61% 3 months - 86%	2 weeks - 45% 4 weeks - 61% 3 months - 85%
Fees paid to Counsel (% change over previous year)	€14.73 million (- 3.6%)	€13.50 million (- 8%)	€12.23 million (- 9.4%)
Law costs awarded against the DPP's Office (% change over previous year)	€6.08 million (- 16.6%)	€2.62 million (- 56.9%)	€5.12 million (+ 95.4%)

## 2.6 FREEDOM OF INFORMATION

**2.6.1** Section 46(1)(b) of the Freedom of Information (FOI) Act, 1997 provides a right of access only with regard to records which relate to the general administration of the Office. This in effect means that records concerning criminal prosecution files are not accessible under the FOI Act.

**2.6.2** The Office continues to make FOI information available as readily as possible. Our section 15 and 16 Reference Book is available on our website, [www.dppireland.ie](http://www.dppireland.ie). This publication outlines the business of the Office including the types of records kept.

**2.6.3** During 2012 a total of thirteen requests were submitted to the Office. Eight of the requests were refused under the Act and one request was withdrawn / dealt with outside of FOI. Four requests were granted/part granted. The reason for the refusals was that the records sought did not relate to the general administration of the Office.

**2.6.4** One of the requests was submitted by a journalist, while the other 12 requests were made by the general public.

**2.6.5** In the eight cases where requests were refused, only one of the requesters sought an internal review of the original decision. In this case, the original decision was upheld. This same requester then appealed the decision to the Information Commissioner who also upheld the original decision.

### Requests Received 2012

Refused under section 46(1)(b)	8
Withdrawn / dealt with outside of FOI	1
Requests Granted / Part Granted	4
<b>TOTAL REQUESTS</b>	<b>13</b>

### Requesters 2012

Journalists	1
General Public	12

### Reviews 2012

Requests for Internal Review	1
Requests to the Information Commissioner for Review	1

# 2.7 ANNUAL ENERGY EFFICIENCY REPORT 2012

## Overview of Energy Usage in 2012

**2.7.1** In 2012, the Office of the Director of Public Prosecutions consumed 1,633.01 MWh of energy. This represents an overall marginal increase of 4.2% on our energy usage in 2011. The increase reflects the relocation of 130 staff in the second half of 2012 from modern office accommodation to well established state owned listed buildings on their own grounds at Infirmary Road. These buildings are less energy efficient by virtue of the period in which they were constructed and many rooms have a greater cubic volume when compared with standard office accommodation. Also, additional energy costs arose due to the need for improved external lighting on the grounds. The total energy consumption is in respect of space heating, air conditioning, hot water, lighting, computer systems and other office equipment at our office buildings in Infirmary Road, North King Street and (until June 2012) in Merrion Street.

This figure is compiled as follows:

- 959.25 MWh of Electricity
- 673.76 MWh of Natural Gas

## Actions Undertaken in 2012

**2.7.2** During 2012, energy efficiency monitoring continued in collaboration with external consultants and maintenance contractors. Actions taken during 2012 include the following:

- Monitoring of the computerised Building Management System (BMS) continued and the decision to switch off gas boilers for extended periods resulted in some savings.

- Implementation of the ongoing energy awareness campaign including signage to encourage staff to switch off equipment wherever possible and to use stairs rather than lifts.

## Actions Planned for 2013

**2.7.3** Actions planned for 2013 include the following:

- Survey new property and implement building insulation measures where feasible.
- Upgrade external lighting with more energy efficient fittings.
- Water heaters to be connected to BMS or at least linked to timer controls.
- Continuation of awareness campaign using signage and posters.
- Information sessions to be arranged for staff using the services of the OPW appointed energy management consultant.
- Review of night time electricity usage.

# PART 3:

## LEGAL DEVELOPMENTS

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# 3.1 LEGAL DEVELOPMENTS

## 2012

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### INTRODUCTION

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- 3.1.1** This chapter gives a brief outline of some of the Court decisions during the past year which are important or interesting or have precedent value for prosecution work. Space does not permit a comprehensive review of all the case law from 2012 but the cases mentioned should give the reader an idea of some of the issues which arise from time to time in the prosecution of offences.

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### JUDICIAL REVIEW CASES

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#### **Validity of warrants under section 29 of the Offences Against the State Act, 1939**

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*Ali Charaf Damache v. Director of Public Prosecutions, Ireland and the Attorney General* [2012] IESC11

- 3.1.2** The appellant was suspected of involvement in an alleged conspiracy to murder a Swedish cartoonist. The Detective Superintendent who had been involved in the investigation granted a search warrant under section 29 of the Offences Against the State Act 1939, to enable the applicant's home to be searched. Various items were removed from the appellant's home. The appellant was then charged with an offence contrary to section 13 of the Post Office (Amendment) Act 1951, as amended, with regard to sending by telephone a message of a menacing nature. The appellant challenged the issuance of the search warrant by a Garda who was not a neutral party. He sought a declaration that section 29 of the 1939 Act as amended, was repugnant to the Constitution

in that it permitted the issuance of a warrant by a person who was not an impartial decision maker. The Court decided that the issuing of a search warrant is an administrative act which does not require to be issued by a judge but stressed the decision must be carried out in a judicial fashion. It considered that a search warrant ought to be issued by an independent person. In this case the warrant was issued by a member of the Gardaí who had been involved in the investigation and so it could not be said that he was independent in dealing with the search warrant. The Court stressed that the fact that it was the suspect's home which was being searched was an important factor in its decision. Thus the Supreme Court found that section 29 of the Offences Against the State Act 1939, was unconstitutional.

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#### **Aggressive Begging / Burden of Proof**

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*Director of Public Prosecutions v. FR and Director of Public Prosecutions v. JM* [2012] IEHC 19

- 3.1.3** The defendants had been prosecuted separately for breach of section 2 of the Criminal Justice (Public Order) Act 2011, with regard to begging in a harassing or intimidating fashion. Begging was defined in the Act as occurring where a person sought money or goods from another person without a licence, permit or authorisation. In each case the defence claimed that the prosecution had not proven that the accused did not have a licence, permit or authorisation to beg and sought to have the case dismissed. Cases were stated to the High Court which considered whether the burden of proof was transferred to the accused in a case where knowledge of whether he/she had a permit, licence or authorisation was peculiarly within their

knowledge. The Court considered the basic principles of criminal law in this jurisdiction that a defendant is not asked to prove his/her innocence but, except where there are statutory provisions to the contrary, the burden of proof is always on the prosecution to prove his/her guilt beyond reasonable doubt. The court held that the burden of proof remained on the prosecution to establish a *prima facie* case that the begging took place without legal authorisation. It is then a matter for the accused to raise a reasonable doubt as to whether the begging was in fact lawful.

### Offence of buggery abolished

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*Director of Public Prosecutions v. Judge Mary Devins and M. O'M.* [2012] IESC 7

- 3.1.4** The appellant was prosecuted *inter alia* for one count of buggery alleged to have occurred in 1970. The Court considered that the offence of buggery was a common law offence which had been abolished by section 2 of the Criminal Law (Sexual Offences) Act 1993. No transitional provisions had been provided in that Act. Therefore the question arose whether the appellant could be prosecuted for an offence which had allegedly occurred in 1970 but which had been abolished in 1993. Section 1 of the Interpretation (Amendment) Act 1997, would have cured the matter except that it could not be applied retrospectively. Therefore there was a *lacuna* in the law with regard to the offence of buggery between 1993 and 1997. The Court noted that there was no specific reference to the offence of buggery in the Interpretation (Amendment) Act 1997, and thus the legal position of the appellant was not clear. The Court noted the provisions of section 1(4) of the Act which provided that where provisions of the section conflict with the constitutional rights of a person appropriate limitation should be applied to the provisions. It was further noted that the provision in the Interpretation (Amendment) Act 1997, which purported to cure the problem if applied to the appellant would in fact be applied retrospectively. The Court decided that the appellant had a constitutional right not to be prosecuted for an offence which had been abolished by the Oireachtas without any

transitional or saving provisions. It would be a breach of the appellant's constitutional right to be tried in due process of law to apply the provisions of the Interpretation (Amendment) Act 1997, retrospectively. The Court thus prohibited the prosecution of the appellant for the offence of buggery.

### Sections 3 and 5 of the Criminal Law (Sexual Offences) Act 2006 - gender discrimination

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*M.D. (minor) v. Ireland, the Attorney General and the Director of Public Prosecutions* [2012] IESC 10

- 3.1.5** The plaintiff had challenged the constitutionality of the provisions of sections 3 and 5 of the Criminal Law (Sexual Offences) Act 2006. He argued that the provisions were discriminatory since only under age males would be liable to prosecution under those provisions. However, the Court took the view that the Act does in fact make both sexes liable for commission of most of the offences in the Act and that a female is exempted from criminal liability when the offence involved is one of sexual intercourse but she is not exempted from other sexual offences. In regard to section 5 of the Act the court decided that the Oireachtas was entitled to decide social policy and had made an objective decision to adopt this social policy as a means of protecting young girls from pregnancy. The Court rejected the assertion that the provisions were unconstitutional.

### Right to silence

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*Director of Public Prosecutions v. Christian Roibu* [2012] IEHC 421

- 3.1.6** The appellant was convicted in the District Court of criminal damage for having broken a window. His defence was that it was not he but another man who had broken the window. Despite objections from the defence the District Court judge permitted the prosecuting Garda to ask the accused in cross examination why he had not told the Gardaí that someone else had broken the window. He was directed to answer the question by the judge. The

Court found that the decision to allow the question to be put to the accused and the judge's instruction to him to answer the question infringed his right to silence. For this and other reasons the Court decided that the prosecution of him should be dismissed.

## Delay

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### *Patrick Enright v. Director of Public Prosecutions and Judge Carroll Moran [2012] IESC 54*

- 3.1.7** The applicant was prosecuted for ten counts of forgery alleged to have been committed on various dates in 1994. He was charged in August 1996. Both the District Court judge and the local State Solicitor had recused themselves from the case as they each knew the applicant, so the case was assigned to another judge and to a State Solicitor from another area. As the judge assigned to the case was also sitting in another area the matter was adjourned on several dates from 22 October 2008 to 4 November 2009. The new State Solicitor assigned was ill. Neither the prosecution nor the defence requested the assignment of a different judge or State Solicitor to take over the matter. Finally on 7 December 2009 the appellant made an application to the judge to have the proceedings dismissed on the basis of delay. On 1 February 2010 the District Court judge ruled against the appellant and the matter was adjourned to 26 February 2010 to take depositions. The appellant was then returned for trial and the matter appeared a number of times in the list for fixed dates until on the 5 January 2011 the trial was fixed for 5 April 2011. The application for Judicial Review seeking an order to prohibit the DPP from proceeding with the prosecution on the basis of delay was applied for on 28 February 2011. The Court found that there was blameworthy delay on the part of the prosecution. However whilst noting that the prosecution could have taken action to remedy some of the problems which had arisen, the Court recognised that the defence could have done so also. The Court reviewed the case law on delay to decide whether the blameworthy prosecutorial delay required that the prosecution be prohibited. The Court noted that it was accepted that the

delay had caused no actual prejudice to the appellant. Furthermore, no problem such as faulty recollection by witnesses or identification arose as the case was mainly dependent on documentary evidence. Therefore, the Court found there were no factors warranting prohibition.

The appellant had also brought proceedings to the European Court of Human Rights alleging violation of his rights under Article 6 of the Convention of Human Rights because of the delay in prosecuting the matter, and under the auspices of the Court he and the Government of Ireland reached a friendly settlement of the case. The Court found that even a finding of a breach of European Human Rights Convention that there was a violation of the right to an expeditious trial would not necessarily mean that a trial would also be unfair. The Court dismissed the applicant's appeal.

## Equality of treatment

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### *Mona Lisa Brehuta v. District Judge John Coughlan and Director of Public Prosecutions [2012] IEHC 498*

- 3.1.8** The applicant and two companions were separately convicted of offences of deception for similar crimes contrary to section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001. Her two companions who were not employed were given the benefit of the Probation Act and thus no conviction was registered against either of them. The applicant was working and earning €350.00 per week. She was convicted and a fine of €500.00 was imposed. She applied by way of Judicial Review to have the conviction and fine quashed on the basis that she should have been sentenced in the same way as her companions were for the same offence. Having considered the submissions and the case law the Court found that there would have been no issue if each of the three had been convicted and the applicant had been given a different sentence because she was working and could afford to pay a fine. However, the Court found that persons similarly situated must be similarly treated and that it would leave any reasonable person with a feeling that an injustice had

occurred if two of the three accused left court without a conviction (the effect of the dismissal under the Probation Act) and the third was convicted purely because she was employed. In essence the Court found that the factor in determining whether all three should have their charges dismissed or convicted could not be whether one of them was employed. The court found that it could not see any relevant distinction between the applicant and her two companions such as to justify her not receiving the benefit of the Probation Act as her two companions did. The Court therefore granted an order of *certiorari* and quashed the order of conviction.

### Breath tests - section 12 of the Road Traffic Act 1961

*Director of Public Prosecutions (at the suit of Garda Conor Byrne) v. Joseph Healy, High Court 22 October 2012 – ex tempore judgement*

- 3.1.9** This was an appeal by way of Case Stated to a conviction under section 12 (2) of the Road Traffic Act 1961, as amended. The accused asserted in the District Court that he had been stopped for not wearing a seat belt and that the Garda had then utilised section 12 to do a roadside breath test. The District Court judge decided that the Garda had improperly demanded a road side breath test under section 12 of the Road Traffic Act 1961, as amended, in circumstances where the only opinion the Garda had formed was that the accused was not wearing a seat belt. The High Court found that the judge was not correct in his finding and was not correct in dismissing the prosecution.

### Specified person as per section 4 of the Road Traffic Act 2010

*Director of Public Prosecutions (at the suit of Garda Janice Catherine O'Neill) v. John Kelly [2010] IEHC 540*

- 3.1.10** The High Court found that it was not an essential proof where a person was prosecuted for a breach of section 4(4)(a) of the Road Traffic Act 2010 for the prosecution to show

that he/she was a "specified person" within the meaning of section 3 of the Act. For a conviction under section 4 the prosecution must prove that the defendant was driving within the specified time period and that at that time, his/her breath was in excess of 22 micrograms of alcohol per 100ml of breath. Any person, whether a specified person or not, may be convicted under the section if the case was proven. However, if a person is being prosecuted as a specified person then the prosecution must prove that the defendant was a specified person driving in excess of 9 micrograms of alcohol per 100ml of breath. The Court therefore found that the special category was included in the general category. The Court rejected the concept that a defendant could defeat a prosecution of himself/herself by asserting that the prosecution should have proven that he/she was or was not a specified person.

## COURT OF CRIMINAL APPEAL

### Appeal against sentence – 18 years affirmed

*Director of Public Prosecutions v. Michael Byrne [2012] IECCA 72*

- 3.1.11** Mr. Byrne was prosecuted *inter alia* for possession of heroin to the value of €6.2m contrary to section 15A of the Misuse of Drugs Act 1977, as amended. He pleaded not guilty and defended himself by giving evidence on his own behalf. In sentencing him to eighteen years imprisonment, the trial Judge indicated there could be little room for sympathy for an accused who got into the witness box and perjured himself. The appellant claimed that he had been penalised for defending the case and that in any event the sentence was excessive for the offence involved. The Court decided that as far as his first ground of appeal was concerned, the case was indistinguishable from that of *The People (Director of Public Prosecutions) v. Daly* [2011] IECC A104. The Court considered that the trial Judge had been very careful to ensure that the accused would not be penalised for pleading not guilty and



for defending each and every point in the case. The Court considered that the Judge's comments must therefore be construed as meaning that the accused was not entitled to the somewhat more sympathetic treatment that an accused who had pleaded guilty and exhibited contrition might receive.

In regard to his second ground of appeal the Court noted the provisions of section 15A of the Misuse of Drugs Act 1977, as amended, which provided for a penalty of imprisonment for life and a minimum sentence of not less than ten years save in exceptional and specific circumstances. The Court noted that there was no such exceptional circumstances in the case and that the trial court was therefore obliged to impose a sentence of at least ten years. The Court further found there were a number of aggravating factors in the case. The Court viewed the case of *The People (Director of Public Prosecutions) v. Long* as being relevant and further noted that in the case of *Daly* above, it had upheld a sentence of twenty five years imprisonment for the possession of cocaine worth over €108m. The Court decided that application of the extensive analysis of sentencing policy in the case of *Long* did not disclose any grounds for calling into question the sentence imposed in this case. To the contrary, the Court felt it lent support to it.

### Undue leniency – sentence increased

#### *Director of Public Prosecutions v. Gary Kinsella* [2012] IECCA 73

- 3.1.12** The respondent, Gary Kinsella, was charged with rape, threatening to kill and assault causing harm on 7 August 2008. The first two trial dates had to be vacated and on the third occasion the complainant gave her evidence before the accused pleaded guilty. He was sentenced to a total of eight years imprisonment with the final year to be suspended. The Director of Public Prosecutions applied for a review of the sentence on the grounds of undue leniency.

The Court noted that the trial Judge had approached the question of sentencing in a clear and structured way but the Court felt

that the starting point of eight years was low and that the suspension of the final year was generous in the circumstances. The Court referred to the requirement that the stage in the proceedings when an accused pleads guilty should be taken into consideration in giving credit for a guilty plea. As the accused had pleaded very late in the day in the face of a very strong case, the Court felt that very limited credit should be given. The Court further considered that the trial Judge's view that the case was at the lowest end of the scale of serious offences was an error in principle and the sentence was unduly lenient in the circumstances. The Court therefore increased the sentence on the accused to one of ten years, with the last six months to be suspended on conditions.

### Sentencing for tax / social welfare offences

#### *Director of Public Prosecutions v. Paul Murray* [2012] IECCA 6

- 3.1.13** The appellant committed a number of social welfare offences and obtained just under €249,000 over several years by claiming various allowances under nine different identities. He was sentenced to 12.5 years. When he was arrested in October 2010 many documents supporting false identities were found in his possession including a false passport. The Court considered it to be to his credit that he made admissions to and was co-operative with the Gardaí, and that he pleaded guilty at an early stage thus sparing the State the costs of a lengthy trial. On the debit side it was noted that only a small amount of money had been repaid. Also he had previously been convicted of social welfare fraud in the United Kingdom around 1993. He had caused great embarrassment to members of his family whose identities he had used. The Court considered that the totality principle was really a sub-set of the wider proportionality principle and that while a sentence of six months imprisonment might well have been justified in the case of each individual social welfare fraud, that it did not follow that just because the appellant had been convicted of twenty four similar social welfare frauds the sentence

imposed should then come to twelve years and six months. The Court considered the sentence infringed the totality principle and that a sentence of that gravity was generally reserved for serious offences against the person. Nevertheless, it viewed the appellant's culpability as considerable and took into account as aggravating factors the fact that he stole the identities of his siblings and others and that important public documents such as passports and driving licences were falsified. The Court considered that the overall starting sentence should be one of nine years and reached this by convicting on three of the twenty five counts of social welfare fraud and imposing a sentence of three years on each of them to run consecutively, the final year to be suspended. The sentence for the passport offence was to run concurrently. The other counts were taken into consideration.

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## HABEAS CORPUS & BAIL APPLICATIONS

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### Adequacy of notice in criminal proceedings is an issue which can be dealt with by way of an Article 40.4.2 enquiry

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*Gary Bailey v. Governor of Mountjoy Prison* [2012] IEHC 366

- 3.1.14** The applicant was convicted of various road traffic offences and was sentenced to four months imprisonment which he appealed. On 15 July 2012 he learned that there was a warrant for him and he presented himself to the relevant Garda Station where the committal warrant was executed and he was conveyed to prison. It transpired that his appeal had been dealt with on 13 June 2012 and there being no appearance by or on behalf of the appellant the District Court Order was affirmed. The applicant applied for *habeas corpus* on the basis that neither he or his solicitor was notified of the hearing date for the Appeal. The respondent raised a preliminary jurisdictional point with regard to whether the application should be by way

of Judicial Review rather than *habeas corpus* and relied on the decision in the case of *McSorley*. The Court reviewed the decisions of the Supreme Court in that case and in the cases of *Sheehan* and *McDonagh*. The Court concluded that *McSorley* was a singular and exceptional case confined to cases where the conduct of the Judge is impugned to the extent that proceeding by way of Judicial Review was necessary to permit the Judge to offer his observations. The Court noted that insofar as *McSorley* established a rule that relief under Article 40.4.2 of the Constitution was only available where the unlawful custody was obvious, it had not been followed by the Supreme Court either before or after and thus the Court felt it was not bound by it. The Court also considered that such a rule would substantially reduce the scope of the remedy in Article 40.4.2, a remedy which the Court viewed as central to the workings of a free society and cited *Kafka* in support of that view. The Court rejected the respondent's arguments and proceeded with the enquiry under Article 40.4.2 of the Constitution.

### Unlawfulness of conviction following *Damache* / proof of Director's consent to trial in the ordinary courts

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*Michael O'Callaghan v. Governor of Cork Prison* [2012] IEHC 325

- 3.1.15** The applicant was sentenced to 10 years imprisonment for robbery with a firearm. Evidence connecting him to the robbery came from DNA evidence obtained from a cigarette butt found on a search of his home under section 29 of the Offences Against the State Act 1939. Just over a year after his conviction the Supreme Court held in the case of *Ali Charaf Damache v. Director of Public Prosecutions and Attorney General* that section 29 of the Offences Against the State Act 1939, was unconstitutional. The applicant applied for *habeas corpus* on the basis that his conviction had been rendered unlawful as a result of the decision in the *Damache* case. He had an appeal pending to the Court of Criminal Appeal. However the Court found that even if he could successfully

avail of the *Damache* point on his appeal, and even if the exclusionary rule demanded the exclusion of the evidence, it could not be said that any unconstitutionality was so central to the conviction that it rendered it 'wanting in the fundamental legal attributes' under the Constitution as per Henchy J. in the *The State (Royle) v. Kelly* [1974] I.R. 259, 26.

The applicant also contended that there was no proof that the DPP had consented to the trial of the firearms offence in the ordinary courts as was required for trial there, the offence being a scheduled offence to which section 45(2) of the Act of 1939 applied. The Court cited the provisions of section 4(3) of the Prosecution of Offences Act 1974 and noted that in the Circuit Court prosecuting Counsel had told the Court that evidence of the Director's consent had been given in the District Court and also noted that the Circuit Court Judge had accepted this. The Court rejected the applicant's application for release.

# PART 4:

## STATISTICS

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# STATISTICS

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## Explanatory Note in Relation to Statistics

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- 4.1** The statistics outlined in this report have been compiled from the Office's electronic Case, Document Management and File Tracking system.
- 4.2** The system operates on an integrated basis where all elements of a case, from the initial direction process to an appeal in the Court of Criminal Appeal, have the same case reference, providing a snapshot picture of all the different elements of a case at one glance.
- 4.3** Part 4 is broken down into four distinct sections:
- Charts 1 to 5 (Part 4.1) relate to the receipt of files in the Office and include details on the types of directions made;
  - Charts 6 to 10 (Part 4.2) provide details of the results of cases prosecuted on indictment by the Director in respect of files received in the Office between 2009 and 2011.
  - Charts 11 to 13 (Part 4.3) relate to applications to the Courts for review of sentence on grounds of undue leniency; confiscation and forfeiture of criminal assets; and European Arrest Warrants.
  - Chart 14 (Part 4.4) provides details of requests for mutual legal assistance processed by the Office of the DPP.
- 4.4** All the yearly demarcations in the statistical tables refer to the year the file was received in the Office. The reason for going back so far in charts 6 to 10 is to take account of the time difference between a decision to prosecute being made and a trial verdict being recorded. If statistics were to be provided in respect of

2012 case outcomes, a large proportion of the cases would still be classified as 'for hearing' and the statistics would have little value. Cases heard within a short period of being brought are not necessarily representative.

- 4.5** In this report we have attempted in most instances to include updated versions of the data set out in previous Annual Reports in order to give a fuller account of the progress made since that data was previously published. Because of the continuous change in the status of cases - for example, a case which was pending at the time of a previous report may now have concluded - information given in this report will differ from that for the same cohort of cases in previous reports. In addition, data from two different years may not be strictly comparable because as time goes on more cases are completed so that information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated in June 2013.

- 4.6** Caution should be exercised when comparing these statistics with statistics published by other organisations such as the Courts Service or An Garda Síochána. The statistics published here are based on our own classification and categorisation systems and may in some cases not be in line with the classification systems of other organisations.

# 4.1 PROSECUTION FILES RECEIVED

Chart 1 shows the total number of prosecution files received by the Office of the Director of Public Prosecutions from 2002 to 2012.

The chart does not include work undertaken by the Office in relation to other matters not directly related to criminal prosecution files such as: requests for legal advice from the Garda Síochána, local state solicitors or other agencies; policy related matters; or queries of a general nature.

**CHART 1: TOTAL PROSECUTION FILES RECEIVED**

YEAR	FILES
2002	13,963
2003	14,046
2004	13,903
2005	13,738
2006	15,279
2007	15,446
2008	16,144
2009	16,074
2010	15,948
2011	16,127
2012	15,289

The Solicitors Division of the Office of the Director of Public Prosecutions provides a solicitor service to the Director and acts on her behalf. The division also deals with cases which do not require to be referred to the Directing Division for direction.

Chart 2 represents the number of cases dealt with solely within 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.

The Solicitors Division also deals with judicial review applications. While some of these applications are dealt with solely within the Solicitors Division, others require to be forwarded to the Directing Division for direction. However, because the dedicated Judicial Review Section is based in the Solicitors Division the total number of judicial review applications dealt with are included in this chart. Judicial reviews may be taken by the Director or be taken against her.

**CHART 2: FILES DEALT WITH BY SOLICITORS DIVISION**

	2012	%	2011	%	2010	%
District Court Prosecution Files	1333	21%	1736	25%	1979	29%
Appeals from District Court to Circuit Court	2433	38%	2306	34%	2177	32%
High Court Bail Applications	2418	37%	2545	37%	2316	34%
Judicial Review Applications	293	4%	264	4%	308	5%
<b>TOTAL</b>	<b>6477</b>		<b>6851</b>		<b>6780</b>	

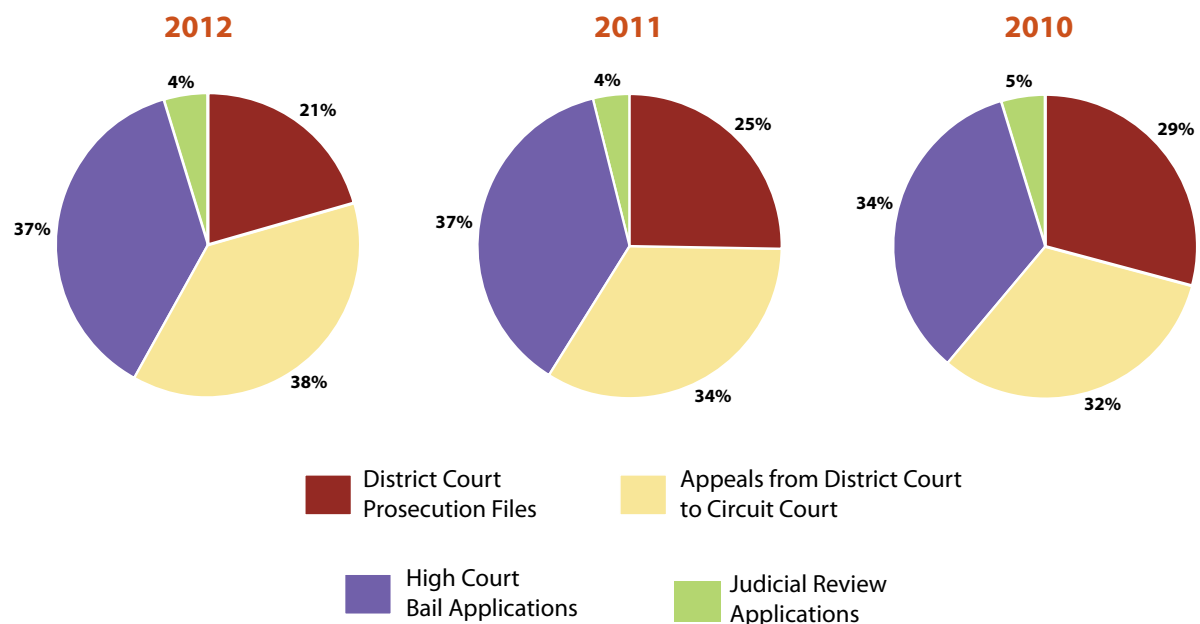
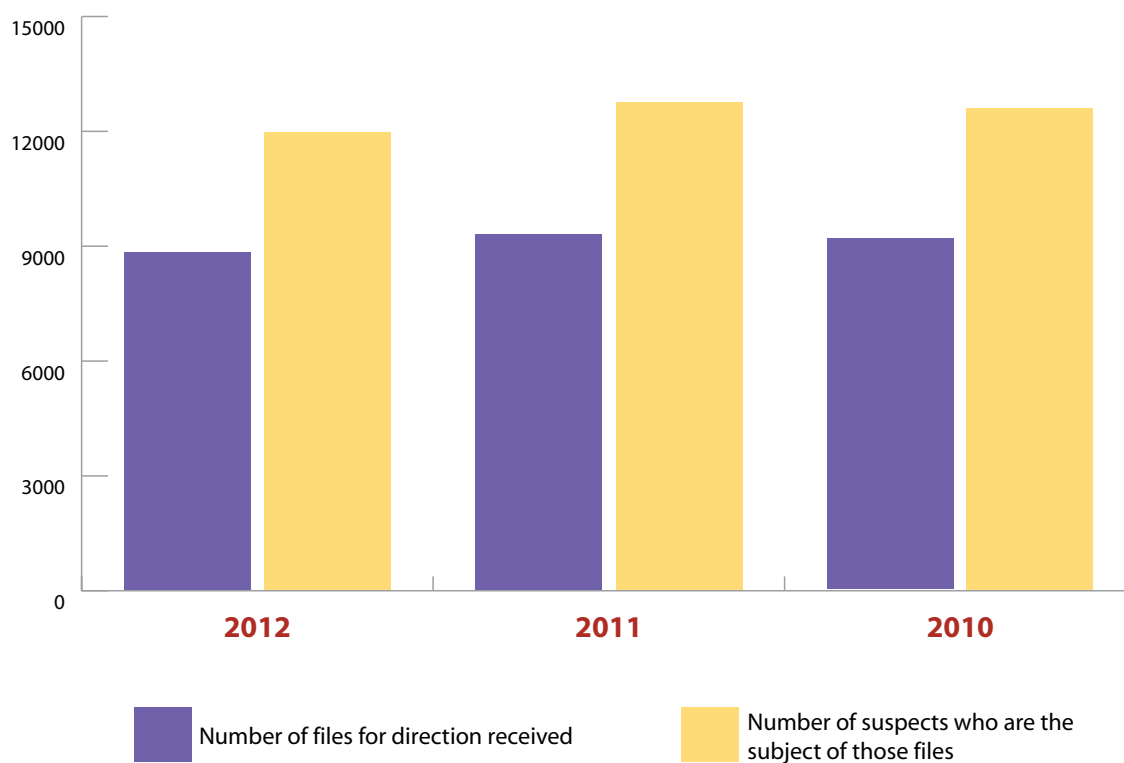


Chart 3 represents the number of files received in which a decision to prosecute or not to prosecute must be taken. The chart compares the number of files received with the number of suspects who are the subject of those files. Many files relate to more than one suspect and to treat such a file as a single case can give a misleading impression of the workload of the Office. It is important, therefore, to look at the total number of suspects as well as the total number of files.

**CHART 3: BREAKDOWN OF FILES RECEIVED FOR DECISION WHETHER TO PROSECUTE**

	2012	2011	2010
Files received for decision whether to prosecute	8812	9276	9168
Number of suspects who are the subject of those files	11942	12728	12575





The following chart shows a breakdown of the disposal of files received in the Directing Division in 2010, 2011 and 2012 (as of June 2013). The Garda Síochána and specialised investigating agencies submit files either directly to our Solicitors Division or to 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.

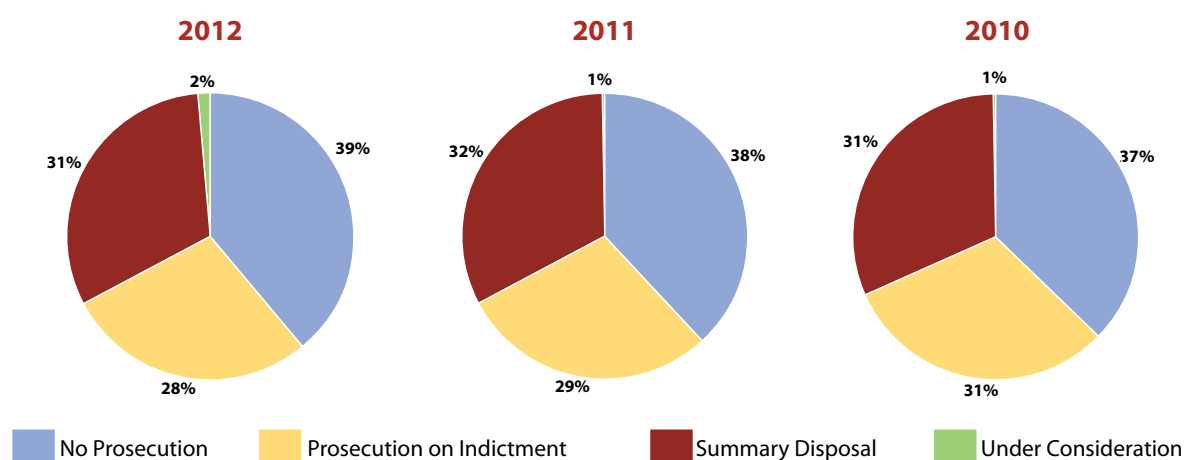
**Summary Disposal:** The offence is to be prosecuted in the District Court.

**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.

**NOTE:** The figures for 2010 and 2011 have been updated since the publication of previous Annual Reports. The reduction in the files 'Under Consideration' figures compared with those given in previous years reflect developments on those files since then. 'Prosecutions on Indictment' include those cases in which defendants elected for trial by jury and cases where the judge of the District Court refused jurisdiction, even though the Director initially elected for summary disposal.

**CHART 4: DISPOSAL OF DIRECTING DIVISION FILES BY NUMBER OF SUSPECTS SUBJECT OF FILES RECEIVED**

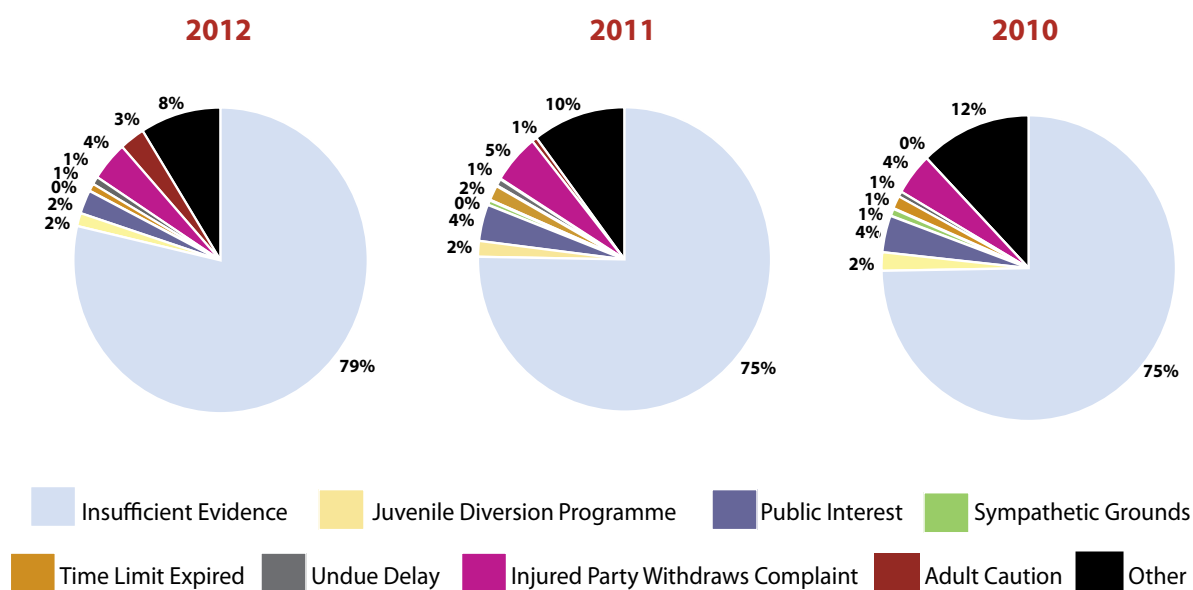
Direction Made	2012	%	2011	%	2010	%
No Prosecution Directed	4674	39%	4847	38%	4691	37%
Prosecution on Indictment Directed	3379	28%	3732	29%	3916	31%
Summary Disposal Directed	3744	31%	4118	32%	3949	31%
<b>TOTAL OF FILES DISPOSED</b>	<b>11797</b>	<b>98%</b>	<b>12697</b>	<b>99%</b>	<b>12556</b>	<b>99%</b>
Under Consideration	145	2%	31	1%	19	1%
<b>TOTAL</b>	<b>11942</b>		<b>12728</b>		<b>12575</b>	



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). 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.

**CHART 4A: BREAKDOWN OF MAIN REASONS FOR A DIRECTION NOT TO PROSECUTE**

Main Reasons for No Prosecution	2012	%	2011	%	2010	%
Insufficient Evidence	3678	79%	3656	75%	3514	75%
Juvenile Diversion Programme	72	2%	80	2%	95	2%
Public Interest	113	2%	195	4%	179	4%
Sympathetic Grounds	1	0%	21	0%	37	1%
Time Limit Expired	37	1%	87	2%	61	1%
Undue Delay	36	1%	29	1%	31	1%
Injured Party Withdraws Complaint	192	4%	256	5%	212	4%
Adult Caution	137	3%	31	1%	1	0%
Other	408	8%	492	10%	561	12%
<b>TOTAL</b>	<b>4674</b>		<b>4847</b>		<b>4691</b>	



In October 2008 the Director announced a change in policy on the giving of reasons for prosecutorial decisions not to prosecute. The policy was introduced on a pilot basis whereby reasons for a decision not to prosecute in a case involving a death are given to the family or household of a victim at their request. Prior to this change in policy, reasons for decisions not to prosecute were given to the Garda Síochána or State Solicitor but were not made public. The policy applies to decisions not to prosecute, or to discontinue a prosecution made in respect of offences involving a death where the alleged offence occurred on or after 22 October 2008.

Since the introduction of the policy a total of 41 requests were received, 65.8% of which related to fatal road traffic cases. The following chart outlines the outcomes of those requests.

**CHART 4B: BREAKDOWN OF REQUESTS FOR REASONS RECEIVED FROM OCTOBER 2008 TO JUNE 2013**

Detailed reasons given	Request for Reasons Declined	Request Withdrawn	Pending	TOTAL
35	3	1	2	41

Chart 4D is a breakdown of directions to prosecute on indictment, by the county in which the offence was committed. It includes cases directed to be heard in the Circuit Criminal, Central Criminal and Special Criminal Courts. Please note that a number of cases are still 'Under Consideration' (see Chart 4). These include cases where a file was received but further information was required. It is not possible to determine how many of these cases may eventually result in a direction to prosecute on indictment.

**CHART 4D: BREAKDOWN OF NUMBER OF PROSECUTIONS ON INDICTMENT DIRECTED PER COUNTY OF OFFENCE**

	Population				Population				Number of Prosecutions on Indictment Directed per County					Cases per 1,000 Persons				3 Year Rolling Average		
	2012*	2011*	2010*	2009*	2008*	2012	2011	2010	2009	2008	2012	2011	2010	2009	2008	2012	2011	2010	2009	2008
<b>Carlow</b>	54,966	54,612	54,868	54,245	53,295	36	44	49	37	38	0.65	0.81	0.89	0.68	0.71	0.78	0.79	0.76	0.76	0.76
<b>Cavan</b>	72,616	73,183	68,420	68,598	67,300	30	37	45	42	44	0.41	0.51	0.66	0.61	0.56	0.53	0.59	0.61	0.61	0.61
<b>Clare</b>	117,435	117,196	115,121	114,937	114,291	79	100	115	108	82	0.67	0.85	1.00	0.94	0.38	0.84	0.93	0.77	0.77	0.77
<b>Cork</b>	520,333	519,032	502,193	502,116	499,481	328	403	391	443	381	0.63	0.78	0.78	0.88	0.16	0.73	0.81	0.61	0.61	0.61
<b>Donegal</b>	159,888	161,137	157,427	157,836	154,849	61	59	97	71	87	0.38	0.37	0.62	0.45	2.46	0.45	0.48	1.18	1.18	1.18
<b>Dublin</b>	1,262,900	1,273,069	1,207,300	1,211,501	1,217,800	1355	1565	1698	1751	1746	1.07	1.23	1.41	1.45	0.07	1.24	1.36	0.97	0.97	0.97
<b>Galway</b>	246,175	250,653	240,630	241,245	238,282	123	100	97	110	89	0.50	0.40	0.40	0.46	7.33	0.43	0.42	2.73	2.73	2.73
<b>Kerry</b>	145,867	145,502	145,907	145,884	145,119	114	130	93	111	65	0.78	0.89	0.64	0.76	0.61	0.77	0.76	0.67	0.67	0.67
<b>Kildare</b>	213,881	210,312	209,360	205,989	201,677	126	125	137	133	91	0.59	0.59	0.65	0.65	0.32	0.61	0.63	0.54	0.54	0.54
<b>Kilkenny</b>	96,037	95,419	95,417	94,334	92,681	47	68	64	60	45	0.49	0.71	0.67	0.64	0.98	0.62	0.67	0.76	0.76	0.76
<b>Laos</b>	81,868	80,559	72,824	72,105	71,092	68	59	31	35	31	0.83	0.73	0.43	0.49	0.63	0.66	0.55	0.51	0.51	0.51
<b>Leitrim</b>	31,552	31,798	30,948	31,028	30,441	8	14	9	26	17	0.25	0.44	0.29	0.84	1.02	0.33	0.52	0.72	0.72	0.72
<b>Limerick</b>	192,200	191,809	190,974	190,668	189,598	116	169	210	166	157	0.60	0.88	1.10	0.87	0.09	0.86	0.95	0.69	0.69	0.69
<b>Longford</b>	39,634	39,000	37,348	36,979	36,459	41	43	68	28	30	1.03	1.10	1.82	0.76	4.31	1.32	1.23	2.29	2.29	2.29
<b>Louth</b>	121,944	122,897	118,946	119,255	116,998	116	103	99	75	101	0.95	0.84	0.83	0.63	0.26	0.87	0.77	0.57	0.57	0.57
<b>Mayo</b>	128,304	130,638	128,629	128,958	127,373	86	74	85	95	68	0.67	0.57	0.66	0.74	0.79	0.63	0.65	0.73	0.73	0.73
<b>Meath</b>	187,260	184,135	182,952	180,006	176,238	62	82	86	64	69	0.33	0.45	0.47	0.36	0.39	0.42	0.42	0.40	0.40	0.40
<b>Monaghan</b>	60,014	60,483	59,862	60,017	58,881	37	34	41	33	37	0.62	0.56	0.68	0.55	1.17	0.62	0.60	0.80	0.80	0.80
<b>Offaly</b>	77,933	76,687	76,961	76,200	75,130	64	43	27	34	28	0.82	0.56	0.35	0.45	0.49	0.58	0.45	0.43	0.43	0.43
<b>Roscommon</b>	62,921	64,065	61,041	61,197	60,445	20	17	20	19	26	0.32	0.27	0.33	0.31	0.46	0.30	0.30	0.37	0.37	0.37
<b>Sligo</b>	64,886	65,393	65,097	65,266	64,031	47	40	47	22	29	0.72	0.61	0.72	0.34	0.41	0.69	0.56	0.49	0.49	0.49
<b>Tipperary</b>	159,470	158,754	159,195	158,056	156,101	120	109	89	131	97	0.75	0.69	0.56	0.83	0.19	0.67	0.69	0.52	0.52	0.52
<b>Waterford</b>	114,532	113,795	117,651	116,316	114,227	88	98	90	118	155	0.77	0.86	0.76	1.01	0.85	0.80	0.88	0.88	0.88	0.88
<b>Westmeath</b>	87,564	86,164	86,168	85,316	84,118	76	71	71	75	142	0.87	0.82	0.82	0.88	1.84	0.84	0.84	1.18	1.18	1.18
<b>Wexford</b>	146,261	145,320	143,574	141,944	139,457	70	60	74	89	48	0.48	0.41	0.52	0.63	1.02	0.47	0.52	0.72	0.72	0.72
<b>Wicklow</b>	138,959	136,640	141,788	139,505	136,585	60	84	83	80	77	0.43	0.61	0.59	0.57	0.35	0.54	0.59	0.50	0.50	0.50
<b>TOTAL</b>	<b>4,585,400</b>	<b>4,588,252</b>	<b>4,470,601</b>	<b>4,459,500</b>	<b>4,422,000</b>	<b>3379</b>	<b>3732</b>	<b>3916</b>	<b>3956</b>	<b>3781</b>										

\* Population figures for 2011 are taken from the census figures for that year. The 2008, 2009, 2010 & 2012 figures are based on a proration of the estimated regional population figures as published in the Central Statistics Office's Population and Migration Estimates issued in 2008, 2009, 2010 & 2012

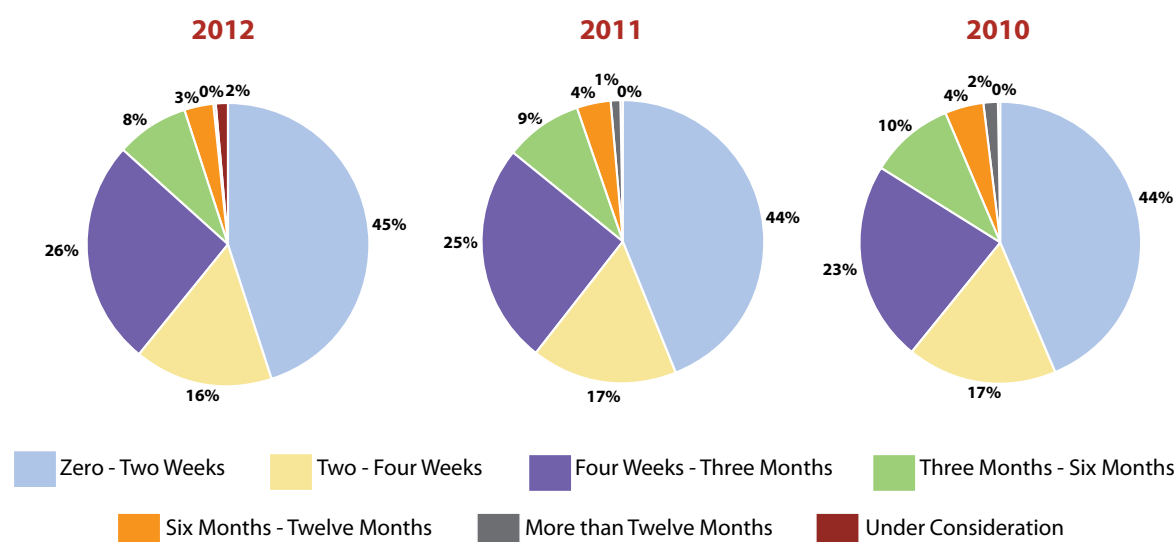
Chart 5 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution of a suspect should be taken or not. It has been decided to show this information by suspect rather than by file since in the case of files containing multiple suspects, decisions in respect of all suspects may not be made at the same time.

Files vary in size and complexity. Also, in some cases, further information or investigation was required before a decision could be made. Further information may be sought to enhance the proofs in a case and does not necessarily imply any deficiency in the investigation.

The time taken to issue directions is calculated on the basis of only those files which have been disposed of. Files still under consideration are therefore shown as a separate category in the table below.

**CHART 5: TIME TAKEN TO ISSUE DIRECTIONS**

Time Taken	2012	%	2011	%	2010	%
Zero - Two Weeks	5374	45%	5602	44%	5498	44%
Two - Four Weeks	1919	16%	2125	17%	2164	17%
Four Weeks - Three Months	3071	26%	3218	25%	2891	23%
Three Months - Six Months	1002	8%	1146	9%	1236	10%
Six Months - Twelve Months	384	3%	477	4%	551	4%
More than Twelve Months	47	0%	129	1%	216	2%
<b>TOTAL FILES DISPOSED</b>	<b>11797</b>	<b>98%</b>	<b>12697</b>	<b>100%</b>	<b>12556</b>	<b>100%</b>
Under Consideration	145	2%	31	0%	19	0%
<b>TOTAL</b>	<b>11942</b>	<b>100%</b>	<b>12728</b>	<b>100%</b>	<b>12575</b>	<b>100%</b>



## 4.2 RESULTS OF CASES PROSECUTED ON INDICTMENT

**4.2.1** Charts 6 to 10 provide information for prosecutions on indictment taken by the Director in respect of files received in the Office between 2009 and 2011. As referred to in the initial explanatory note, care should be taken before a comparison is made with figures provided by any other organisation, as they may be compiled on a different basis.

**4.2.2** The figures in these charts relate to individual suspects against whom a direction has been made to prosecute on indictment. Statistics are provided on a suspect-by-suspect basis rather than on the basis of files received. This is because directions are made in respect of each suspect included within a file rather than against the complete file as an entity in itself. Depending on the evidence provided, different directions are often made in respect of the individual suspects received as part of the same file. References in these charts to 'cases' refer to such prosecutions taken against individual suspects. Although individual suspects on a file may be tried together where a direction is made to prosecute them in courts of equal jurisdiction, each suspect's verdict will be collated separately for the purpose of these statistics.

**4.2.3** Statistics are provided on the basis of one outcome per suspect; this is irrespective of the number of charges and offences listed on the indictment. Convictions are broken down into: conviction by jury, conviction on plea, and conviction on a lesser charge. A conviction on a lesser charge indicates that the suspect was not convicted for the primary or most serious offence on the indictment. The offence categorisation used in the main charts is by the primary or most serious offence on

the indictment. Therefore, if a defendant is convicted of a lesser offence, the offence or offences they are convicted for may be different from that under which they are categorised in the charts. For example, a suspect may be charged with murder but ultimately convicted for the lesser offence of manslaughter or charged with aggravated burglary but convicted of the lesser offence of burglary. A breakdown of convictions on a lesser charge is given in respect of cases heard in the Special and Central Criminal Courts in charts 8A and 9A. Where a suspect is categorised as 'acquitted', this means that the suspect has been acquitted of all charges.

**4.2.4** It should also be noted that statistics set out in these charts relate to what happened in the trial court only and not in a subsequent appeal court. In other words where a person is convicted and the conviction is subsequently overturned on appeal, the outcome of the trial is still shown in these statistics as a conviction.

**4.2.5** Care should be taken in relation to interpreting the rates of conviction and acquittal in respect of recent years, as a higher number of cases will not have reached a conclusion. The picture furnished by these statistics will be less complete and therefore less representative than those in respect of earlier years. Cases heard relatively early may not necessarily be a representative sample of the whole.

Chart 6 shows the results of prosecutions on indictment taken in relation to defendants in respect of whom prosecutions were commenced in the years 2009 to 2011 (as of June 2013). The figures relate to:

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

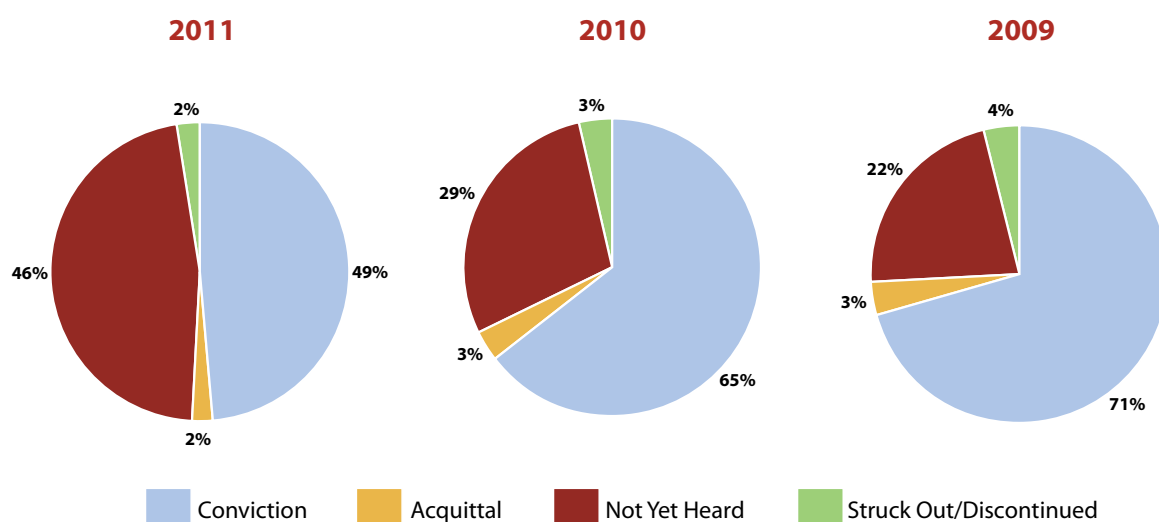
**Acquittal:** The defendant was acquitted on all charges.

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

**NOTE:** Figures have not been included for 2012 as the great majority of these cases have yet to be dealt with by the courts and the outcomes for the few cases where results are available may not be representative of the final picture covering all the cases.

**CHART 6: CASE RESULTS - PROSECUTIONS ON INDICTMENT**

Outcome	2011	%	2010	%	2009	%
Conviction	1816	49%	2529	65%	2802	71%
Acquittal	88	2%	129	3%	137	3%
Not Yet Heard	1735	46%	1127	29%	868	22%
Struck Out/Discontinued	93	2%	131	3%	149	4%
<b>TOTAL</b>	<b>3732</b>		<b>3916</b>		<b>3956</b>	



**CHART 6A: BREAKDOWN OF CONVICTIONS AND ACQUITTALS**  
(EXCLUDING CASES STILL TO BE HEARD)

	2011	%	2010	%	2009	%
Conviction by Jury	60	3%	89	3%	110	4%
Conviction Following Plea of Guilty	1756	92%	2440	92%	2692	91%
<b>TOTAL CONVICTIONS</b>	<b>1816</b>	<b>95%</b>	<b>2529</b>	<b>95%</b>	<b>2802</b>	<b>95%</b>
Acquittal by Jury	46	2%	81	3%	77	3%
Acquittal on Direction of Judge	42	2%	48	2%	60	2%
<b>TOTAL ACQUITTALS</b>	<b>88</b>	<b>5%</b>	<b>129</b>	<b>5%</b>	<b>137</b>	<b>5%</b>
<b>TOTAL</b>	<b>1904</b>		<b>2658</b>		<b>2939</b>	

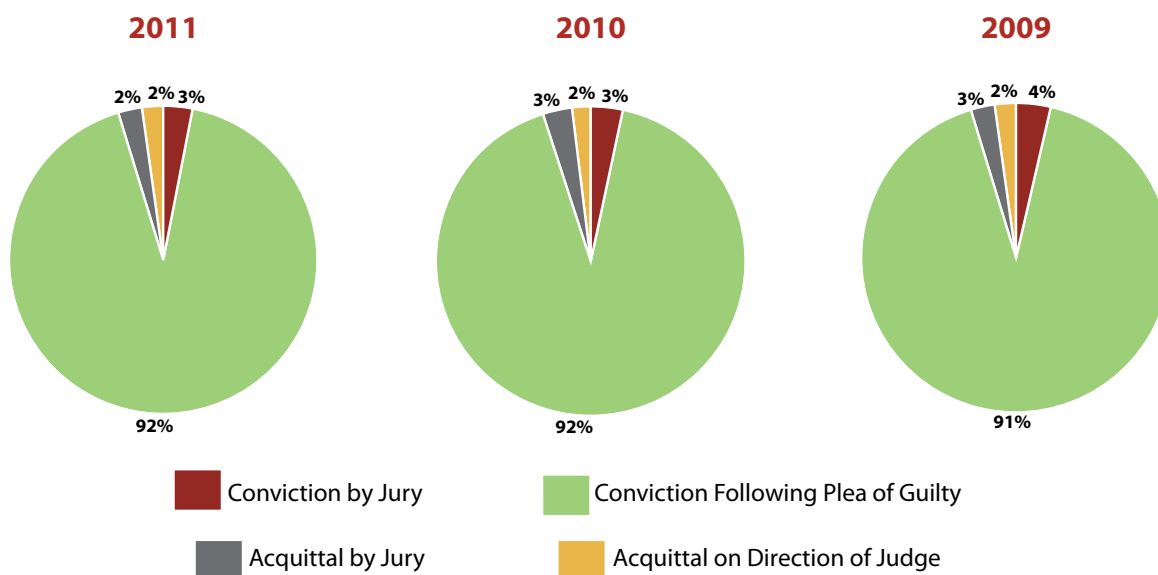




Chart 7 breaks down the prosecutions directed on indictment to be heard in the Circuit Court. The cases categorised as 'For Hearing' are those for which a verdict has not yet been recorded. In some of these cases, a trial may have begun but proceedings have been halted by a Judicial Review application. In other cases the defendant may have absconded before the trial and a bench warrant and/or extradition proceedings may be in process. Other cases, especially those of a complex nature, may not yet have come to trial. The greater proportion of cases 'For Hearing' makes the figures in more recent years less representative. This provision is also applicable to Charts 8 and 9. Where a trial results in a disagreement the case is treated as still being 'For Hearing' unless a *nolle prosequi* is entered.

**CHART 7: OUTCOMES OF CASES PROSECUTED IN THE CIRCUIT CRIMINAL COURT**

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge			For Hearing			Other Disposals		
	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009
Fatal Accident at Work	11	5	13	0	0	0	1	2	7	0	0	0	0	0	1	1	2	0	9	1	5	0	0	0
Manslaughter	11	15	17	0	2	1	4	5	8	1	5	4	0	0	1	0	0	0	6	3	2	0	0	1
<b>TOTAL - FATAL OFFENCES</b>	<b>22</b>	<b>20</b>	<b>30</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>15</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>15</b>	<b>4</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>1</b>
Burglary	377	375	420	1	2	2	188	220	304	16	29	13	3	3	0	5	1	1	153	111	83	11	9	17
Fraud	48	31	49	0	0	1	17	16	34	1	2	1	0	0	0	0	1	0	30	12	13	0	0	0
Robbery	524	629	460	2	2	1	301	463	349	11	17	14	4	2	0	4	2	4	189	135	81	13	8	11
Theft	189	156	166	2	3	1	73	88	104	7	3	3	1	1	0	3	4	2	96	51	46	7	6	10
Other Offences Against Property	364	323	284	1	1	1	153	186	175	22	21	16	4	7	2	6	2	5	168	95	70	10	11	15
<b>TOTAL - OFFENCES AGAINST PROPERTY</b>	<b>1502</b>	<b>1514</b>	<b>1379</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>732</b>	<b>973</b>	<b>966</b>	<b>57</b>	<b>72</b>	<b>47</b>	<b>12</b>	<b>13</b>	<b>2</b>	<b>18</b>	<b>10</b>	<b>12</b>	<b>636</b>	<b>404</b>	<b>293</b>	<b>41</b>	<b>34</b>	<b>53</b>
Buggery	0	3	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2	1	0	0	0
Child Pornography	14	16	12	0	0	0	8	12	11	0	0	1	0	0	0	0	0	0	6	3	0	0	1	0
Sexual Assault	83	92	65	5	4	4	24	42	26	0	1	2	4	4	6	1	2	1	48	32	21	1	7	5
Sex with an Underage Person	33	20	28	0	1	0	8	4	20	0	1	1	0	0	1	1	0	1	23	13	4	1	1	1
Other Sexual Offences	53	51	32	2	0	3	19	19	14	0	1	1	1	1	2	0	1	0	30	27	10	1	2	2
<b>TOTAL - SEXUAL OFFENCES</b>	<b>183</b>	<b>182</b>	<b>138</b>	<b>7</b>	<b>5</b>	<b>7</b>	<b>59</b>	<b>78</b>	<b>71</b>	<b>0</b>	<b>3</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>9</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>107</b>	<b>77</b>	<b>36</b>	<b>3</b>	<b>11</b>	<b>8</b>
Dangerous Driving Causing Death	26	37	33	0	1	2	10	19	15	0	3	6	2	3	2	1	1	0	13	10	6	0	0	2
Unauthorised Taking of Motor Vehicles	51	60	69	1	0	0	27	39	52	8	3	2	0	1	0	0	0	0	14	13	12	1	4	3
Other Road Traffic Offences	54	43	58	1	0	1	17	19	37	5	6	5	2	2	1	1	1	0	28	14	14	0	1	0
<b>TOTAL - ROAD TRAFFIC OFFENCES</b>	<b>131</b>	<b>140</b>	<b>160</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>54</b>	<b>77</b>	<b>104</b>	<b>13</b>	<b>12</b>	<b>13</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>55</b>	<b>37</b>	<b>32</b>	<b>1</b>	<b>5</b>	<b>5</b>
Drug Offences	590	644	829	3	3	3	170	301	481	161	149	170	2	1	3	0	6	7	251	174	151	3	10	14
Firearms and Explosives Offences	132	190	176	3	0	1	48	109	105	15	20	21	1	3	1	2	2	3	57	52	41	6	4	4
Non Fatal Offences Against the Person	724	756	812	7	15	23	282	369	455	26	54	44	14	41	42	13	16	27	361	229	176	21	32	45
Public Order Offences	183	182	176	0	1	1	47	79	75	11	27	21	3	2	2	1	0	2	116	61	67	5	12	8
Revenue Offences	38	36	24	1	0	0	6	14	8	0	0	0	0	0	0	0	0	0	31	21	15	0	1	1
Sea Fisheries	5	9	17	0	0	1	2	5	3	0	0	0	0	0	0	0	0	0	2	4	13	1	0	0
Other Offences	100	80	91	1	0	5	33	36	45	5	3	5	0	0	1	1	0	3	59	38	27	1	3	5
<b>GRAND TOTAL</b>	<b>3610</b>	<b>3753</b>	<b>3832</b>	<b>30</b>	<b>35</b>	<b>51</b>	<b>1438</b>	<b>2048</b>	<b>2328</b>	<b>289</b>	<b>345</b>	<b>330</b>	<b>41</b>	<b>71</b>	<b>65</b>	<b>40</b>	<b>41</b>	<b>56</b>	<b>1690</b>	<b>1101</b>	<b>858</b>	<b>82</b>	<b>112</b>	<b>144</b>

**CHART 7A: BREAKDOWN OF 'OTHER DISPOSALS' FROM CHART 7**

	2011	2010	2009
<i>Nolle Prosequi</i> Entered	72	104	127
Struck Out	2	4	6
Taken Into Consideration	2	3	1
Terminated by Judicial Review	2	0	0
Unfit to Plead	0	0	1
Not Guilty by Reason of Insanity	4	1	9
<b>TOTAL</b>	<b>82</b>	<b>112</b>	<b>144</b>

**CHART 7B: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Percentage of Convictions		
	2011	2010	2009	2011	2010	2009
Fatal Accident at Work	2	4	8	50%	50%	88%
Manslaughter	5	12	14	100%	100%	93%
<b>TOTAL - FATAL OFFENCES</b>	<b>7</b>	<b>16</b>	<b>22</b>	<b>86%</b>	<b>88%</b>	<b>91%</b>
Burglary	213	255	320	99%	98%	100%
Fraud	19	19	36	100%	95%	100%
Robbery	322	486	368	98%	99%	99%
Theft	86	99	110	95%	95%	98%
Other Offences Against Property	186	217	199	95%	96%	96%
<b>TOTAL - OFFENCES AGAINST PROPERTY</b>	<b>825</b>	<b>1076</b>	<b>1033</b>	<b>96%</b>	<b>98%</b>	<b>99%</b>
Buggery	0	1	0	N/A	100%	N/A
Child Pornography	8	12	12	100%	100%	100%
Sexual Assault	34	53	39	85%	89%	82%
Sex with an Underage Person	9	6	23	89%	100%	91%
Other Sexual Offences	22	22	20	95%	91%	90%
<b>TOTAL - SEXUAL OFFENCES</b>	<b>73</b>	<b>94</b>	<b>94</b>	<b>90%</b>	<b>91%</b>	<b>88%</b>
Dangerous Driving Causing Death	13	27	25	77%	85%	92%
Unauthorised Taking of Motor Vehicles	36	43	54	100%	98%	100%
Other Road Traffic Offences	26	28	44	88%	89%	98%
<b>TOTAL - ROAD TRAFFIC OFFENCES</b>	<b>75</b>	<b>98</b>	<b>123</b>	<b>92%</b>	<b>92%</b>	<b>98%</b>
Drug Offences	336	460	664	99%	98%	98%
Firearms and Explosives Offences	69	134	131	96%	96%	97%
Non Fatal Offences Against the Person	342	495	591	92%	88%	88%
Public Order Offences	62	109	101	94%	98%	96%
Sea Fisheries	7	14	8	100%	100%	100%
Revenue Offences	2	5	4	100%	100%	N/A
Other Offences	40	39	59	98%	100%	93%
<b>GRAND TOTAL</b>	<b>1838</b>	<b>2540</b>	<b>2830</b>	<b>96%</b>	<b>96%</b>	<b>96%</b>

Chart 8 outlines the result of cases directed for prosecution in the Special Criminal Court.

**CHART 8: OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE SPECIAL CRIMINAL COURT**

	TOTAL			Conviction by Judges			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Judges			Other Disposals			For Hearing		
	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009
Membership of Unlawful Organisation & Related Offences	4	12	3	3	5	1	1	0	0	0	3	0	0	2	2	0	2	0	0	0	0
Firearms and Explosives Offences	10	16	6	0	3	2	7	5	4	0	6	0	0	1	0	2	0	0	1	1	0
Murder	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Burglary	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Blackmail	0	5	0	0	0	0	0	4	0	0	0	0	0	1	0	0	0	0	0	0	0
Threat to Kill	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Violent Disorder	0	3	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0
Possession of Mobile Phone in Prison	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Counterfeiting	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0
<b>TOTAL</b>	<b>17</b>	<b>43</b>	<b>9</b>	<b>5</b>	<b>11</b>	<b>3</b>	<b>9</b>	<b>12</b>	<b>4</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>

**CHART 8A: BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE' FOR PERSONS CHARGED WITH MEMBERSHIP OF UNLAWFUL ORGANISATION AND RELATED OFFENCES**

Primary Charge	Lesser Charge Convicted of			TOTAL			Conviction by Judges			Conviction on Plea		
	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009
Membership of Unlawful Organisation & Related Offences	0	3	0	0	3	0	0	2	0	0	1	0
Firearms and Explosives Offences	0	2	0	0	2	0	0	1	0	0	1	0
Membership of Unlawful Organisation	0	4	0	0	4	0	0	4	0	0	0	0
False Imprisonment	0	9	0	0	9	0	0	7	0	0	2	0
<b>TOTAL</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>

**CHART 8B: BREAKDOWN OF 'OTHER DISPOSALS' FROM CHART 8**

	2011	2010	2009
<i>Nolle Prosequi</i> Entered	2	6	0
<b>TOTAL</b>	<b>2</b>	<b>6</b>	<b>0</b>

**CHART 8C: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Percentage of Convictions		
	2011	2010	2009	2011	2010	2009
Firearms and Explosives Offences	7	15	6	100%	93%	100%
Membership of Unlawful Organisation & Related Offences	4	10	3	100%	80%	33%
Other Offences	3	11	0	100%	91%	N/A
<b>TOTAL</b>	<b>14</b>	<b>36</b>	<b>9</b>			

Chart 9 outlines the result of cases directed for prosecution in the Central Criminal Court and breaks down all cases by the most serious charge directed against the defendant. Supplementary charts break down the 'convictions on a lesser charge' and the 'other disposals' outcomes.

**CHART 9: OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE CENTRAL CRIMINAL COURT**

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge			Other Disposals			For Hearing		
	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009
Murder	31	38	45	12	14	21	1	2	4	4	10	12	0	0	2	0	2	1	0	1	2	14	9	3
Attempted Murder	0	4	3	0	1	1	0	0	1	0	0	1	0	0	0	0	0	0	0	2	0	0	1	0
Rape	70	70	58	6	10	15	15	17	16	6	10	8	5	8	8	2	2	2	9	10	3	27	13	6
Attempted Rape	3	4	2	1	0	0	0	2	2	0	0	0	0	1	0	0	0	0	0	0	0	2	1	0
Aggravated Sexual Assault	1	2	1	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	1
Assisting an Offender	0	2	6	0	0	0	0	1	5	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0
<b>TOTAL</b>	<b>105</b>	<b>120</b>	<b>115</b>	<b>19</b>	<b>25</b>	<b>37</b>	<b>16</b>	<b>23</b>	<b>28</b>	<b>10</b>	<b>21</b>	<b>21</b>	<b>5</b>	<b>9</b>	<b>11</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>9</b>	<b>13</b>	<b>5</b>	<b>44</b>	<b>25</b>	<b>10</b>

**CHART 9A: BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE'**

Primary Charge	Lesser Charge Convicted of	TOTAL			Conviction by Jury			Conviction on Plea		
		2011	2010	2009	2011	2010	2009	2011	2010	2009
Murder	Manslaughter	4	10	9	2	2	6	2	8	3
Murder	Assisting an Offender	0	0	3	0	0	1	0	0	2
Rape	Aggravated Sexual Assault	0	1	0	0	0	0	0	1	0
Rape	Assault Causing Harm	1	0	3	1	0	3	0	0	0
Rape	Burglary	0	0	1	0	0	0	0	0	1
Rape	Harassment	0	1	0	0	1	0	0	0	0
Rape	Other Sexual Offences	2	2	1	1	0	1	1	2	0
Rape	Sexual Assault	2	6	3	0	3	1	2	3	2
Rape	Threat to kill	1	0	0	1	0	0	0	0	0
Aggravated Sexual Assault	Sexual Assault	0	1	0	0	0	0	0	1	0
Attempted Murder	Assault causing serious harm	0	0	1	0	0	0	0	0	1
<b>TOTAL</b>		<b>10</b>	<b>21</b>	<b>21</b>	<b>5</b>	<b>6</b>	<b>12</b>	<b>5</b>	<b>15</b>	<b>9</b>

**CHART 9B: BREAKDOWN OF 'OTHER DISPOSALS'**

	2011	2010	2009
<i>Nolle Prosequi</i> Entered	8	10	1
Suspect Deceased	0	2	1
Struck Out	1	0	0
Prosecution Withdrawn	0	0	1
Not Guilty by Reason of Insanity	0	1	2
<b>TOTAL</b>	<b>9</b>	<b>13</b>	<b>5</b>

**CHART 9C: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS  
(INCLUDING CONVICTIONS ON A LESSER CHARGE)**

	TOTAL			Percentage of Convictions		
	2011	2010	2009	2011	2010	2009
Murder	17	28	40	100%	93%	93%
Attempted Murder	0	1	3	N/A	100%	100%
Rape	34	47	49	79%	79%	80%
Attempted Rape	1	3	2	100%	67%	N/A
Aggravated Sexual Assault	0	2	0	N/A	100%	N/A
Assisting an Offender	0	1	6	N/A	100%	83%
<b>TOTAL</b>	<b>52</b>	<b>82</b>	<b>100</b>	<b>87%</b>	<b>84%</b>	<b>86%</b>

Chart 10 breaks down the case verdicts for each circuit criminal court. Unlike Chart 7, it does not include cases 'for hearing' or cases where the outcome is other than conviction or acquittal. Please note that in some cases, a trial may be held in a circuit court for a county other than that in which the offence was committed.

**CHART 10: OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE CIRCUIT CRIMINAL COURT BY COUNTY**

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge		
	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009	2011	2010	2009
Carlow	10	22	25	0	0	0	7	21	24	3	1	1	0	0	0	0	0	0
Cavan	16	27	27	0	0	1	15	23	19	1	3	6	0	0	0	0	1	1
Clare	19	49	88	1	2	1	14	38	65	1	3	11	3	4	2	0	2	9
Cork	189	267	333	7	6	7	153	227	281	16	17	31	5	10	5	8	7	9
Donegal	21	51	41	1	1	3	18	40	35	0	9	1	1	0	0	1	1	2
Dublin	1072	1277	1339	8	5	11	832	1012	1103	209	221	191	12	24	20	11	15	14
Galway	21	42	60	1	5	3	12	30	52	6	2	3	0	5	2	2	0	0
Kerry	41	48	72	3	2	1	33	44	63	1	0	5	4	2	3	0	0	0
Kildare	56	96	98	1	1	1	45	79	81	9	7	7	0	1	3	1	8	6
Kilkenny	17	35	37	1	0	0	13	33	35	2	0	1	0	2	1	1	0	0
Laois	6	17	27	1	0	0	4	17	24	0	0	3	1	0	0	0	0	0
Leitrim	5	3	19	0	0	0	3	2	15	2	1	4	0	0	0	0	0	0
Limerick	46	106	101	0	1	3	39	89	84	5	14	9	2	2	4	0	0	1
Longford	28	46	26	0	1	2	28	24	22	0	18	2	0	3	0	0	0	0
Louth	31	37	43	0	0	3	23	28	32	7	5	4	0	3	4	1	1	0
Mayo	44	68	73	1	1	2	28	53	55	7	12	9	4	2	6	4	0	1
Meath	35	58	46	1	0	0	26	47	41	7	5	3	1	2	1	0	4	1
Monaghan	1	13	17	0	0	0	0	13	13	0	0	4	0	0	0	1	0	0
Offaly	21	21	25	1	0	1	18	19	20	0	1	2	1	1	2	1	0	0
Roscommon	10	16	15	0	1	0	9	13	11	1	0	3	0	2	1	0	0	0
Sligo	16	30	18	0	0	2	15	23	14	0	5	1	0	1	1	0	1	0
Tipperary	29	42	81	1	2	2	18	34	62	3	5	14	2	1	1	5	0	2
Waterford	39	52	84	1	3	3	30	46	65	2	3	5	2	0	4	4	0	7
Westmeath	14	43	45	1	2	3	12	38	38	1	2	3	0	0	0	0	1	1
Wexford	8	28	41	0	1	2	6	21	35	1	3	2	1	3	2	0	0	0
Wicklow	43	46	49	0	1	0	37	34	39	4	8	5	2	3	3	0	0	2
<b>TOTAL</b>	<b>1838</b>	<b>2540</b>	<b>2830</b>	<b>30</b>	<b>35</b>	<b>51</b>	<b>1438</b>	<b>2048</b>	<b>2328</b>	<b>289</b>	<b>345</b>	<b>330</b>	<b>41</b>	<b>71</b>	<b>65</b>	<b>40</b>	<b>41</b>	<b>56</b>

**CHART 10A: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Percentage of Convictions		
	2011	2010	2009	2011	2010	2009
<b>Carlow</b>	10	22	25	100%	100%	100%
<b>Cavan</b>	16	27	27	100%	96%	96%
<b>Clare</b>	19	49	88	84%	88%	88%
<b>Cork</b>	189	267	333	93%	94%	96%
<b>Donegal</b>	21	51	41	90%	98%	95%
<b>Dublin</b>	1072	1277	1339	98%	97%	97%
<b>Galway</b>	21	42	60	90%	88%	97%
<b>Kerry</b>	41	48	72	90%	96%	96%
<b>Kildare</b>	56	96	98	98%	91%	91%
<b>Kilkenny</b>	17	35	37	94%	94%	97%
<b>Laois</b>	6	17	27	83%	100%	100%
<b>Leitrim</b>	5	3	19	100%	100%	100%
<b>Limerick</b>	46	106	101	96%	98%	95%
<b>Longford</b>	28	46	26	100%	93%	100%
<b>Louth</b>	31	37	43	97%	89%	91%
<b>Mayo</b>	44	68	73	82%	97%	90%
<b>Meath</b>	35	58	46	97%	90%	96%
<b>Monaghan</b>	1	13	17	0%	100%	100%
<b>Offaly</b>	21	21	25	90%	95%	92%
<b>Roscommon</b>	10	16	15	100%	88%	93%
<b>Sligo</b>	16	30	18	100%	93%	94%
<b>Tipperary</b>	29	42	81	76%	98%	96%
<b>Waterford</b>	39	52	84	85%	100%	87%
<b>Westmeath</b>	14	43	45	100%	100%	98%
<b>Wexford</b>	8	28	41	88%	89%	95%
<b>Wicklow</b>	43	46	49	95%	93%	90%
<b>TOTAL</b>	<b>1838</b>	<b>2540</b>	<b>2830</b>	<b>96%</b>	<b>96%</b>	<b>96%</b>



# 4.3 APPLICATIONS TO THE COURTS

Charts 11 to 13 provide details of applications made to the Courts in relation to reviews of sentence on grounds of undue leniency, confiscation and forfeiture of criminal assets, and European Arrest Warrants.

## APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

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 in law unduly lenient.

Chart 11 below details the number of applications made since the introduction of the Act.

In Annual Reports prior to 2004 the results of applications made were set out according to the year in which they were lodged. However not all applications lodged in the year for which the Annual Report was reporting were heard by the date of publication of the Annual Report and the results for such applications were listed as pending. It was therefore decided, from the year 2003 onwards, to set out the results of applications according to the year in which they were heard.

Chart 11A outlines the results of applications, from the years 1994 to 2002, by the year in which the application was lodged (as appeared in previous Annual Reports).

Chart 11B outlines the results of applications, from the year 2003 onwards, by the year in which the application was heard.

**CHART 11: APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY**

Year of Application	Number of Applications Lodged	Year of Application	Number of Applications Lodged
1994	2	2004	21
1995	2	2005	37
1996	3	2006	41
1997	4	2007	42
1998	12	2008	58
1999	34	2009	57
2000	31	2010	54
2001	23	2011	55
2002	23	2012	21
2003	26		

**CHART 11A: RESULTS OF APPLICATIONS BY YEAR LODGED**

Year of Application Heard	Successful	Refused	Applications Struck Out or Withdrawn	TOTAL
1994	-	1	1	2
1995	-	1	1	2
1996	1	1	1	3
1997	2	2	-	4
1998	6	3	3	12
1999	17	16	1	34
2000	15	13	3	31
2001	17	3	3	23
2002	14	9	-	23

**CHART 11B: RESULTS OF APPLICATIONS BY YEAR HEARD**

Year of Application Heard	Successful	Refused	Applications Struck Out or Withdrawn	TOTAL
2003	11	8	1	20
2004	13	8	1	22
2005	18	9	2	29
2006	33	15	2	50
2007	30	6	3	39
2008	30	14	3	47
2009	15	13	3	31
2010	27	27	3	57
2011	22	18	3	43
2012	15	10	3	28

## CONFISCATION AND FORFEITURE OF CRIMINAL ASSETS

Taking away the assets of convicted criminals, as provided for under the provisions of the Criminal Justice Act 1994 (as amended), has proved to be an effective tool available to the Prosecution in diminishing the proceeds that are obtained from criminal activity. The Office of the Director of Public Prosecutions established a dedicated Assets Seizing Section in 2007 which co-ordinates and monitors all applications brought under the Act. The section liaises on an ongoing basis with An Garda Síochána, State Solicitors, the Criminal Assets Bureau and the Revenue Commissioners, to ensure best practice in the area of confiscation and forfeiture of criminal assets.

The total number of asset seizing files under the Criminal Justice Act 1994 opened in the Office for 2012 was 71, ranging from forfeiture order cases, to confiscation order cases, to freezing order applications. The total number of confiscation and forfeiture cases opened in the Office of the DPP in 2012 is set out in chart 12 below.

Since 1 August 2011, the Director of Public Prosecutions, pursuant to the Prosecution of Offences Act 1974, section 4(1)(a), directed that the Principal Prosecution Solicitor in charge of the Asset Seizing Unit of the DPP's Office may, among other Professional Officers, give directions to bring applications under section 39 of the Criminal Justice Act 1994 as amended under section 20 of the Proceeds of Crime Act 2005. The Assets Seizing Unit is in the Solicitors Division of the DPP's Office

From 1 January 2012 to 31 December 2012, 22 directions were issued by the Head of the Unit on section 39 files received from the Gardai and Revenue Solicitors. This delegation of decision making authority has helped in reducing the number of such cases that would otherwise have to be considered by Professional Officers in the Directing Division of the DPP's Office. The delegated function is part of the ongoing efficiencies implemented under the Croke Park Agreement as it affects the Office. The decision making function in relation to such cases is now centralised in the Asset Seizing Unit.

**CHART 12: ASSET SEIZING FILES OPENED IN 2012**

Asset Seizing Files Opened 2012	
Section 39 Applications	10
Section 39 (Revenue Solicitor) Applications	24
Sections 4 and 9 Applications	12
Section 61 Applications	22
Section 24 Applications	3
<b>TOTAL</b>	<b>71</b>

**Section 39 Forfeiture Orders:** Under section 39 of the Act a Judge of the Circuit Court may order the forfeiture of any cash which has been seized under section 38\* of the Act if satisfied that the cash directly or indirectly represents the proceeds of crime.

\* [Section 38 of the Act authorises the seizure of cash where a member of An Garda Síochána or an officer of Customs and Excise has reasonable grounds for suspecting that the cash (including cash found during a search) represents any person's proceeds from criminal conduct. The cash seized by a Garda or an officer of Customs and Excise may not be detained for more than 48 hours unless the further detention of the cash is authorised by a Judge of the District Court. Applications can be made to Court to continue to detain the cash for periods of up to two years.]

**Section 4 Confiscation Orders:** Under the provisions of section 4 of the Criminal Justice Act 1994 (as amended), once a person has been convicted on indictment of a drug trafficking offence and sentenced, the Court of trial must determine whether the convicted person has benefited from drug trafficking, the extent to which he has benefited, and the amount that is realisable to discharge a Confiscation Order. The Court then makes a Confiscation Order for that figure.

**Section 9 Confiscation Orders:** Section 9 of the Act allows the confiscation, on conviction, of the benefit an accused person has gained from any indictable offence other than drug trafficking offences. An inquiry may be held by the Circuit Court into the benefit gained after the person is sentenced. The Prosecution must prove that benefit generated is directly related to the offence with which the accused is charged.

**Section 61 Forfeiture Orders:** Section 61 of the Act allows for forfeiture of any property used to commit, or to facilitate any offence, in either the District Court or Circuit Court. This Office brings applications under the section in relation to a wide variety of assets, such as cars used to transport criminals to and from crime scenes, as well as money and instruments of crime such as drug preparation equipment found at the crime scene, or near to it.

**Section 24 Freezing Orders:** Section 24 of the Act provides for applications to the High Court by the DPP for freezing orders where a person is charged, or a decision has been taken to charge that person, with an indictable offence. The freezing order can cover all property identified both in Ireland or abroad belonging to the accused person. Freezing orders are designed to prevent the dissipation of assets prior to a confiscation inquiry being conducted by the trial court if the accused is convicted of the offence charged.

Details of Confiscation and Forfeiture Orders granted by the courts in 2012, to a total value of €2,764,161 are outlined in chart 12A below. This figure does not include an order for restitution of misappropriated money for the sum of €75,000 to the injured parties from whom it was stolen, granted under section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

**CHART 12A: CONFISCATION OF CRIMINAL ASSETS**

Orders	Number	Amount
Forfeiture Orders	25	€475,548
Section 4 Confiscation Orders	15	€1,320,692
Section 39 Forfeiture Orders	11	€253,410
Section 39 Forfeiture Orders (Revenue Solicitor Applications)	29	€714,511
<b>TOTAL</b>	<b>80</b>	<b>€2,764.161</b>

## EUROPEAN ARREST WARRANTS

The European Arrest Warrant Act, 2003 came into operation on 1 January 2004. Section 2 of the Act defines the European Arrest Warrant (EAW) as a Court decision in one member state of the EU addressed to a Court in another member state of the EU for the purpose of “conducting a criminal prosecution or the execution of a custodial sentence in the issuing member state”.

Requests for the preparation of EAWs are submitted to the Office of the Director of Public Prosecutions by the Extradition Unit of the Garda Síochána. Applications for EAWs are normally made to a Judge of the High Court sitting in Dublin by a solicitor from the Office and when issued by the High Court, the EAW is dispatched to the Department of Justice & Equality for transmission to the country where it is believed the requested person is residing. Section 33 of the European Arrest Warrant Act, 2003 permits an EAW to be issued only if the offence carries on conviction a term of imprisonment of at least 12 months or, where the requested person is a convicted person, a term of 4 months imprisonment has been imposed. The offences for which EAWs have been sought covered a wide range of serious offences including murder, sexual offences, drugs offences, thefts and serious assaults.

The chart below outlines the number of European Arrest Warrants dealt with in the years 2010, 2011 and 2012. It should be noted that the issue of the EAW and the surrender of the person will not necessarily correspond to the year the file is received. The total files received include 38 files where an application is pending or where either no application for an EAW was made, or the issued EAW was withdrawn because the DPP had so directed, the requested person was arrested in Ireland, or the requested person or complainant had died.

**CHART 13: EUROPEAN ARREST WARRANTS**

Year	EAW Files Received from Gardaí	EAWs Issued	Persons Surrendered
2010	61	50	27
2011	69	54	29
2012	61	66	51
<b>TOTAL</b>	<b>191</b>	<b>160</b>	<b>107</b>

## 4.4 MUTUAL LEGAL ASSISTANCE

Under the provisions of the Criminal Justice (Mutual Assistance) Act 2008, Ireland can provide mutual legal assistance to and ask for mutual assistance from other countries in criminal investigations or criminal proceedings. All such requests are dealt with by the Central Authority for Mutual Assistance in the Department of Justice and Equality.

Requests for mutual assistance to other countries are forwarded to the Office of the Director of Public Prosecutions by the Central Authority for assessment and legal advice, before transmission to other countries.

Chart 14 outlines the total number of requests for mutual legal assistance dealt with by this Office.

**CHART 14: REQUESTS FOR MUTUAL LEGAL ASSISTANCE**

	2012	2011	2010
Number of Requests	223	152	86

