

Office of the Director of Public Prosecutions,
14 - 16 Merrion Street,
Dublin 2.

Tel: + 353 1 678 9222
Fax: + 353 1 661 0915
Web: www.dppireland.ie

Solicitors Division,
Chapter House,
26 - 30 Upper Abbey Street,
Dublin 1.

Tel: +353 1 858 8500
Fax: +353 1 858 8555
Web: www.dppireland.ie

CONTENTS

PART I:	GENERAL WORK OF THE OFFICE	3
Chapter 1:	Functions of the Director of Public Prosecutions	4
Chapter 2:	Divisions of the Office	5
PART II:	THE YEAR IN REVIEW	9
Chapter 3:	Organisational Developments	10
PART III:	LEGAL DEVELOPMENTS	15
Chapter 4:	Legal Decisions	16
Chapter 5:	Contempt of Court	20
Chapter 6:	Prosecutions on Behalf of the Health & Safety Authority	22
Chapter 7:	Aspects of Sentencing	24
Chapter 8:	International Co-operation	26
Chapter 9:	European Arrest Warrant	28
PART IV:	FREEDOM OF INFORMATION	29
Chapter 10:	Freedom of Information	30
PART V:	STATISTICS	33
Chapter 11:	Prosecution File Statistics	34
Chapter 12:	Extract from Appropriation Account 2002	49
Chapter 13:	Prompt Payment of Accounts Act, 1997	50
PART VI:	CHARTS	51
Chapter 14:	Outline of the Criminal Prosecution Process	52
Chapter 15:	Organisation Structure	53
PART VII:	APPENDIX	55

FOREWORD



It is my great pleasure to introduce the annual report of the Office of the Director of Public Prosecutions for 2003.

The year 2003 was largely one of consolidation for the expanded Office which since 2001 includes the solicitor service formerly provided by the Chief State Solicitor and now a part of my Office headed by the Chief Prosecution Solicitor. A number of important ambitions of the Office are still, at the time of writing, unachieved. Discussions are still taking place regarding the transfer of the State Solicitor service from the Attorney General to the Office of the DPP. Legislation to enable the transfer has been prepared and will be introduced in the Oireachtas shortly. It is anticipated that the transfer will take place in the near future.

The problem of accommodation for the Office remains unresolved. The Office is in two locations, Upper Abbey Street and Merrion Street, which creates an obstacle to the integration of what were formerly two separate offices, and leads to much unnecessary and time-wasting travel between the two locations. As the decentralisation programme proceeds, it is understood that suitable Office space will become available. In the long run, the delay in resolving our accommodation problem may turn out to be an advantage, since it is now proposed to build a new criminal court complex incorporating most of the criminal courts serving Dublin. It will obviously be desirable that the Office of the DPP be located near that new centre.

At present we are embarking on a major IT project, aimed at a much improved management information system for all aspects of the Office's administration. This will include a case management system. Our existing systems have become inadequate for the expanded Office and our increasingly sophisticated requirements. This will enable us to obtain, and use, much more comprehensive information both for ourselves and to provide more detailed and reliable statistics for the interested public in our annual reports.

It remains for me to thank all the members of my staff for their hard work and dedication in 2003. I would also like to thank those who although not members of my Office act on our behalf in the courts, both members of the Bar and State Solicitors. Finally, I thank all those other persons with whom the Office interacts in our daily business in particular members of the Garda Síochána and other investigation agencies, the Forensic Science Laboratory, the State Pathologists, the many other professional witnesses, and the staff of the Courts Service. Without their professionalism we would be unable to achieve our goal of providing on behalf of the People of Ireland a prosecution service which is independent, fair and effective.

A handwritten signature in black ink that reads "James Hamilton". The signature is written in a cursive style with a long horizontal stroke underneath.

James Hamilton

Director of Public Prosecutions

PART I
GENERAL WORK OF THE OFFICE

CHAPTER 1

FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

CHAPTER 2

DIVISIONS OF THE OFFICE

2.1 The Office of the Director of Public Prosecutions has three main divisions: Directing Division, Solicitors Division, and Administration Division.

DIRECTING DIVISION

2.2 The Office of the DPP works closely with the Garda Síochána and with other investigative agencies including Government departments, the Revenue Commissioners, Revenue Solicitor, An Post, The Competition Authority, the Director of Corporate Enforcement, the Health & Safety Authority, as well as with other State agencies and local authorities on occasion. However, in making prosecution decisions the Director and his Office are independent of the investigative agency concerned.

2.3 There are a considerable number of ancillary tasks carried out by the Office in the exercise of its principal functions. Many aspects of this work are summarised in the extract from our Annual Report for 1999 at page 56. They include the drafting or settling of documents necessary for the prosecution of requests for extradition into the State as well as the making of requests for international mutual assistance in criminal matters. The Office serves on committees and attends meetings relating to prosecutions and criminal law and procedure. It also organises prosecutorial conferences on an annual basis.

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

2.5 There are other functions concerning the prosecution of offences which are performed by the Director such as the issuing of consents enabling certain indictable offences to be dealt with summarily. These functions are summarised in the extract from the 1999 Annual Report at page 56.

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

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

2.8 The Directing Division consists of 19 professional officers (solicitors and barristers) who assist the Director in performing his functions, and in particular the core functions of deciding whether or not to bring prosecutions and supervising the conduct of prosecutions once brought.

Independence

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

2.10 Section 2(5) of the Prosecution of Offences Act, 1974 states that 'the Director shall be independent in the performance of his functions'. Section 6 of the 1974 Act protects the Director's independence by obliging the Director and his

officers to refuse to entertain a communication or representation if it constitutes an improper interference in the discharge of their functions.

Representations and Communications

2.11 It is unlawful to communicate with the Director for the purpose of influencing a decision to withdraw or not to initiate a prosecution, pursuant to section 6 of the Prosecution of Offences Act, 1974. This prohibition does not apply to interested parties, who include a complainant, a suspect or accused, or their legal or medical advisor, social worker or a member of their family.

SOLICITORS DIVISION

2.12 The work of the Solicitors Division, headed by the Chief Prosecution Solicitor, includes:

- Acting as solicitor for the DPP and working with the Gardaí in the preparation and presentation of all indictable criminal prosecutions listed in Dublin. This includes trials in the Circuit Criminal Court, Special Criminal Court and the Central Criminal Court, and appeals after conviction and sentence to the Court of Criminal Appeal.
- Appearing on behalf of the DPP in criminal prosecutions in the district courts of the Dublin Metropolitan District and appeals therefrom to the Circuit Court. This role involves extensive advocacy. The work in this area includes the preparation of Books of Evidence for trials in the Dublin courts.
- Acting as solicitor to the DPP in all judicial reviews, habeas corpus applications, cases stated, bail applications etc. in the superior courts, where the DPP is a party.

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

- District Court Section
- Circuit Court Trials Section

- Judicial Review Section
- Superior Courts Section

The Superior Courts Section has responsibility for cases in the Central Criminal Court, the Special Criminal Court and for the preparation of books of evidence and trial work in corporate crime, competition law, complex frauds including money-laundering prosecution. This latter function is intended to cater for the anticipated rise in prosecutions in such areas, having regard to the introduction of legislation recently, and the roles of the Competition Authority and the Office of the Director of Corporate Enforcement. The organisation of the divisions within the Office of the Director of Public Prosecutions is reflected in the organisation chart at page 53 in this Report.

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

2.15 As stated above, the work of the Division involves close interaction with the Garda Síochána and other specialised investigating agencies. The effective prosecution of offences at an operational level also depends on close co-operation with other stakeholders in the criminal justice system e.g. the Courts Service, expert witnesses, members of the Bar and victim representatives.

ADMINISTRATION DIVISION

- 2.16 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.
- 2.17 Central to the role of the Administration Division is the implementation of the civil service modernisation programme which has been fundamental to the development of the Office in recent years. Progress on the various elements of the programme are set out in detail in Chapter 3.

PART II
THE YEAR IN REVIEW

CHAPTER 3

ORGANISATIONAL DEVELOPMENTS

Modernisation Programme

- 3.1 The implementation of the civil service modernisation programme while presenting challenges has had a positive impact on the development of the Office of the Director of Public Prosecutions. During 2003 considerable time and effort was invested in building on work undertaken in previous years.
- 3.2 Our primary focus under the modernisation programme is the strategic management of the core work of the Office – the prosecution of crime. Previous Annual Reports have drawn attention to the time invested in the development of Strategy Statements and Business Plans. The Office continued its focus on strategic management during 2003. During the year a new Strategy Statement for the years 2004 – 2006 was developed. This document drew heavily on work commenced in 2002 and concluded in 2003 under the Management Information Framework (MIF).
- 3.3 As reported in the 2002 Annual Report consultants were engaged, during 2002, to assist in the identification of the information needs of the Office under Phase I of the Management Information Framework (MIF). The purpose of MIF is to provide managers with relevant and timely financial and non-financial management information to support their decision-making. Following a thorough business analysis of the functions and responsibilities of the Office a comprehensive report was produced in 2003. This report set out in detail the information required to effectively manage the work of the Office. It also outlined the action required to develop the IT systems necessary to provide this management information.
- 3.4 Three main categories of information were identified in the MIF Report. The categories relate to the legal work of the Office, the financial transactions of the Office and the human resources available to the Office.
- 3.5 The MIF Report identified that the provision of the above information would be provided from three separate IT systems, a legal case management system, a financial management system and a human resource management system.
- 3.6 As was reported in the 2002 Annual Report the Office implemented the new civil service Human Resource Management System (HRMS) in December 2002. This was further developed during 2003 and now provides a comprehensive range of management information with regard to the human resources of the Office.
- 3.7 Historically accounting services for the Office of the Director of Public Prosecutions were provided by the Department of Finance. However, as part of the rollout of MIF throughout the civil service it was decided that responsibility for the provision of this service should be transferred to this Office. During 2003 the Office undertook the specification and selection of a financial system which would, amongst other things, provide the financial reporting, management accounting and cost allocation information needs identified in the MIF Report.
- 3.8 The selection process for the financial system was completed in September 2003. Installation and testing of the system on a phased basis commenced in October. The key modules of the new financial package were in place by December 2003, ready for a go-live date of 1 January 2004. These included the nominal ledger and the purchase ledger modules. The target for completion of this project is September 2004. It is expected that work will be completed in advance of that date.
- 3.9 The provision of the third category of information identified in the MIF Report relating to the management of the legal work of the Office represents a greater challenge than the provision of either of the other two categories. This is primarily because the scope of the project is significantly greater. It will involve the

development of a new IT system to manage not only the legal work traditionally performed by the Office but also the expanded responsibilities of the Office arising from the transfer of the criminal prosecution functions of the Chief State Solicitor and the planned transfer of responsibility for the state solicitor service. This transfer of responsibilities has been reported on previously in our Annual Reports for 2001 and 2002.

- 3.10 It was decided during 2003 to engage consultants to assist in identifying the detailed requirements for a new legal case management system as part of the development of our overall IT Strategy for the next three years. Funds for this were secured and the project commenced. It is anticipated that the specification and selection process with regard to the new legal case management system will be concluded in 2004 and that the development of the IT system will commence at the start of 2005 and conclude in mid 2006.
- 3.11 The development of the new legal case management system will be the single biggest IT project ever undertaken by the Office. Its successful delivery will be central to providing the management information required to effectively manage the expanded remit of the Office. Funds have been secured to commence this project and the indications are positive that the necessary funding to bring the project to conclusion will be made available.
- 3.12 The Strategy Statement 2004 – 2006 highlights that the achievement of the objectives set out for the period 2004 – 2006 is dependent upon the development of the IT systems identified in the MIF Report. Progress on the development of these systems will be reported on further in the 2004 Annual Report.

Library Services

- 3.13 The implementation of the first phase of the library management system was completed in

2003. The catalogue iLink was launched in May 2003 and offers access to the library collections, personalised library accounts and our full suite of electronic resources. It incorporates “quick links” to recent judgments, internal directions and new book lists. The Digital Collections were launched via iLink in December 2003 with a pilot collection of unreported court judgments from 1998-2003, Garda circulars from 1995-2001 and selected internal directions and opinions.

- 3.14 The integration of both of these systems means that users can view and search the documents in the digital collections from their desktops with the benefit of “added value” indexing included. The new library systems mean that our staff now has access to all library resources from a single interface.

Human Resources

- 3.15 During the year negotiations on the creation of a common promotion pool between the Solicitors Division of the Office of the Director of Public Prosecutions and the Office of the Chief State Solicitor were successfully concluded. The agreement reached will increase career opportunities for solicitors and legal technical staff of both Offices. It will also result in a wider pool of candidates and greater competition in the filling of promotional posts in both organisations.
- 3.16 Negotiations commenced during the year on the creation of a common promotion pool between the two legal divisions of this Office. The advantages of such a common pool would be similar to those described in the preceding paragraph. The main difficulty identified in relation to putting a common promotion pool in place between the two legal divisions of this Office is the fact that as things currently stand barristers from the Directing Division would be unable to be assigned to work in the Solicitors Division. As both solicitors and barristers have

traditionally been employed to perform the directing functions of the Office no difficulty would arise with movement of solicitors from the Solicitors Division to the Directing Division. The possibility of seeking legislative change to deal with this matter is being considered.

- 3.17 In November 2003 a sub-group of the Office Partnership Committee was established to develop a Human Resources Strategy for the Office. The Strategy will play a central role in the development of Human Resource policies for the Office for the period 2004 – 2006.
- 3.18 In line with the commitment of the Office to promote work life balance, family friendly policies were promoted during the year and a Family Friendly Day was held in March 2003.
- 3.19 The implementation of the Performance Management and Development System (PMDS) has resulted in a more focused approach to staff training and development. Requests outlined in staff personal training and development plans are assessed by our Training Unit and appropriate training arranged on an ongoing basis. During 2003 the Office invested 4.6% of payroll costs on staff training and development. The expenditure includes €65,413 on seminars, conferences and courses; €17,000 on IT training; and €30,000 on the refund of fees scheme.

Quality Service

- 3.20 In recognition of the need to continuously consult with those to whom we provide a service the Office once again organised a number of conferences which served to provide a forum for discussion and exchange of ideas among those involved in the criminal justice system, both nationally and on a European level.
- 3.21 In January 2003 our Annual State Solicitors' Seminar took place in the Law Society of Ireland. The seminar was attended by those who work in the State Solicitor Service. Dr. Louise McKenna, Deputy Director of the Forensic Science

Laboratory gave a presentation on developments in the Forensic Science Laboratory and Francis H. Cassidy, Head of Superior Courts Section in the Office of the Director of Public Prosecutions gave an outline of the legislative process involved in the seizure of the proceeds of crime in Ireland.

- 3.22 Our 4th Annual National Prosecutors' Conference took place in May 2003 in Dublin Castle Conference Centre and was attended by over 200 delegates, all of whom are involved in the prosecution of crime. The programme for the conference was not devoted to any one single theme but rather several diverse topics. These included presentations on preservation of evidence given by George Birmingham, SC; the appliance of science by Mr. John McCullough, Chemistry Section, Forensic Science Laboratory; the International Criminal Court by H.E. Judge Maureen Harding Clark, International Criminal Court; and jury research by Dr. Penny Darbyshire from Kingston Law School, U.K.
- 3.23 This year the Office also co-hosted a conference with the Irish Centre for European Law and the Academy of European Law in Trier on The Impact of EU Law on National Criminal Law and Practice. The conference took place in June 2003 and was attended by 70 delegates from across Europe. The purpose of the conference was to review the development of co-operation in criminal justice matters at European Union level. Among the interesting topics covered at the conference were EU measures in relation to the fight against terrorism; combating cyber-crime; framework decision on the European Arrest Warrant; and the role of the European Court of Justice and National Courts of Justice in EU criminal justice matters. Conclusions of the conference were given by Mr. Michael McDowell, TD, Minister for Justice, Equality & Law Reform and Commissioner David Byrne, European Commission.
- 3.24 In the interests of providing as much information as possible on the work of the Office of the

Director of Public Prosecutions to the general public, the Office published two information guides in September 2003 on 'The Role of the DPP' and 'Attending Court as a Witness'. The booklets are set out in a frequently asked questions format and were published with plain English and editing advice from the National Adult Literacy Agency. Victim Support was also consulted in relation to sections of the booklets, which are of particular relevance to victims of crime. Since publication almost 30,000 copies of the booklets have been distributed on a national level through offices such as Victim Support; citizens information centres; libraries; Rape Crisis Centres; court offices; and Garda Stations. The booklets are also available on our website at www.dppireland.ie.

- 3.25 Another source of information on the Office of the Director of Public Prosecutions is our website. The site was re-designed and launched in December 2003. In the interests of fostering a better understanding of the work of the Office we have included a number of new features on our website including a questions and answers section; contact details of local state solicitors; an organisation chart; a careers page; and a comment form for feedback from visitors to the site. The website is WAI Level II compliant and is also bi-lingual. We will continue to review and evaluate the site through monitoring web traffic and through completed feedback forms.

Partnership

- 3.26 During 2003 the partnership process in the Office of the Director of Public Prosecutions was developed significantly. The partnership approach to examining organisational issues has proved to be extremely beneficial for the Office.
- 3.27 The partnership committee was consulted on issues such as the implementation of the Performance Management and Development System; preparation of progress reports for the

Civil Service Performance Verification Group (CSPVG); drafting of an e-mail policy for the Office; and introduction of the smoking ban.

- 3.28 Sub-groups of the committee were responsible for researching and reporting on the extension of flexible working hours to both administrative and legal staff; the implementation of the merit award scheme; and the preparation of an anti-bullying and harassment policy.
- 3.29 A review of the partnership process was also conducted during the year and, as a result of recommendations made, ten sub-groups of the partnership committee were formed in November 2003 to examine various issues including communications; quality service; environmental issues; promotion of the Irish language; health & safety; and human resources strategy. The establishment of such sub-groups will assist the information and decision-making process on a variety of issues affecting the workplace and will also serve to involve staff members at all levels from across the organisation in the change and modernisation process.
- 3.30 By the end of 2003 a total 49% of staff had been actively involved in the partnership process in one way or another. This involvement includes those who served on the partnership committee, those who occupied visitors' chairs at committee meetings, and those who were involved in partnership sub-groups. By any standards this is a tremendous achievement.

Conclusion

- 3.31 The foregoing organisational developments resulted in a real improvement in the service provided by the Office in 2003 and laid the foundation for a continued improvement in service into the future. They have also contributed significantly to the delivery of the overall mission of the Office which is *to provide on behalf of the People of Ireland a prosecution service which is independent, fair and effective.*

PART III
LEGAL DEVELOPMENTS

CHAPTER 4

LEGAL DECISIONS

INTRODUCTION

- 4.1 The purpose of this chapter is to give a brief review of some of the more important or interesting decisions in criminal legal cases in 2003.
- 4.2 The cases are chosen to give a flavour of the type of legal issues which arise in criminal trials. The chapter is not intended to give a comprehensive review of all developments in criminal law during the year. Readers who are interested in such a review may care to refer to Binchy and Byrne's Annual Review of Irish Law for 2003.

DELAY

- 4.3 Delay continues to be a live issue in many criminal prosecutions. The passage of time between the commission of an offence and its prosecution can give rise to the risk of an unfair trial for various reasons. Witnesses may be dead; unable to give evidence due to old age or illness; or unable to remember. The defendant may be unable to obtain evidence which might have helped the defence case, such as support for an alibi. Some of the more significant decisions are as follows:
 - 4.4 In *Director of Public Prosecutions v. P.O'C.* Court of Criminal Appeal (unreported, 26 January 2003), the court said that where a defendant thought that he would not get a fair trial because of delay, he should ask the High Court to stop the prosecution from going ahead, rather than raising the matter in the trial court.
 - 4.5 The issue of delay by the prosecutorial authority, rather than by a complainant, arose in *The Minister for Social, Community and Family Affairs v. Orla Lawlor* High Court (unreported, 17 February 2003). The accused was alleged to have made false representations for the purpose of obtaining unemployment assistance. The court said that an accused must satisfy two tests in relation to delay: (1) is the defendant going to face an unfair trial because of the delay? (2) is

the delay so outrageous that, fair trial or not, the prosecution should be prevented from proceeding?

- 4.6 The question of prosecutorial delay was again considered in *James M. Barry v. Director of Public Prosecutions and Others* Supreme Court (unreported, 17 December 2003). In refusing to stop the trial the court accepted the fact that because there were over 600 complaints in relation to Dr Barry there would, inevitably, be delays in processing the complaints, in completing the investigation, and in initiating the prosecution. It was understandable, given that the allegations related to behaviour in the context of the relationship between the doctor and his patients, that the victims would not have complained earlier.
- 4.7 Delay also has an impact on sentencing. In *Director of Public Prosecutions v. R.B.* Court of Criminal Appeal (unreported, 12 February 2003), the accused was convicted of two counts of unlawful carnal knowledge of a young girl a considerable time previously. The court held that where there was a long delay between the commission of the offence and the trial, there are a number of factors that ought to be considered in sentencing including, the conduct of the offender in the intervening time, relevant occurrences in the offender's life during the intervening period (in this case a serious illness), the harmful effect of the abuse on the victim, whether there were subsequent similar convictions or whether the offences formed part of a pattern, and the rehabilitation of the offender.

DRINK DRIVING

Alcolyser

- 4.8 The alcolyser is a device used by the Gardaí to measure the presence of alcohol in a driver using a breath sample. If a driver drinks alcohol immediately before giving a sample this may

affect the result. Because of this the usual practice is to allow twenty minutes after arrest before the driver is asked to blow into the alcolyser. In *Director of Public Prosecutions v. Marie Quirke* High Court (unreported, 3 March 2003), Mr. Justice Ó Caoimh said that unless a Garda thinks that the suspect drank alcohol within the preceding twenty minutes, the Garda need not wait before applying the alcolyser test. Although the Garda could have asked the accused when she last consumed intoxicating liquor, she did not have to answer (and any answer given might have been untrue). What was important was the opinion formed by the Garda, rather than the reliability of the alcolyser.

- 4.9 In *Director of Public Prosecutions v. Patricia Behan* High Court (unreported, 3 March 2003), the accused was charged with failure to provide a breath sample, contrary to section 13 of the Road Traffic Act, 1994. The court was asked what defences were available and what mental element was required by the section. It responded that the fact that the driver was confused or upset does not give an excuse to refuse to provide a sample.

EVIDENCE

Accomplice Evidence

- 4.10 An accomplice is a person who helps another person to commit a crime or helps him escape and avoid prosecution. The courts are cautious about accepting the evidence of an accomplice because an accomplice may tend to blame another person in the wrong, or exaggerate the other person's involvement, in order to minimise his own responsibility. As a result, the courts look for corroboration of accomplice evidence. Corroboration is independent evidence confirming the evidence being given by the accomplice. In *The People (Director of Public Prosecutions) v. John Gilligan* Court of Criminal Appeal (unreported, 8 August 2003), the court

said that it was not essential for the judge to warn the jury about this. The court found that it was sufficient for the trial court to seek corroboration of accomplice evidence by circumstantial evidence or independent testimony. The task of the court of trial was to recognise the dangers of accepting accomplice evidence and to safeguard against these dangers so that the evidence of an accomplice could be reasonably accepted.

Retention of Evidence

- 4.11 When investigating a crime the Gardaí must look for all the evidence and not just the evidence that shows a suspect to be guilty. They must generally show all the evidence collected to the suspect. Usually they cannot dispose of items of evidence which might be of value to the suspect without first giving an opportunity to inspect them. Often a stolen vehicle may itself be evidence in a case. It is, of course, important that it be restored to its owner as soon as possible.
- 4.12 A number of cases have dealt with the question of retaining evidence: *James Bowes and Deirdre McGrath v. Director of Public Prosecutions* [2003] 2 IR 25 Supreme Court; *Gavin McKeown v. the Judges of the Dublin Circuit Court and the Director of Public Prosecutions* Supreme Court (unreported, 9 April 2003); and *Ian Connolly v. Director of Public Prosecutions and the Judges of the Metropolitan District Court* High Court (unreported, 15 May 2003). In one case, a person accused of dangerous driving wanted to examine a motorcycle involved in the crash but it had already been disposed of. In the three other cases the suspects wanted to examine the cars in which they were apprehended. The court ruled in favour of one suspect and against the others. Arising from these decisions the following conclusions can be drawn:

- The obligations on the Gardaí must be interpreted realistically and practically and in relation to evidence which is necessary.
- The accused must show that the trial would be unfair in the absence of the evidence.
- The conduct of an investigation is primarily a matter for the Gardaí, who must exercise their discretion in relation to pursuing lines of inquiry.
- The suspect must ask to see the items within a reasonable time.

Powers of Arrest on Private Property

4.13 In *Director of Public Prosecutions v. Bernard O'Rourke* High Court (unreported, 17 February 2003) the Gardaí pursued onto private property a driver they suspected of dangerous driving. The driver was arrested on the property but did not own it. The District Court judge ruled that the procedure was invalid because the Gardaí had trespassed. The High Court disagreed. The offence had been committed in a public place. The Gardaí were entitled to enter onto private property not belonging to the driver to make an arrest. There was an implied authority given by householders to Gardaí to enter the driveway or garden of their property to enforce the law and there was no evidence given that the implied invitation had been withdrawn in the case.

4.14 Under section 39(2) of the Road Traffic Act, 1994, the Gardaí can enter private property, including the driveway of a house, but not the house itself, in order to arrest a person for drink driving. They must first have decided, on proper grounds, to make the arrest.

4.15 In *Director of Public Prosecutions v. Alan Molloy* Supreme Court (unreported, 28 February 2003) the Gardaí pursued a driver on to his own driveway, suspecting him of drink driving. The driver ordered the Gardaí to get out of the driveway. They decided to arrest him only after

entering his property. The High Court held that in the circumstances, the implied consent to allow Gardaí on to the driveway to enforce the law was revoked and therefore agreed the charges should have been dismissed.

4.16 In *Director of Public Prosecutions v. Jack Delaney* High Court [2003] 1 IR 363, the Gardaí chased the driver into his brother's house. The fact that the Gardaí might have trespassed on his brother's property did not mean that the driver's arrest was invalid. However, the court held the arrest was unlawful because Gardaí do not have the power under section 39(2) of the Road Traffic Act, 1994 to enter a dwelling to arrest a drunk driver pursuant to section 49(8) of the same Act.

Witness Protection Program

4.17 In general, a witness cannot be paid to give evidence but is entitled to expenses. Where the life of a witness would be in danger because he gave evidence, he may be put into a witness protection programme which would involve some monetary benefit. This was considered in *Director of Public Prosecutions v. John Gilligan* Court of Criminal Appeal (unreported, 8 August 2003). The court decided that it was not unlawful to offer some benefits as part of a witness protection program, even though the offering of a specific sum of money in return for testimony would be unlawful. The critical question was whether the witness thought he was being paid for his evidence. If not, the evidence would be admissible.

MULTIPLE CHARGES

Multiple charges - one trial

4.18 Rule 3, First Schedule, Criminal Justice (Administration) Act, 1924, states that a person may be prosecuted in one trial for different offences, once they arise from the same facts, or are part of a series of offences of the same or a similar character. They often need not have been

committed at the same time, although there is generally some link. Separate trials can take place if the judge thinks that a single trial would not be appropriate, under section 6(3) of the Criminal Justice (Administration) Act, 1924. In *The People (Director of Public Prosecutions) v. Catherine Nevin* Court of Criminal Appeal (unreported, 14 March 2003), the court held that three charges against Mrs. Nevin of soliciting others to murder her husband could be tried at the same time as the charge of murder itself, since there were significant facts which were common to all four charges, and all were supported by evidence suggesting a conspiracy or attempted conspiracy to murder her husband, and to do so by means which were similar in character.

CHAPTER 5

CONTEMPT OF COURT

- 5.1 A number of recent cases have dealt with the publication of material prejudicial to a fair trial of suspects both at a time when they had not yet been charged and also after the charging.
- 5.2 There are various forms of contempt of court. Contempt in the face of the court includes any act done, or words spoken in court or in the precincts of the court which obstructs or interferes with the administration of justice or is calculated to do so, for example, the interruption of court proceedings, assault committed in court, insults to the court or contempt by witnesses refusing without legal excuse to be sworn or to answer questions in court. Contempt outside court includes publishing material intended or likely to prejudice a fair trial.
- 5.3 Contempts in the face of the court may be punished in a summary manner by the trial judge. Contempts committed outside court may be prosecuted on indictment or may be dealt with through a special procedure known as attachment and committal. Under this the Director of Public Prosecutions may ask the High Court sitting without a jury to find that there has been a contempt and to punish it appropriately.
- 5.4 In *Director of Public Prosecutions v. Independent Newspapers Ireland Limited and Others* High Court [2003] 2 IR 367, two suspects were charged two days after a traffic accident in which two people died. Both were children within the meaning of the Children Act, 2001. There was much publicity in the days after the accident, both before and after they were charged, identifying the two suspects and indicating that they were out on bail on other charges and had previous criminal records.
- 5.5 The Director of Public Prosecutions brought a number of media organisations to court for contempt. In relation to contempts alleged to have been committed before charges were brought, Mr. Justice Kelly considered the Law Reform Commission report in 1991 on contempt of court which recommended that the same rules should apply where charges were imminent as apply after a person has been charged. The judge decided that any such extension in the law would require legislation. He upheld a number of the complaints relating to matters published after charges were brought.
- 5.6 In *Director of Public Prosecutions v. Independent Newspapers and Vincent Doyle* 2003 30 MCA, the Director brought attachment proceedings in the High Court against a newspaper that identified an accused, and also identified him as having already been convicted of offences similar to the offences of a sexual nature with which he was now charged. The same newspaper indicated that he was a paedophile and showed his photograph being led from court manacled to a Garda.
- 5.7 The accused had been charged a considerable length of time before the alleged contempt, and no trial date had been set. Mr. Justice Kearns held that the risk of prejudice to a trial was remote. For there to be a contempt, the risk had to be a real one. Furthermore, there was no mischievous intent by the journalist who was entitled to assume that the trial would not be held for some time. The application for attachment by the Director was refused.

Adverse Media Publicity

- 5.8 In *The People (Director of Public Prosecutions) v. Catherine Nevin* Court of Criminal Appeal (unreported, 14 March 2003), it was noted that media coverage could create bias or prejudice in the mind of a jury. This could result in an unfair trial. The onus lay on the applicant to establish that there had been a real risk of an unfair trial which could not be avoided by appropriate rulings and directions by the trial judge. Potential jurors in the trial had been invited to tell the court if they believed themselves to have been biased by publicity and a considerable

number of jurors who were selected did so inform the court and were excused. The Court of Criminal Appeal held that this had adequately addressed the issue of possible prejudice. The court also approved the trial judge's decision to ban certain 'colour piece' articles which commented on the accused's appearance, dress and demeanor in court, as well as photographs. It recalled the trial judge's description of these pieces as "the worst kind of tabloid journalism designed solely to sell newspapers without any regard to Mrs. Nevin's dignity as a human person".

CHAPTER 6

PROSECUTIONS ON BEHALF OF THE HEALTH AND SAFETY AUTHORITY

- 6.1 The Office of the Director of Public Prosecutions is not an investigative agency and has no formal role in relation to the investigation of offences other than to provide advice to investigators on legal and related issues as the need arises.
- 6.2 The Garda Síochána is the agency primarily charged with the investigation of allegations of criminal offences in this country. There are however other specialised investigating agencies, such as the Health and Safety Authority (the Authority).
- 6.3 The Authority is an independent statutory body. It was established pursuant to the Safety, Health and Welfare at Work Act, 1989.
- 6.4 The Authority has a multiple function. It is responsible for the promotion and enforcement of workplace health and safety in Ireland. It monitors compliance with occupational health and safety legislation and takes enforcement action, including prosecution, where necessary. It offers itself as an expert centre for information and general advice to employers, employees and self-employed and it promotes education and training in occupational safety and health.
- 6.5 The Authority has the right to initiate summary prosecutions in its own name. Only the Director of Public Prosecutions can prosecute on indictment.
- 6.6 With the growing complexity of industrial activity in general, the Authority has sought to develop, in parallel to its regulatory and advisory function, an investigative capability providing a proper basis for criminal prosecution in appropriate cases.
- 6.7 Both the Director and the Authority considered it desirable that a working relationship be developed between the Office of the Director of Public Prosecutions and the Authority, whereby the expertise of the former in criminal prosecutions and of the latter in the forensic analysis of industrial accidents might be combined, in particular to establish a sound basis for indictable prosecutions.
- 6.8 To that end, and over a series of regular meetings, an understanding has been developed by establishing the respective functions of the two agencies and acknowledging their respective expertise.
- 6.9 The DPP handles summary prosecutions on behalf of the Authority, a function previously exercised by the Chief State Solicitor, since December 2001.
- 6.10 The Solicitors Division of the DPP's Office, headed by the Chief Prosecution Solicitor, has developed a close working relationship with the Authority to agree procedures governing the submission of files by it, the material to be contained in them and also governing the handling of prosecutions on their behalf.
- 6.11 The Chief Prosecution Solicitor represents the Authority in summary prosecutions in Dublin and the local state solicitors represent the Authority outside Dublin. Summary prosecutions are taken in the name of the National Authority for Occupational Safety and Health (which is the formal title of the Authority).
- 6.12 Prosecutions on indictment are taken by the Director of Public Prosecutions. The Chief Prosecution Solicitor provides a solicitor and counsel service for these prosecutions. Decisions on whether to prosecute on indictment are the sole responsibility of the Director of Public Prosecutions, who acts independently of the Authority. However, in exercising such functions the Director will take the views and recommendations of the Authority into consideration.
- 6.13 The Solicitors Division also provides a solicitor and counsel service for judicial review proceedings arising out of summary prosecutions taken in the name of the Authority.

6.14 An internal reporting system has been developed to ensure that the Authority is in a position to monitor the initiation and progress of prosecutions brought by them around the country. A review of working procedures between the Solicitors Division of the DPP's Office, the Authority, and local state solicitors is ongoing. This includes a set of guidelines for prosecutions on behalf of the Authority which is near completion.

CHAPTER 7

ASPECTS OF SENTENCING

- 7.1 Under Section 2 of the Criminal Justice Act, 1993, the Director of Public Prosecutions may apply to the Court of Criminal Appeal to review a sentence if it appears to the Director that a sentence imposed by a court (Circuit, Central or Special Criminal Court) on conviction of a person on indictment was unduly lenient. The application must be made, on notice given to the convicted person and/or his solicitor, within 28 days from the day on which the sentence was imposed.
- 7.2 Since the Act came into force in 1993 a number of issues have arisen in relation to the role of the prosecution at the sentence hearing.
- 7.3 In the Statement of General Guidelines for Prosecutors issued by the Director in November 2001 the role of the prosecutor in the sentencing process is outlined as follows:
- To ensure the court is aware of the range of sentencing options available to it;
 - To refer the court to any relevant authority or legislation that may assist in determining the appropriate sentence;
 - To assist the court to avoid making any appealable error, and to draw the court's attention to any error of fact or law, which the court may make when passing sentence.

Duty to identify any error in principle by the trial Judge

- 7.4 In the case of *Director of Public Prosecutions v. Kevin Keegan* Court of Criminal Appeal *ex tempore* (unreported, 28 April 2003) the court stated it had great difficulty in approaching this particular case on the basis that a specific error of principle was alleged, where no attempt had been made to point out or argue the alleged error of principle at the time.
- 7.5 The court then referred to the case of *Director of Public Prosecutions v. George Redmond* [2001] 3 IR 390, in which the Court of Criminal Appeal

drew attention to the rule dating back to the year 1929 that where a defendant appealed against sentence and sought to allege an error of principle, except in the most extraordinary circumstances, he had to have made that point in the trial court if he was to be permitted to make it on appeal. The court could not see why this rule should not also apply to section 2 appeals by the Director.

Lack of formality in which evidence is given to a sentencing judge

- 7.6 The court in *Director of Public Prosecutions v. Kevin Keegan* Court of Criminal Appeal *ex tempore* (unreported, 28 April 2003) also criticised the lack of formality in which evidence is sometimes given to a sentencing judge. The prosecution is generally put on full proof by the defence on all evidence submitted to a court. When it comes to the mitigation plea on behalf of the accused, quite often courts are given character references, testimonials, and the like, without any formal proof. The Court of Criminal Appeal was critical of such informal practices.

Review of Sentencing, Undue Leniency

- 7.7 The issues of sentencing, undue leniency and the relationship between the judiciary and the Government arose in *Director of Public Prosecutions v. Grant Alexiou* Court of Criminal Appeal (unreported, 31 July 2003). In an application for a review of sentence on the grounds of leniency, the Director of Public Prosecutions submitted that the learned trial judge had erred in principle in the original case when he imposed a four-year suspended sentence on the understanding that the defendant was to leave the country immediately. The Director submitted that the power to order foreign nationals to leave the State is conferred on the Minister for Justice by the Immigration Act, 1999, and by making such an order the trial judge had intruded on the executive power of

the Minister. The Court of Criminal Appeal in dismissing the application held that the order of the trial judge requiring the defendant to leave the country had been a condition of the suspended sentence and not a deportation order. The trial judge had acted within his discretion when imposing the sentence. However the court was of the opinion that imposing an open-ended condition that the defendant never return to the country was in principle not good practice.

Mitigating Factors

7.8 The question of disparity in sentencing in respect of parties to the same offence tried by different judges on different dates was considered in *Director of Public Prosecutions v. Duffy & O'Toole* Court of Criminal Appeal (unreported, 21 March 2003). The defendants submitted that there was a disparity between the sentences imposed on them and a lighter sentence imposed on another participant in the offence in a separate trial. The Court of Criminal Appeal quoted Walsh J. in *The People (Attorney General) v. Poyning* [1972] IR 402 that where two prisoners have been jointly indicted and one receives a lighter sentence than the other it does not necessarily follow that the severe sentence is unjust. Furthermore the fact that a co-accused has received too short a sentence is not a reason to interfere with the longer sentence passed on the other accused. The Court of Criminal Appeal was of the view that an appellate court should only interfere where there is a disparity between sentences imposed on persons involved in the same offence for two reasons: firstly, where there was an objectively justifiable substantial sense of grievance due to the disparity in sentence and secondly where the disparity in sentence would have a harmful effect on public confidence in the public administration of justice. The Court of Criminal Appeal also emphasised that it was desirable where possible that co-accused be sentenced at the same time and by the same judge.

CHAPTER 8

INTERNATIONAL CO-OPERATION

- 8.1 Mutual legal assistance and extradition between states have become extremely important at a time when all types of crime, especially serious crime, are increasingly planned and carried out in more than one jurisdiction. The free movement of people, goods and capital throughout the European Union has facilitated the free movement of criminals, drugs, trafficked persons, arms, explosives, stolen goods and the proceeds of crime. The Director of Public Prosecutions is responsible for issuing requests for assistance on behalf of the investigating agencies (principally the Garda Síochána) and with issuing requests for extradition. Requests made to Ireland for mutual assistance or extradition are dealt with by the Department of Justice, Equality and Law Reform, advised by the Office of the Attorney General.
- 8.2 The past two years have seen increased activity with 97 requests for mutual assistance issued by the DPP in the year 2003 compared with 92 in the year 2002. On the incoming side, it is understood that the Department of Justice, Equality and Law Reform, which arranges for execution of all incoming requests, saw a slight fall in the number of requests received in 2003 over 2002. However the number of requests received still far exceeds the number issued with 231 requests received in 2002 and 208 in 2003. The presence of such an imbalance is worthy of study.
- 8.3 As the law stands it is difficult to conduct out-of-state investigations of offences committed within Irish jurisdiction where this involves questioning a suspect. In those circumstances a prosecutor is often left with no option but to seek the suspect's extradition, which removes the possibility of questioning, or to await the return of a suspect, which may never happen. The imbalance may also have to do with the comparative formality of some systems of investigation when compared to the common law system in which our own investigations take place. In our system Garda enquiries can take place without the need to raise formal request procedures, which could only be reciprocated pursuant to formal procedures. This arises because in some systems in continental Europe, equivalent enquiries can be made only if subject to supervision by a judge.
- 8.4 That imbalance is not apparent in relation to extraditions. In relation to extradition, Ireland had sought 36 extraditions in 2002 and 38 in 2003. The number of requests for extradition sent to Ireland has fallen slightly over the same period with 28 in 2003 compared to 32 in 2002.
- 8.5 Apart from that, Ireland continues to play its part in deepening cooperation with Member States of the EU in the field of criminal matters having maintained contact points within the European Judicial Network and a national representative at the European judicial coordination body, EUROJUST. Ireland also has a presence in the magistrates unit of OLAF (Office européen de lutte anti-fraude), the EU agency established to protect the financial interests of the European Communities against fraud and corruption. In the last year Ireland has legislated for the introduction of the European Arrest Warrant, which effectively replaces extradition procedures within the European Union. This is discussed in more detail in Chapter 9 of this report. Ireland will also shortly legislate for the introduction of joint investigation teams between Member States of the EU.

Chart 8.1

Requests for Mutual Assistance issued by the Director of Public Prosecutions

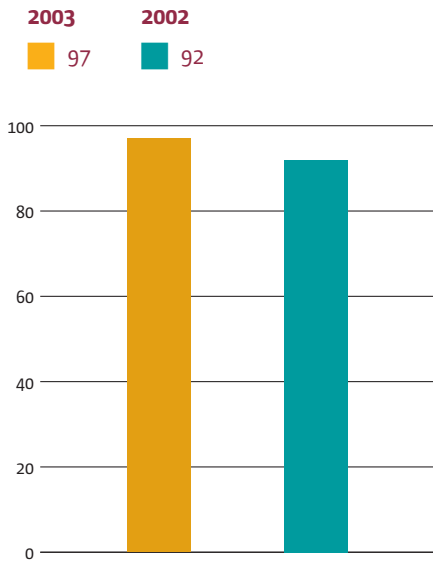


Chart 8.2

Requests for Mutual Assistance received by Department of Justice, Equality & Law Reform

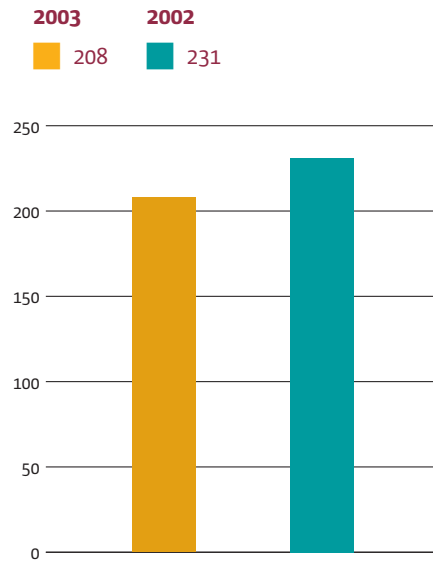


Chart 8.3

Requests for Extradition sought by Ireland

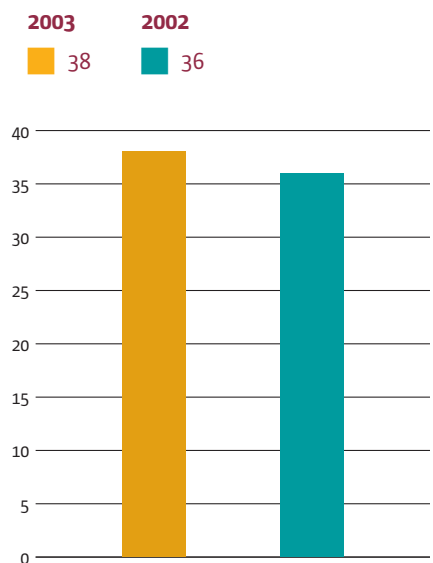
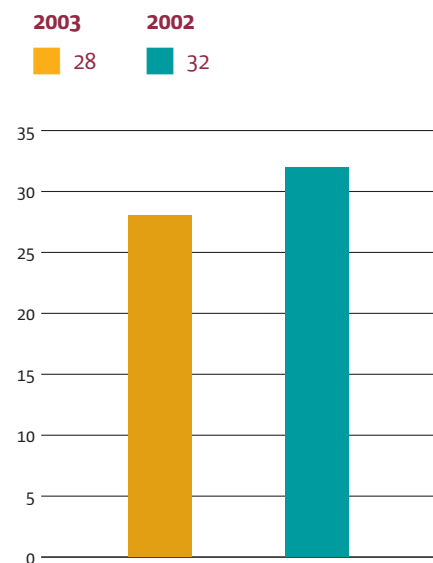


Chart 8.4

Requests for Extradition sent to Ireland



CHAPTER 9

EUROPEAN ARREST WARRANT

- 9.1 The European Arrest Warrant Act, 2003 was signed by the President on 28 December 2003 and came into effect on 1 January 2004. The Act gives effect to the provisions of the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States of the European Union, and provides for matters connected therewith.
- 9.2 The surrender arrangements for wanted persons introduced by the European Arrest Warrant replace the existing extradition arrangements between Ireland and all other EU Member States. It will also apply between Ireland and new accession States as soon as they adopt the necessary domestic measures. It replaces as between EU Member States the existing extradition arrangements based on the Council of Europe's 1957 European Convention on Extradition with a simplified surrender procedure.
- 9.3 Where the extradition of a person is sought and it is believed that that person may be in any of the other EU Member States an application will be made to a Judicial Authority within the State for the issue of a European Arrest Warrant. That application can either be made to the court that issued a domestic warrant for that person or the High Court. Such applications will now be made by solicitors from the Solicitors Division of the Office of the Director of Public Prosecutions on the instructions of the Director.
- 9.4 The format of the warrant is required to be as near as is practicable to the generic format as set out in the Framework Decision. This ensures an EU-wide consistency of format.
- 9.5 An agreed procedure was established between the Garda Síochána, the Office of the Director of Public Prosecutions and the Courts Service. The request for the application is initiated by the Garda Síochána who provide a draft warrant based on information of which they have particular knowledge, including identification of the accused, an outline of the offence and other material information. That draft will be forwarded to the Solicitors Division of the DPP's Office in order to address all necessary legal issues and then forwarded to the Directing Division for approval and direction to apply. The draft is then forwarded to the Courts Division who arrange a time, date and judge before which the application should be made and forward the draft to the judge for consideration prior to the application.
- 9.6 Completed warrants are forwarded by the Gardaí to the Central Authority for Mutual Assistance in the Department of Justice, Equality & Law Reform for onward dispatch.
- 9.7 There will be ongoing monitoring of procedures.

PART IV
FREEDOM OF INFORMATION

CHAPTER 10

FREEDOM OF INFORMATION

Developments in 2003

- 10.1 This year saw the enactment of the Freedom of Information Amendment Act, 2003. This has resulted in a need for further training for all FOI deciding officers and reviewers within the Office and this is being carried out on an on-going basis.
- 10.2 The Act introduced many amendments including the introduction of a standard fee for all requests received on or after 7 July 2003.
- 10.3 In total there were five requests submitted to the Office during this year. Four of the five requests were refused under the Acts and one request was granted in full. One of the requests was submitted by a journalist and the other four by the general public.
- 10.4 There was a fall of 70% in the number of requests received this year when compared with last year. This fall is quite significant.

FOI Information

- 10.5 The DPP's Office has continued to make FOI information available as readily as possible. The Office has also revised its section 15 and 16 Reference Book in line with the new legislation which is widely available in public libraries throughout the country and also on our website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept. It also explains that records held or created by this Office other than those relating to the general administration of the Office are restricted under section 46 (1)(b) of the FOI Act. This in effect means that these records are not accessible under FOI.
- 10.6 The FOI Unit can be contacted by telephone or by e-mail at foi@dppireland.ie. This e-mail address can be used for general queries on FOI but cannot be used to submit a request.

Statistics

- 10.7 Two applications were received without a fee and therefore not processed.

Requests Received 2003

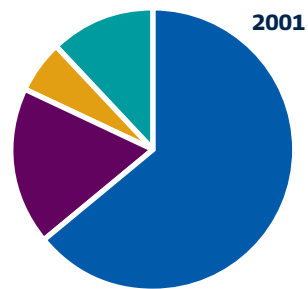
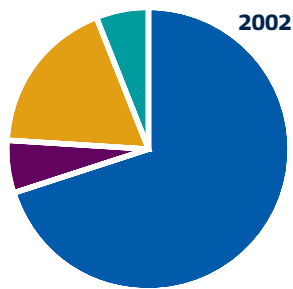
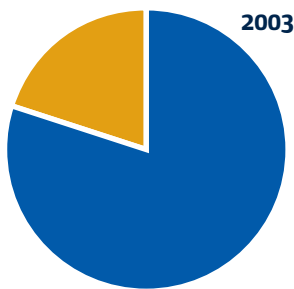
Requests Granted	1
Requests Refused	4
TOTAL REQUESTS	5

Requestors 2003

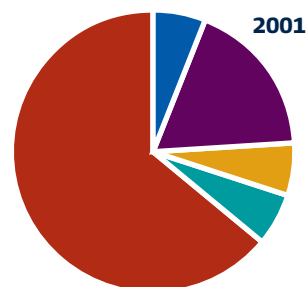
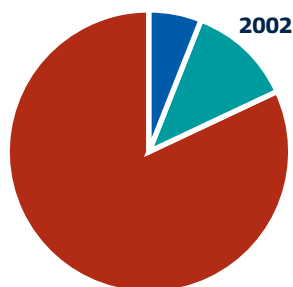
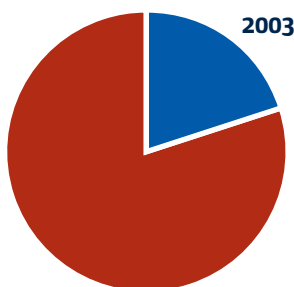
Journalist	1
General Public	4

A breakdown of the FOI requests received and decisions taken in the 3 year period from 1 January 2001 to 31 December 2003 is shown in the chart below:

Requests Received	2003	2002	2001
Members of the Public	4	12	11
Staff	0	1	3
Journalists	1	3	1
Other	0	1	2
TOTAL	5	17	17



Decisions Taken	2003	2002	2001
Requests Granted	1	1	1
Requests Part-Granted	0	0	3
Requests Transferred under s.7(3) of the Act	0	0	1
Requests Withdrawn	0	2	1
Requests Refused	4	14	11
TOTAL	5	17	17



PART V
STATISTICS

CHAPTER 11

PROSECUTION FILE STATISTICS

EXPLANATORY NOTE IN RELATION TO STATISTICS

The statistics outlined in this report have been compiled from data taken from our IT systems. The systems are subject to ongoing developments in order to enhance the quality of the data produced. We have in most instances included updated versions of the data set out in the Annual Report 2002 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 data at any given time, e.g. files 'under consideration' or cases 'for hearing', information given in this report will differ from that for the same year in last year's report. In addition, data from two years may not be strictly comparable because as time goes on more cases are completed, so the information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated as of May 2004.

TOTAL FILES RECEIVED

Chart 11.1 shows the total number of files received by the Office of the Director of Public Prosecutions from 1976 to 2003.

In December 2001 the Criminal Division of the Chief State Solicitor's Office was transferred to the Office of the Director of Public Prosecutions to form the Solicitors Division of the Office. The Solicitors Division of the Office of the Director of Public Prosecutions provides a solicitor service to the Director and acts on his behalf. The Division also deals with cases which do not require to be referred to the Directing Division for direction or decision. The files which are dealt with solely by the Solicitors Division include District Court Prosecution Files, appeals from the District Court to the Circuit Court and High Court Bail Applications. The number of files dealt with solely by the Solicitors Division is outlined in Chart 11.2.

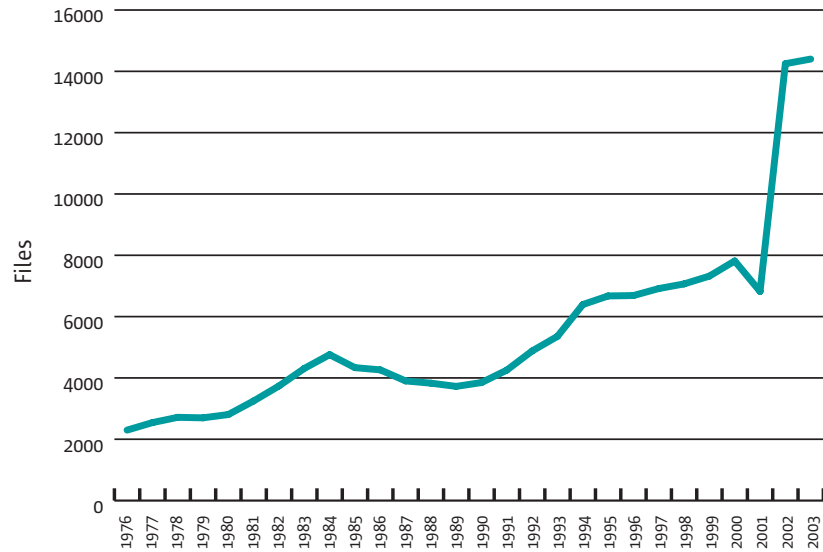
The vast majority of files received in the Directing Division relate to the investigation of crime. The remainder deal with general queries, matters for judicial review or requests for legal advice from the Garda Síochána or local state solicitors. The caseload has increased generally on a year on year basis since the establishment of the Office, both in terms of number of files received and in the complexity of the issues which have to be addressed. A significant drop of over 1,000 files can be seen in the figures from 2000 to 2001. This is due to a change in administrative arrangements authorising the prosecution of certain offences by the Garda Síochána without the necessity for the prior submission of files to this Office for directions. As can be seen, the increase in the number of files received subsequently resumed, notwithstanding those administrative arrangements. This suggests that the underlying trends are still upwards.

Chart 11.1

Total Files Received

Directing Division

Year	Files
1976	2298
1977	2542
1978	2715
1979	2698
1980	2806
1981	3249
1982	3738
1983	4309
1984	4759
1985	4335
1986	4263
1987	3902
1988	3829
1989	3724
1990	3849
1991	4255
1992	4880
1993	5356
1994	6393
1995	6674
1996	6687
1997	6915
1998	7066
1999	7321
2000	7815
2001	6821
2002	14249*
2003	14400*



* These are the amalgamated figures for files received in both the Directing Division and the Solicitors Division of the Office of the Director of Public Prosecutions. A further breakdown of these figures is outlined in Chart 11.2.

Chart 11.2

Breakdown of number of files received in 2002 and 2003

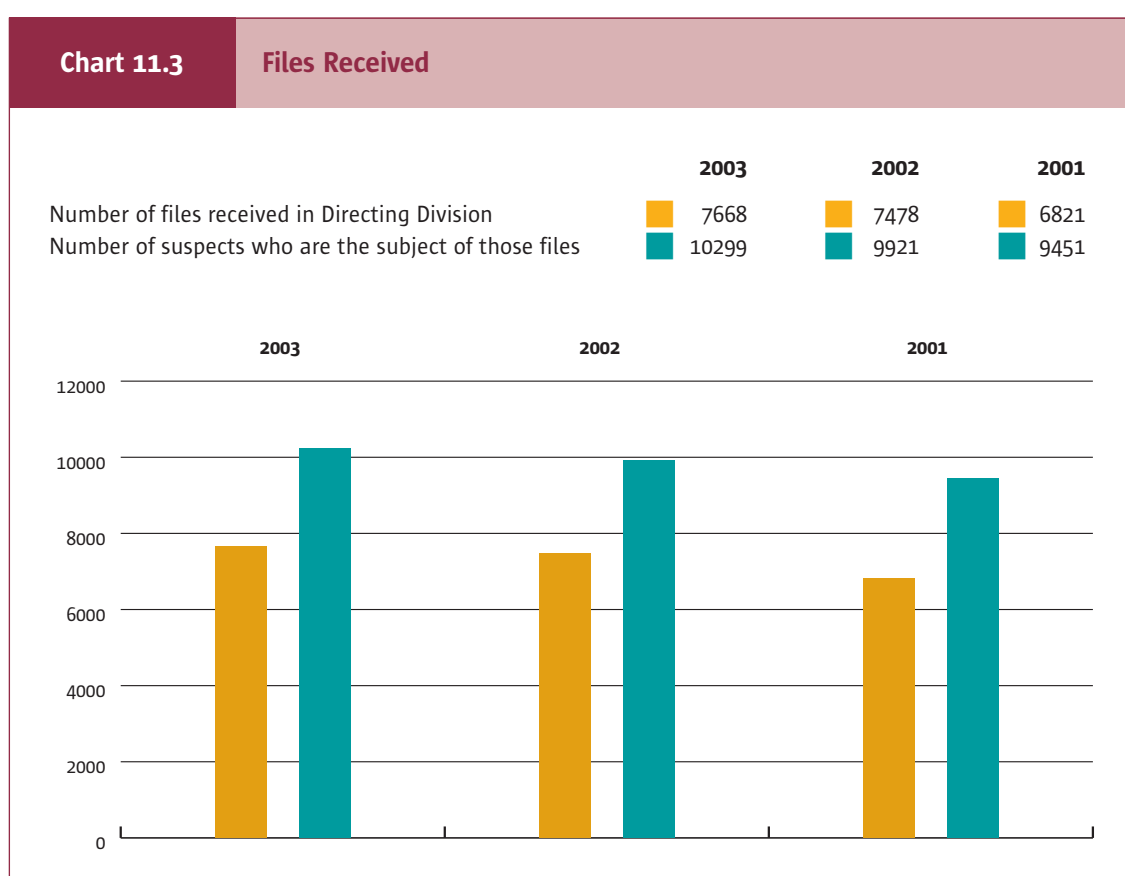
	2002	2003
Directing Division	7478	7668
Solicitors Division	6771	6732
TOTAL	14249	14400

DIRECTING DIVISION

FILES RECEIVED

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

NOTE: The figures for 2002 & 2001 differ slightly from those published in previous Annual Reports due to amalgamation and re-categorisation of some files.



DISPOSAL OF DIRECTING DIVISION FILES

The following charts show a breakdown of the disposal of files received in the Directing Division in 2001, 2002 & 2003 (as of May 2004). The Garda Síochána and specialised investigating agencies submit files either directly to our Solicitors Division or the local state solicitor for a direction whether or not to prosecute. Depending on the seriousness of the offence and the evidence disclosed in the file, a decision will be taken as follows:

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

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

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

Under Consideration: Files in which a decision has not been made. This figure includes those files in which

further information or investigation was required before a decision could be made. Further information is sought more often than not to strengthen the case rather than because of any deficiency in the investigation.

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

NOTE: The figures for 2001 & 2002 have been updated since the publication of previous Annual Reports (see note to chart 11.3). 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 and cases where the District Judge refused jurisdiction, notwithstanding the fact that the Director initially elected for summary disposal. A 'Non-Prosecution File' is reclassified as a prosecution file if a Garda file in relation to the same matter is subsequently received.

Chart 11.4

DISPOSAL OF DIRECTING DIVISION FILES BY NUMBER OF FILES RECEIVED IN EACH YEAR

Direction Made	2003	%	2002	%	2001	%
No Prosecution Directed	2358	31%	2210	30%	1999	29%
Prosecution on Indictment Directed	2256	29%	2329	31%	2132	32%
Summary Disposal Directed	2216	29%	2152	29%	2135	31%
Under Consideration	219	3%	164	2%	93	1%
Non-Prosecution Files	619	8%	623	8%	462	7%
TOTAL	7668	100%	7478	100%	6821	100%

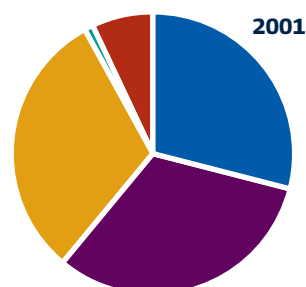
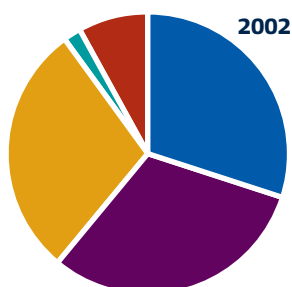
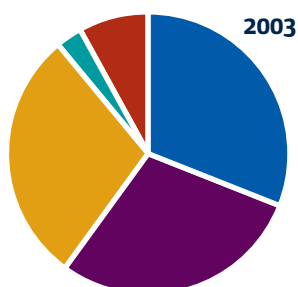
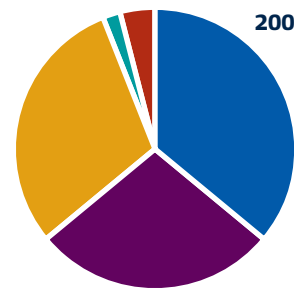
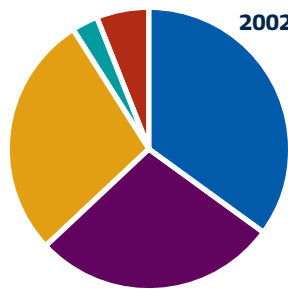
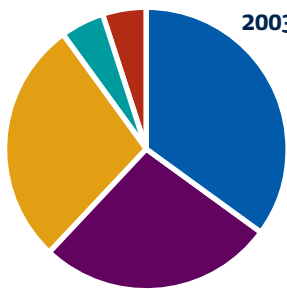


Chart 11.5

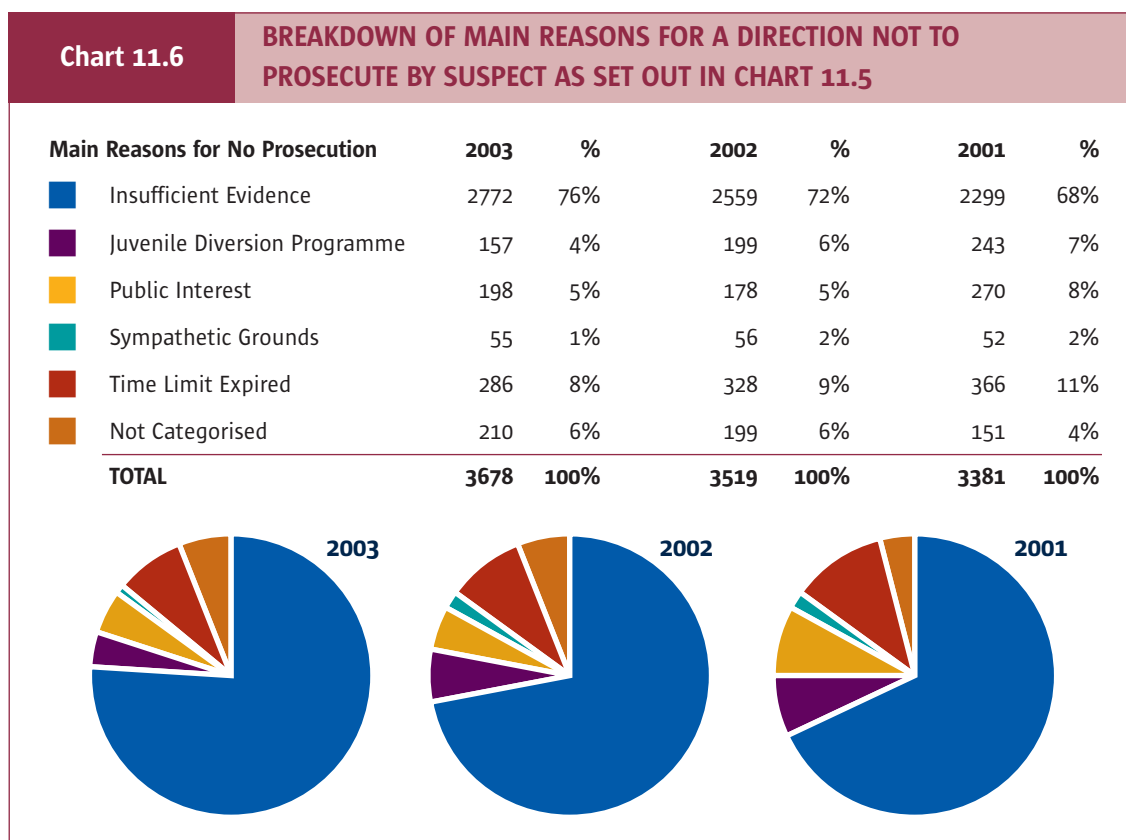
**DISPOSAL OF DIRECTING DIVISION FILES BY NUMBER OF SUSPECTS
SUBJECT OF FILES RECEIVED**

Direction Made	2003	%	2002	%	2001	%
No Prosecution Directed	3678	35%	3519	35%	3381	36%
Prosecution on Indictment Directed	2777	27%	2804	28%	2648	28%
Summary Disposal Directed	2848	28%	2765	28%	2863	30%
Under Consideration	481	5%	285	3%	145	2%
Other (including judicial reviews)	515	5%	548	6%	414	4%
TOTAL	10299	100%	9921	100%	9451	100%



BREAKDOWN OF MAIN REASONS FOR A DIRECTION NOT TO PROSECUTE BY SUSPECT AS SET OUT IN CHART 11.5

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 'not categorised' below). Delay, the death or disappearance of the suspect, the death or disappearance of the complainant or the refusal of a complainant to give evidence are some examples.

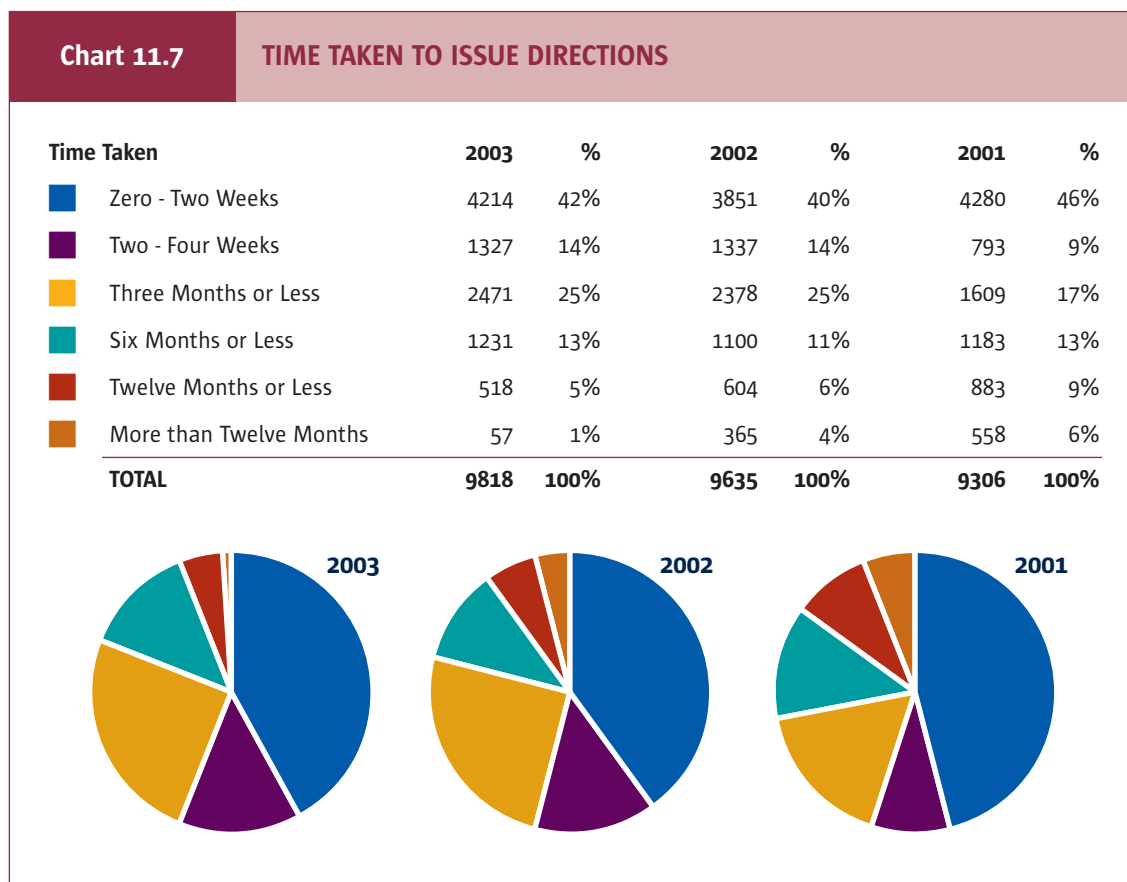


TIME TAKEN TO ISSUE DIRECTIONS

Chart 11.7 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, decision 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.

In order to give a more accurate figure, suspects in respect of whom further information has been sought but not yet provided and suspects in respect of whom cases are still under consideration have been excluded from the figures below. The total therefore is less than the total number of suspects as set out in Chart 11.3.



CASE RESULTS - PROSECUTIONS ON INDICTMENT

Chart 11.8 shows the results of prosecutions on indictment taken in relation to defendants in respect of whom prosecutions were commenced in the years 2000 to 2002 (as of May 2004).

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 2003 as the majority of these cases have yet to be dealt with by the courts.

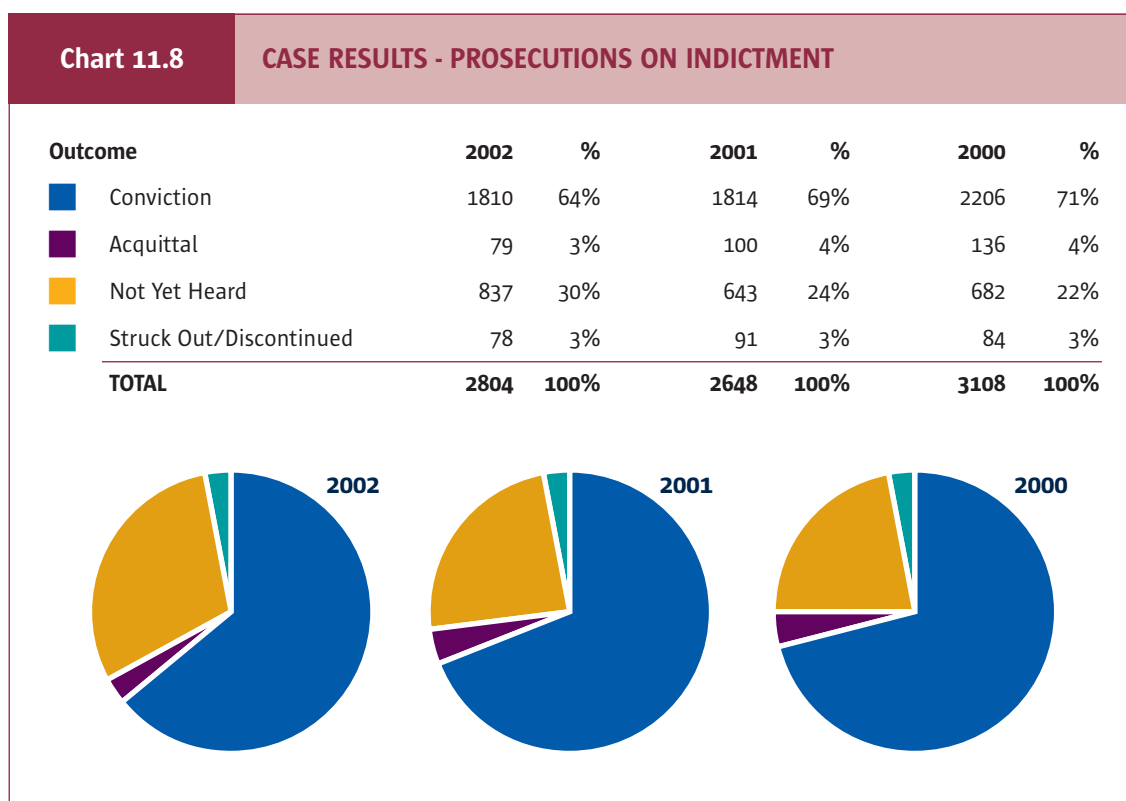
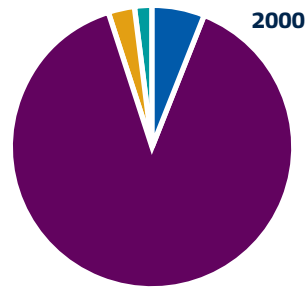
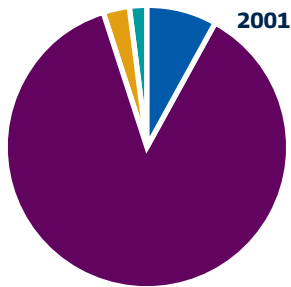
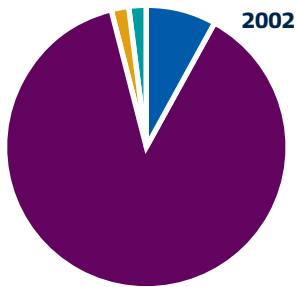


Chart 11.9

BREAKDOWN OF CONVICTIONS AND ACQUITTALS FROM CHART 11.8 ABOVE (EXCLUDING CASES STILL TO BE HEARD)

Breakdown	2002	%	2001	%	2000	%
Conviction by Jury	155	8%	150	8%	145	6%
Conviction Following Plea of Guilty	1655	88%	1664	87%	2061	89%
TOTAL CONVICTIONS	1810	96%	1814	95%	2206	95%
Acquittal by Jury	45	2%	55	3%	78	3%
Acquittal on Direction of Judge	34	2%	45	2%	58	2%
TOTAL ACQUITTALS	79	4%	100	5%	136	5%
TOTAL	1889	100%	1914	100%	2342	100%



APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

Section 2 of the Criminal Justice Act, 1993

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

Chart 11.10 below details the number of applications, and the results of those applications, heard since the introduction of the Act.

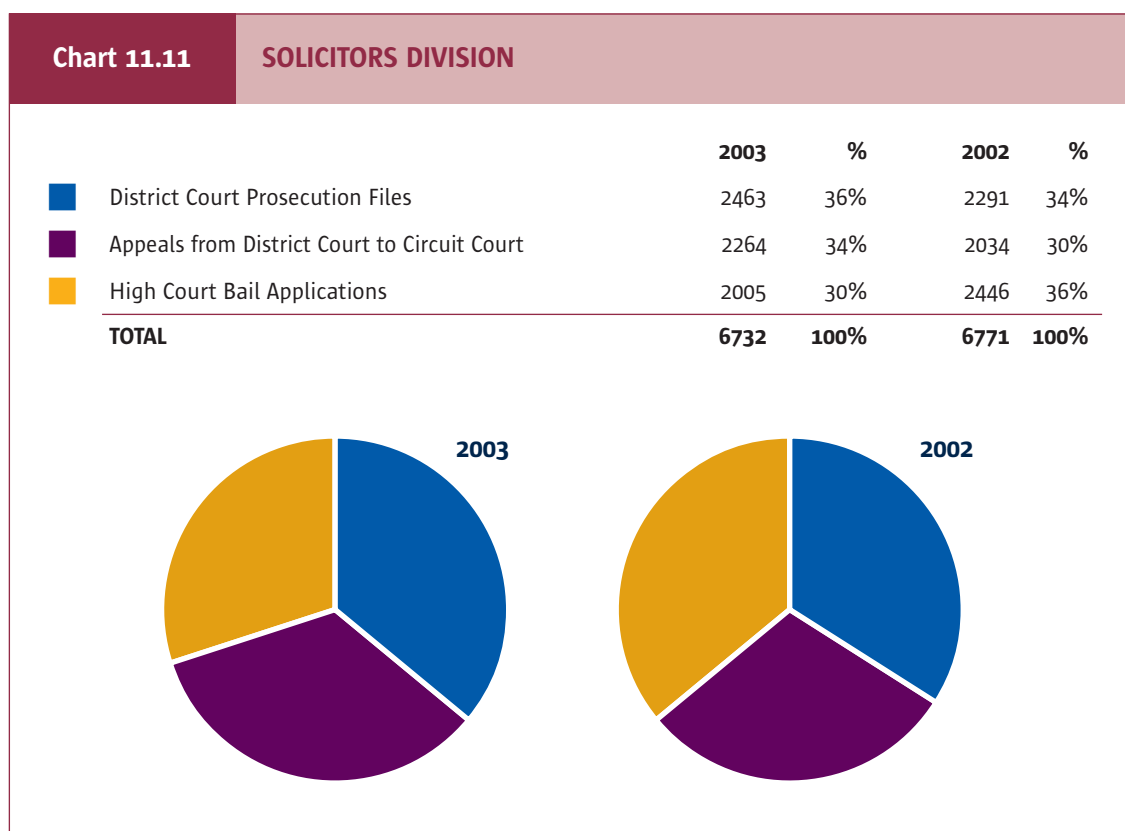
Chart 11.10		APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY			
Year of Application	Number of Applications	Successful	Refused	Pending	Other *
1994	2	-	1	-	1
1995	2	-	1	-	1
1996	3	1	1	-	1
1997	4	2	2	-	-
1998	12	6	3	-	3
1999	34	17	16	-	1
2000	31	15	13	-	3
2001	23	17	3	-	3
2002	23	14	9	-	-
2003	27	11	8	7	1

* Includes applications struck out and withdrawn

SOLICITORS DIVISION

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

Chart 11.11 represents the number of cases dealt with solely by the Solicitors Division and includes District Court prosecution files; appeals from the District Court to the Circuit Court; and High Court bail applications. The figure for District Court appeals represents the number of files held (not the number of individual charges appealed). One defendant may have a multiplicity of charges under appeal.



OFFICE EXPENDITURE

Chart 11.12 shows the breakdown of office expenditure for 2003, 2002 & 2001.

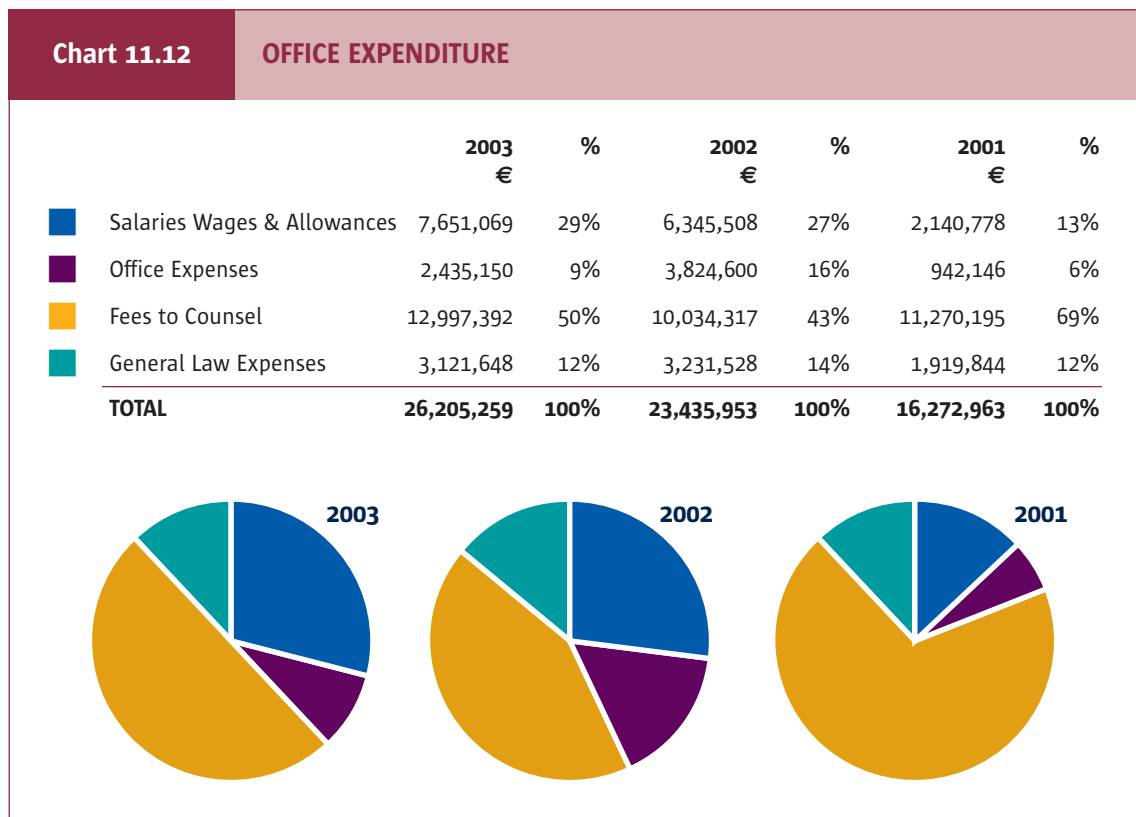
Salaries, Wages & Allowances: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2003 was 165.

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

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

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

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



FEES TO COUNSEL

Charts 11.13 & 11.14 show a breakdown of expenditure on fees to counsel in the various criminal courts and by region in respect of the Circuit Criminal Court.

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

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

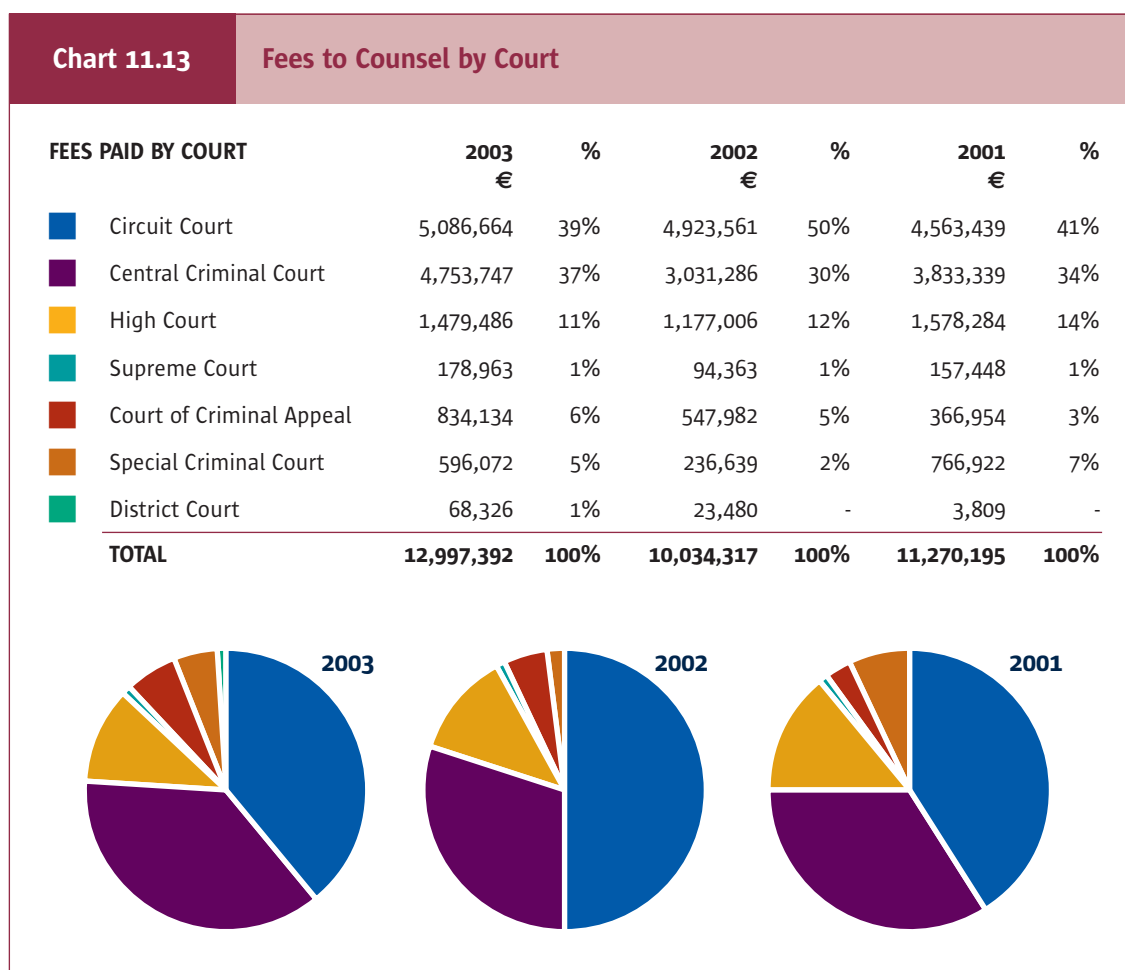
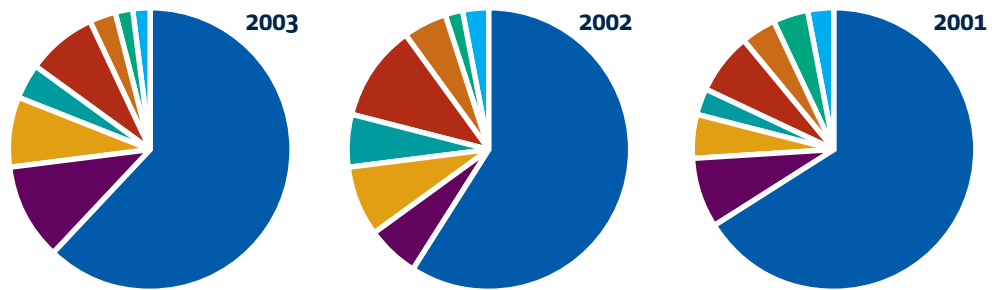


Chart 11.14

FEES TO COUNSEL - CIRCUIT COURT

FEES PAID BY CIRCUIT	2003	%	2002	%	2001	%
	€		€		€	
Dublin Circuit *	3,188,025	62%	2,918,243	59%	2,972,457	66%
Cork Circuit	548,147	11%	280,078	6%	373,303	8%
Eastern Circuit	389,966	8%	392,516	8%	238,711	5%
Midland Circuit	184,909	4%	272,795	6%	139,671	3%
South Eastern Circuit	420,950	8%	549,324	11%	317,435	7%
South Western Circuit	138,093	3%	223,562	5%	186,651	4%
Western Circuit	115,019	2%	121,299	2%	204,428	4%
Northern Circuit	101,555	2%	165,744	3%	132,053	3%
TOTAL	5,086,664	100%	4,923,561	100%	4,564,709	100%

* Added 58,480 to Dublin Circuit totals to account for re-issued Payable Orders



CHAPTER 12

Extract from Appropriation Account 2002

The following is an extract from the Annual Report of the Comptroller and Auditor General and Appropriation Accounts 2002.

Office of the Director of Public Prosecutions Vote 14

ACCOUNT of the sum expended, in the year ended 31 December 2002, compared with the sum granted and of the sum which may be applied as appropriations in aid in addition thereto, for the salaries and expenses of the Office of the Director of Public Prosecutions.

Service	Estimate Provision €'000	Outturn €'000	Closing Accruals €'000
ADMINISTRATION			
A.1. Salaries, Wages and Allowances	6,920	6,346	-
A.2. Travel and Subsistence	206	123	3
A.3. Incidental Expenses	1,068	978	36
A.4. Postal and Telecommunications Services	356	359	28
A.5. Office Machinery and Other Office Supplies	709	1,256	8
A.6. Office Premises Expenses	1,337	1,196	(70)
OTHER SERVICES			
B. Fees to Counsel	13,090	10,034	2,252
C. General Law Expenses	1,276	3,231	1,872
Gross Total	24,962	23,523	4,129
<i>Deduct -</i>			
D. Appropriations in Aid	7	87	-
Net Total	24,955	23,436	4,129
SURPLUS TO BE SURRENDERED	€1,519,317		

CHAPTER 13

PROMPT PAYMENTS OF ACCOUNTS ACT, 1997

Operation of the Act in the Period 1 January 2003 to 31 December 2003

- 13.1 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 counsels' fees within 30 days of receipt of the local state solicitor's report in each case.
- 13.2 In the period in question, the Office made 20 late payments in excess of €317.43. These were the only payments that incurred a late payment penalty. The total value of these late payments was €82,770.44 out of total payments of €2.5 million and interest thereon came to €496.63.

Statement of the Accounting Officer

- 13.3 The Office of the Director of Public Prosecutions is one of the organisations which is subject to the terms of the Prompt Payment of Accounts Act, 1997. The Act came into force on 2 January 1998, and since that time the Office has complied with the terms of the Act.
- 13.4 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.
- 13.5 The procedures which have been put in place can only provide reasonable and not absolute assurance against material non-compliance with the Act.

Michael Liddy

Accounting Officer

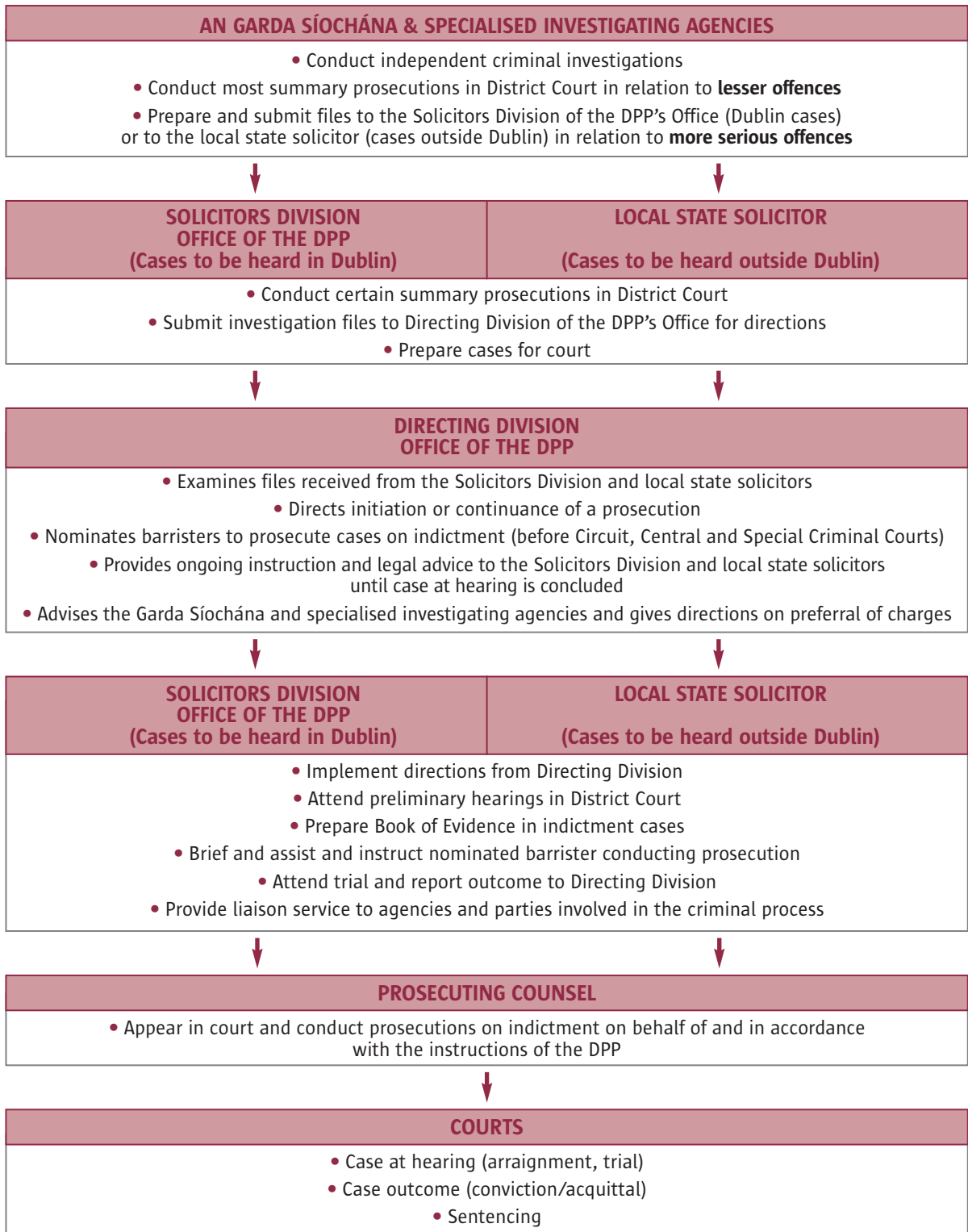
May 2004

PART VI

CHARTS

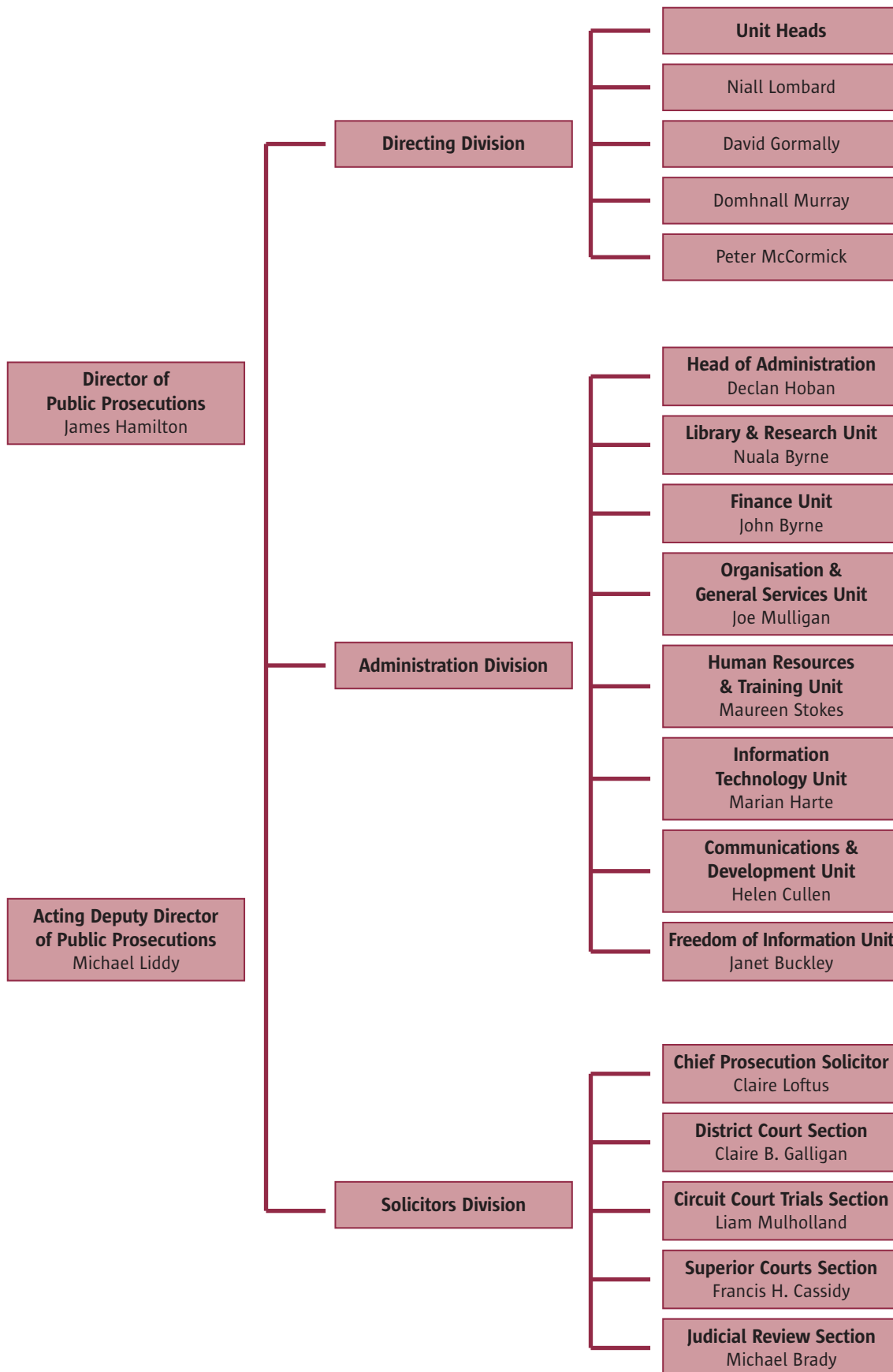
CHAPTER 14

OUTLINE OF THE CRIMINAL PROSECUTION PROCESS



CHAPTER 15

ORGANISATION STRUCTURE



PART VII
APPENDIX

APPENDIX

Extract from Annual Report 1999

Chapter 3: The General Work of the Office

- A.1 The fundamental function of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters. While that function is occasionally performed in conjunction with agencies other than the Garda Síochána, it is for clarity in this report considered generally in relation only to cases emanating from the Garda Síochána which account for over 95% of the casework of the Office. The other investigative agencies referred to include Government Departments, the Revenue Commissioners and the Revenue Solicitor, An Post, the Competition Authority, the National Authority for Occupational Safety and Health, and local authorities.
- A.2 The work of the Office includes:
- (i) the consideration of Garda criminal investigation files submitted to the Office
 - (ii) the decision as to whether or not a prosecution should be initiated or as to whether a prosecution already initiated by the Garda Síochána should be maintained and the advising of any further investigations necessary for the commencement or continuation of a prosecution
 - (iii) the determination of the charges to be preferred and the consideration of any charges already preferred
 - (iv) the determination of the proofs and other materials to be tendered to the court and to the accused, including issues regarding the disclosure to the defence of unused material
 - (v) the giving of instructions generally regarding the conduct of the prosecution of criminal trials including the issuing of decisions regarding the many questions of law and of public policy which can arise in the course of criminal proceedings
 - (vi) conferring as necessary with counsel, state solicitors, members of the Garda Síochána and persons giving scientific or technical evidence
 - (vii) deciding whether appeals, including appeals by way of case stated, should be brought or contested and the prosecution or defence of proceedings for judicial review and habeas corpus arising out of criminal proceedings
 - (viii) the referral of sentences considered to be unduly lenient to the Court of Criminal Appeal
 - (ix) the consideration of complaints and allegations of the commission of criminal offences received from members of the public and, where appropriate, their transmission to the Garda Commissioner
 - (x) the consideration of files submitted by the Garda Síochána Complaints Board
 - (xi) the drafting or settling of documents necessary for the processing of requests for extradition into the State
 - (xii) the drafting and making of requests for international mutual assistance in criminal matters
 - (xiii) serving on committees and attending meetings relating to prosecutions and criminal law and procedure; identifying operational problems arising in the administration of the criminal law and assisting on request on matters relevant to proposed criminal legislation; lecturing at the Garda Síochána Training College

- A.3 One important constituent element of the Director's functions regarding the prosecution of offences consists of his powers and duties under sections 45 to 48 inclusive of the Offences Against the State Act, 1939. In effect, these powers and duties involve the abrogation in particular cases of the general constitutional right to trial by jury. They include the issuing of directions under section 47(1) that persons be charged in a Special Criminal Court rather than in the ordinary courts, and the certification pursuant to section 46(2), 47(2) or 48 that the ordinary courts are inadequate to secure the effective administration of justice in relation to particular cases.
- A.4 Various other functions regarding the prosecution of offences are performed by the Director. For example the issuing of consents enabling indictable offences to be dealt with summarily (section 2 of the Criminal Justice Act, 1951 and section 13 of the Criminal Procedure Act, 1967), electing between summary and indictable procedures in the case of certain statutory offences, directing the initiation of certain types of prosecution which by law require the Director's consent such as prosecutions for corruption, incest, marital rape, prosecution under the Explosive Substances Act, 1883, the Official Secrets Act, 1963 and the Criminal Justice (Drug Trafficking Offences) Act, 1996, and the granting of certificates, pursuant to section 29 of the Courts of Justice Act, 1924, to enable accused persons to appeal from the Court of Criminal Appeal to the High Court on a point of law of exceptional public importance.
- A.5 The Director now has functions under the provisions of the Criminal Justice Act, 1994, both in the domestic and international spheres, in relation to orders of restraint and confiscation of criminal assets, to money laundering and to international mutual assistance in criminal matters.
- A.6 The Director also exercises specific functions under legislation governing elections and referenda, particularly in relation to election and referendum petitions, and under the Companies Act.
- A.7 The Director nominates and through the State Solicitor Service instructs counsel in the various trial courts, in the High and Supreme Courts and the Court of Criminal Appeal and in other courts in which counsel are retained on his behalf, and determines the amount of and discharges their fees.

