





Office of the Director of Public Prosecutions

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FOREWORD



Once again it is my pleasure to present the Annual Report of the Office of the Director of Public Prosecutions.

This Report covers the calendar year 2004, during which the Office continued to consolidate and build upon the major changes brought about by the Nally Report in recent years. That work is set out in detail in Chapter 2 of the Report, which details the developments in the Office in respect of many issues including information technology, case management, training and development of staff, communications with the public, and cooperation with other agencies within the criminal justice system, all of which are intended to enhance the Office's mission to provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective.

I hope that the statistical information in the Report will prove useful and informative. That information is generated as a by-product of our case-tracking system which continues to be developed. In comparing these statistics with those published by other agencies care needs to be taken to ensure that the bases of comparison are the same. Our system classifies cases according to the year in which a file is created by us. As time passes it becomes possible to see a more complete picture for the cohort of cases from each year.

In 2004 the number of files dealt with in the Office remained constant compared with the previous two years, although cases continue to increase in complexity. It is difficult to measure this because the full picture of a case is not always clear until it is finished.

Of the files received in the Office, around 60% in the average year lead to a prosecution. Analysis of the reasons for not prosecuting, which are not given in individual cases other than to the Garda Síochána, shows that in over 70% of cases which are not prosecuted this is because of lack of sufficient evidence. The vast majority of those cases which are prosecuted end up in pleas of guilty. In recent years between 87 and 90% of all prosecutions have led to a guilty plea with an overall conviction rate of 95%. There are acquittals in 5% of cases.

A number of major challenges face the Office over the next few years.

Firstly, it is essential that the project to transfer responsibility for the state solicitor service outside Dublin to the Office be completed soon. It is impossible to have a “joined-up” prosecution service while responsibility for this service remains fragmented. The legislation to enable the transfer is now in place. Further progress now awaits negotiations on contractual terms with the existing state solicitors.

Secondly, it is vital that the Office be located in a single headquarters building, preferably near to the new criminal court complex being built at Parkgate Street. The existing bi-location between Abbey Street and Merrion Street is wasteful of resources and impedes the full achievement of the Office’s potential.

Thirdly, and perhaps most challenging, this Office must continue to develop its focus on victims of crime. While the Office represents the People as a whole rather than individual victims or their families, the Office must be as sensitive as possible to the rights of victims as the persons most directly affected by crime. We addressed this in a very tangible way during the year by co-hosting a conference with two Dublin Children’s Hospitals on child witnesses and victims. I am very pleased that this conference successfully highlighted some of the issues of concern for victims. The conference is discussed in more detail in Chapter 7.

We see the communication of our commitment to victims as essential to the prosecution process and will strive to ensure that victims and their families know about their entitlements including information

on the progress of their cases and the right to make representations to this Office. We welcome the establishment by the Minister for Justice, Equality and Law Reform of a Commission for the Support of Victims of Crime. The Office has made a submission to the Commission emphasising the valuable work carried out prior to and at trial by persons providing support to victims at court. We will continue to cooperate with groups representing the victims of crime and will seek to develop the provision of general information to victims. We will keep our policies in dealing with victims under review as we try to respond to the needs of our changing society. Our two plain language information booklets on “The Role of the DPP” and “Attending Court as a Witness” which are available on our website at www.dppireland.ie will shortly be made available in Russian and Chinese as well as in English and Irish. They are also available in Braille and audio cassette.

I would like to conclude by thanking my own staff as well as the other people and agencies with whom the Office works for their dedication and hard work during 2004.



James Hamilton
Director of Public Prosecutions
September 2005

MISSION STATEMENT

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

1 GENERAL WORK OF THE OFFICE

1.1 The office of the Director of Public Prosecutions was established by the Prosecution of Offences Act, 1974. One of the fundamental functions conferred on the Director under the Act is the direction and supervision of public prosecutions and related criminal matters.

1.2 The majority of criminal 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, the Revenue Solicitor, Government departments, the Health & Safety Authority, An Post, the Competition Authority, the Director of Corporate Enforcement, and local authorities.

1.3 The independence of the Director of Public Prosecutions is a key value of the Office. The Prosecution of Offences Act, 1974 specifically 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.

1.4 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. The decision to prosecute is based on 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. Following a decision to prosecute, the Directing Division, in consultation with the Solicitors Division, gives directions and instructions from time to time which are necessary to ensure the proper conduct of the prosecution.

- The **Solicitors Division**, headed by the Chief Prosecution Solicitor, acts as a solicitor for the Director and the Garda Síochána in the preparation and presentation of cases in the Dublin District and Circuit Court, the Central and Special Criminal Courts, the Court of Criminal Appeal, and the High and Supreme Courts. Outside the Dublin area this function is carried out by 32 local state solicitors who deal with cases in their respective regional areas.
- The **Administration Division** provides organisational, infrastructural, administrative and information services required by the Office and also provides support to both the Directing and Solicitors Divisions.

1.5 The work of the Office includes:

- the consideration of criminal investigation files submitted to the Office

- deciding whether or not a prosecution should be initiated or 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
- the determination of the charges to be preferred and the consideration of any charges already preferred
- 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
- presentation of criminal prosecutions in the District Courts of the Dublin Metropolitan District and appeals therefrom to the Circuit Court
- 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
- 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 giving of instructions 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
- conferring as necessary with counsel, state solicitors, members of the Garda Síochána and professional witnesses
- the determination and discharge of the fees of Counsel who are instructed to act on behalf of the Director
- deciding whether appeals, including appeals by way of case stated, should be brought or contested, and bringing and defending proceedings for judicial review
- defending bail and *habeas corpus* applications arising out of criminal proceedings
- the referral of sentences considered to be unduly lenient to the Court of Criminal Appeal
- 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
- the consideration of files submitted by the Garda Síochána Complaints Board
- the drafting or settling of documents necessary for the processing of requests for extradition into the State
- the drafting and making of requests for international mutual assistance in criminal matters
- participating in and contributing to committees and working groups in relation to criminal law and procedure; facilitating specialised training programmes on aspects of the prosecution of crime for the Garda Síochána; and organising conferences on criminal justice topics for the benefit of our stakeholders
- cooperating with and participating in joint initiatives with other agencies with an interest in and responsibility for aspects of criminal justice, including the Garda Síochána; the Revenue Commissioners; the Competition Authority; the Director of Corporate Enforcement; the Health and Safety Authority; other prosecution agencies; the Courts Service; the Department of Justice, Equality and Law Reform; the Law Reform Commission; the Forensic Science Laboratory; the State Pathologist; the Medical Bureau of Road Safety; the Office of the Attorney General; as well as organisations representing the interests of victims

2 THE YEAR IN REVIEW

2.1 As already stated in previous chapters, the core work of the Office of the Director of Public Prosecutions is to examine criminal investigation files, to decide whether or not to initiate a prosecution, and where prosecutions are directed to prepare and present the case in court. Detailed analysis of progress achieved in this area of our work is set out in Chapter 10 of this report.

2.2 In order for this Office to carry out our core work it is essential that we have the necessary resources, structures, processes and systems in place. During 2004 the continued implementation of the civil service modernisation programme within our organisation has greatly facilitated the development and enhancement of these key support mechanisms.

2.3 The publication early in the year of our Strategy Statement 2004 – 2006 provided an opportunity for us to set out our strategic plan for the three year period and to focus on the key objectives which were identified as being fundamental to the provision of an efficient and effective prosecution service. Over the course of 2004 substantial progress was achieved in delivering on those key objectives.

2.4 The development of a number of modernisation initiatives across a wide range of areas has enabled this Office to lay the foundations upon which our performance into the future will be built. Detailed progress reports outlining the development of these initiatives were submitted to the Civil Service Performance Verification

Group (CSPVG) during the year in fulfilment of our obligations under the Social Partnership Agreement *Sustaining Progress*. This Office was invited to appear before the CSPVG in October 2004 to further outline progress achieved and our plans for future development of the prosecution service. The performance of the Office in delivering on our commitments under the *Sustaining Progress* agreement was verified by the CSPVG as warranting payment of the general round pay increases to all grades of staff during the year. The Progress Reports supplied by this Office to the CSPVG are available on the Department of Finance website at www.finance.gov.ie.

Legal Environment

2.5 Our Office operates in a constantly changing legal environment. It is essential therefore that we keep abreast of national and international legal developments and ensure that our staff have the necessary resources to meet the continuing demands of increasingly complex and new areas of criminal law. It is also important that we work closely with and consult with other agencies involved in the prosecution of crime. During 2004 a number of initiatives were developed in response to these needs.

- Our continued investment in electronic Library Management Services has enabled us to continue to develop the Digital Media Archive, initially launched in December 2003, which provides our staff with timely desktop online access to unreported court judgements,

Garda circulars, legal research papers, selected internal directions and our internal current legal awareness bulletin.

- Arising from needs identified through our Performance Management Development System (PMDS), our Training & Development Plan for 2004 sets as a priority a focus on legal training and continuing legal education programmes for our staff. A number of in-house legal training sessions took place which were facilitated by barristers from the Law Library on legal topics of specific interest. In all, 42% of staff attended national and international conferences during the year on legal topics and in specialist areas of criminal prosecution.
- The Office continued to organise seminars and conferences for our stakeholders during 2004 in order to provide fora for consultation, discussion and sharing of knowledge on best practice in the prosecution of crime. Our Annual State Solicitors' Seminar took place in January 2004 and delegates discussed various topics including appeals against unduly lenient sentences; the European Convention on Human Rights Act, 2003; and the Juries Act, 1976. The 5th Annual National Prosecutors' Conference took place in May 2004 and was attended by over 200 delegates representing numerous agencies involved in the criminal justice system. The theme of the conference was *Combating Child Pornography* and speakers included Dr. Patrick Walsh from the Granada Institute; Tom O'Malley from National University of Ireland Galway; Esther George, Policy Advisor, Crown Prosecution Service, England; and members of the Computer Crime Investigation Unit from the Garda Bureau of Fraud Investigation. In November 2004 this Office, together with the Children's Hospitals in Crumlin and Temple Street, jointly hosted a conference on Child Witnesses which is discussed in some detail in Chapter 7 of this report. This Office also had the honour of hosting the 7th Eurojustice Conference which took place in Dublin Castle in October 2004 and which was attended by heads of prosecution services across the European Union, including the ten new member states. This conference is reported on in Chapter 8 of this report. Finally, the Criminal Law Committee of the International Bar Association held its 7th Transnational Crime Conference in Dublin in June 2004. The Director of Public Prosecutions acted as co-chair of the conference.
- This year we introduced a programme of regional training seminars for members of the Garda Síochána at Superintendent level. The seminars commenced in October 2004 and were facilitated by members of staff from this Office. To date seminars have taken place in Dublin, Sligo, Cork, Kilkenny, Galway and Mullingar. This programme has provided an excellent opportunity for us to liaise with senior members of the Garda Síochána who prosecute summary cases on our behalf in District Courts nationwide and who compile investigation files in more serious cases for submission to this Office.
- This Office responded to the changing work environment brought about when the Central Criminal Court sat outside Dublin in regional locations during the year. This necessitated officers from our Solicitors Division travelling to Limerick and Ennis to attend criminal trials of offences committed in these areas.
- In order to deal effectively with the core work of the Office it is essential that we continue to consult and co-operate with other agencies involved in the criminal justice system both on a national and international level. In recognising the importance of co-operation and cross-agency working relationships members of our staff continued to participate in and contribute to the work of a number of working groups and committees during the year including the Criminal Justice Inter-operability Group; Supreme Court Computerisation Group; and District Court Efficiency Committee. On an international level this Office continues to contribute to and participate in various international bodies including EUROJUST (established to improve co-operation in relation to mutual assistance in criminal matters); GRECO (established to ensure compliance with the European Conventions against Corruption); and OLAF (Office Européen de Lutte Anti-Fraude -

established to protect the financial interests of the European Communities against fraud and corruption). The Office also continues to support the work of the International Bar Association and the International Association of Prosecutors.

Efficient Use of Resources

2.6 Like other public sector organisations the Office is conscious of the need to make the most efficient use of resources possible. During the year the Office continued to develop systems to provide managers with the information necessary to manage the work of the Office effectively and to ensure that our resources are allocated and utilised as efficiently as possible.

- In last year's Annual Report, reference was made to the completion of our Management Information Framework (MIF) Report which identified the information needs of the Office. Three categories of information needs were identified. These related to the legal work of the Office, the financial transactions of the Office and the human resources of the Office. The 2003 Annual Report drew attention to the fact that the Office had implemented the new civil service Human Resource Management System. It also reported that the Office had commenced implementation of a new accounting system to meet its financial needs.
- During 2004 the installation of a new accounting system was completed on time and within budget. The new system provides the Office with a modern integrated accounting solution, tailored to our specific needs. It provides improved management information, especially in the areas of management accounting and budgeting and it will support future developments in the areas of output costing and accrual accounting. Under the new accounting system inefficient manual procedures have been eliminated and the processing of payments has been speeded up. The new system is delivering a significantly improved level of service.
- The third category of management

information identified in our MIF Report related to the management of the legal work of the Office. The point was made in the 2003 Annual Report that the scope of the IT project required to meet these needs is significantly greater than that required with regard to the financial and human resource systems. This project involves the development of a new IT system to manage both the legal work traditionally performed in the Office as well as the expanded range of responsibilities arising from the transfer of the criminal prosecution functions of the Chief State Solicitor and, in addition, the planned transfer of the state solicitor service.

- In the 2003 Annual Report it was stated that we anticipated the specification and selection process with regard to the new legal case management system would be concluded in 2004 with development work commencing at the start of 2005. Specification work was completed on target in 2004 and a tender process for the development of the necessary IT system was initiated. However, upon receipt of tenders the Office was not satisfied that any of the offers represented value for money. Accordingly, the Office reissued the tender. Development work is now expected to commence in the third quarter of 2005. The target date for completion of implementation of the new system is December 2006.
- An internal audit system was introduced during the year to strengthen internal control and to comply with best practice. At the same time an Audit Committee with two external members, one of whom chairs the committee, was appointed. The committee carries out its work in accordance with the terms of a formal Audit Charter. An Internal Audit Plan has been adopted for the period 2004 – 2006 which covers all major aspects of the work of the Office.
- Towards the end of 2004 the Office initiated a risk assessment exercise to identify the principal risks to the achievement of the Office's policies, aims and objectives. This exercise involved a series of facilitated workshops being held across the divisions of the Office following which participants

individually identified and ranked key risks. The top management team examined the risks identified and, with assistance of the facilitator, produced a consolidated risk register.

- The implementation of Phase II of the Library Management System during the year resulted in the completion of the Acquisitions Module and the Serials Module. This has facilitated electronic ordering, receipt and invoicing of library books.
- A new time and attendance system, Vision Time Web, was introduced in December 2004. The new system has facilitated devolvement of some HR responsibilities to line managers who now have direct online access to the system. VTWeb provides a more efficient and expeditious service and the previous paper-based system has been eliminated.

Quality Service

2.7 Quality Service has always been a core value of the Office of the Director of Public Prosecutions. The publication during the year of a Quality Service Charter and Action Plan 2004 – 2006 drew heavily on standing practices and provided an opportunity for us to set out in a public document the standards of service which can be expected from this Office. Both the Charter and Action Plan were developed in consultation with our stakeholders so that their views and expectations could be taken into account. Copies of both documents are available on our website at www.dppireland.ie.

- In evaluating the quality of the service provided by this Office we must firstly look to the statistics outlined in Chapter 10 of this report. The statistics include the number of prosecution files dealt with; the timeliness of our decision-making; how those files were disposed of; a breakdown of the main reasons for a decision not to prosecute; the outcome of prosecutions heard on indictment in court; and the number of applications for review of sentence on grounds of undue leniency. In most instances a comparison is drawn over

a three year period. Insofar as it is possible to draw conclusions concerning the service provided by the Office an examination of the percentage figures shows that we have succeeded in maintaining or improving the level of service provided over that period.

- In the interests of fostering a better understanding of the work of this Office we have continued to provide up-to-date information on the work of the Office through the distribution of Office publications such as Annual Reports, Guidelines for Prosecutors, and Information Booklets. We have also facilitated training programmes on the work of the Office for law students in the Law Society of Ireland and for student Gardaí in the Garda Training College, Templemore.
- Extensive use was made again during the year of the Office website to disseminate information about the work of the Office to a wide audience in an easily accessible and timely manner. The site was re-designed in December 2003 and throughout 2004 we continued to develop the site with particular emphasis on ensuring that it is fully compliant with all accessibility guidelines. Over 25,000 visitors accessed our website in 2004.
- We continued to promote the use of the Irish language through bi-lingual publication of official publications and maintaining a bi-lingual website. During 2004, in compliance with our obligations under the Official Languages Act, 2003, this Office commenced work on drafting a statutory planning framework, known as a 'scheme', which will set out our commitments to delivery of services through Irish over the course of the next three years. By the end of 2004 a sub-group of our Partnership Committee had carried out a survey to determine levels of proficiency in the Irish language among staff members of this Office, those who prosecute on our behalf in the state solicitor service, and barristers on our prosecution panel. The survey findings will be used to inform the commitments set out in our scheme which will be submitted to the Minister for Community, Rural and Gaeltacht Affairs in March 2005.

The Office is fully committed to assisting our stakeholders to conduct their business through the Irish language and we look forward to developing the scheme into the future.

- In December 2004 a member of staff in our Solicitors Division was assigned a lead role in the co-ordination of liaison with victims of crime with a view to enhancing the services that we provide in this very sensitive and important area of work.
- Co-operation and liaison with other individuals and agencies involved in the criminal justice system continued to be an extremely important element of our work during the year. The regular interaction and consultation that takes place between all those involved in the prosecution of crime serves to enable us to provide a more effective service to the People of Ireland.

Internal Stakeholder

2.8 In our Quality Service Action Plan 2004 - 2006 this Office recognises all our staff as internal stakeholders and commits itself to providing a supportive working environment for them. A number of initiatives were introduced in 2004 in response to this commitment.

- During the year this Office published a Human Resources Strategy 2004 - 2006, which was drafted by a sub-group of our Partnership Committee comprising members of staff at all levels and from all divisions of the Office. The Strategy promotes a more planned and focused approach to the management of human resources consistent with the business needs of the Office. To enable the Office to meet the delivery of its core function in an ever-changing environment, and in an area which is growing in volume and complexity, we must constantly strive to ensure that the skills, competencies and capabilities of staff are equal to the full range of tasks that we perform.
- The initial rollout of the Performance Management Development System (PMDS) was completed in December 2003 and during

2004 was developed to a point where it is now an integral part of our management framework which feeds into our Business Planning process. The system provides managers with the information necessary to assess the staffing and supports needed across the organisation and also focuses on the training and development of individual staff members to ensure that they have the skills and competencies necessary to fulfil their role in the organisation. During 2004 the Office invested 3.95% of payroll costs on staff training and development. This expenditure included €76,453 on seminars, conferences and courses; €14,200 on IT training; and €24,900 on the refund of fees scheme.

- A Staff Care Training Programme was launched during the year consisting of two modules which were identified as warranting specific training in the interests of all staff members: 'Anti-Bullying & Harassment' and 'Stress Management'. The Office adopted an Anti-Bullying & Harassment Policy in November 2003 and through the Staff Care Programme awareness sessions were offered to all staff in order to familiarise them with the contents of the policy and with bullying and harassment issues generally. A sub-group of our Partnership Committee carried out a Stress Management survey during the year as a result of which it was decided to offer Stress Management training to all staff members, with particular focus on potential stress relating to the nature of the work of the Office. A Health Screening Programme was also organised through our Partnership Committee in December 2004 and 80% of staff members availed of the opportunity to undergo the programme.
- The Partnership process again proved to be an invaluable resource for this Office and has provided fora for consultation and discussion between unions and management representatives which have been hugely beneficial in addressing and developing a number of organisational issues during the year. Together with the issues already mentioned throughout this chapter, sub-groups of the Partnership Committee have also addressed issues such

as the implementation of a Merit Award & Long Service Award Scheme; Internal Communications; feasibility of introduction of tele-working; implementation of Staff Input Scheme; introduction of eco-friendly initiatives such as waste management and recycling. The opportunities for involvement of staff at all levels from across the organisation in the Partnership process has greatly facilitated the development of a wide variety of initiatives and issues.

3 LEGAL DEVELOPMENTS 2004

3.1 The purpose of this chapter is to give a brief review of the more important or interesting decisions in the area of criminal law in 2004.

3.2 As in previous years, the cases are chosen to give a flavour of the type of legal issues which arise in the area of criminal law. 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 wish to refer to Binchy and Byrne's Annual Review for 2004.

Delay

3.3 The question of whether historic sexual abuse cases should be stopped by the courts continued to be an important issue for the High Court and the Supreme Court during 2004. These are cases where typically complainants come forward as adults to allege that they were sexually abused during their childhood. At the time the complaint is made, ten, twenty or sometimes more years may have elapsed since the sexual abuse is alleged to have happened. The courts have tended to focus on three issues. Firstly, any explanation for any delay on the complainant's part in coming forward to make a complaint to the Garda Síochána. Secondly, any prejudice which the accused may have suffered as a result of such delay. Thirdly, any delay in the investigation or prosecution of the case after the complaint has been made.

3.4 These issues were addressed by the Supreme Court in *P.L. v. Director of Public Prosecutions* (unreported, 20 December 2004). The alleged sexual abuse was said to have happened behind the teacher's desk in a classroom where other pupils were present. A central aspect of the case was evidence as to the type of desk and whether it was such as would have obscured any sexual abuse taking place behind it. The desk was no longer available. The court ruled that the unavailability of the desk and the lack of secondary evidence as to its structure, due to lapse of time, had created a real and substantial risk of an unfair trial. It accordingly directed that the trial should not proceed. Having agreed on this central issue, the judgments of the Supreme Court differed on other issues, such as whether delay on the complainant's part can in the absence of demonstrable prejudice be so long as to create a real risk of an unfair trial and justify prohibition of the trial. The three judgments elucidate a number of interesting issues which the Supreme Court are likely to return to in later cases.

Search Warrants

3.5 In *Dylan Creaven v. Criminal Assets Bureau* (unreported, 29 October 2004) the Supreme Court decided that a District Court judge must be present in his or her own district in order to have jurisdiction to issue a warrant. In this case the District Court judge had been appointed

temporarily to a number of different District Court districts outside Dublin and had issued warrants to search in relation to each district. Throughout the process however, the judge was physically present in the Dublin Metropolitan District. The Supreme Court found that the legislation governing the District Court gave effect to a consistent policy for the exercise of the powers of District Court judges by reference to districts to which they are assigned. However, the Supreme Court ruled that there was no objection to a judge of the District Court being assigned simultaneously to more than one district.

- 3.6 As a number of District Court judges outside Dublin do not reside in their own districts the ruling obviously has practical operational implications for the Garda Síochána in seeking warrants to search at times when the local District Court is not sitting.

Preliminary Examination

- 3.7 The function of conducting a preliminary examination of the prosecution case in advance of a trial on indictment was transferred from the District Court to the trial court by the Criminal Justice Act, 1999. In *Eamon Cruise v. Judge Frank O'Donnell and Director of Public Prosecutions* (unreported, 8 December 2004) the High Court had to determine the function of the trial court in conducting a preliminary examination under the new provision and to decide whether there was any change in function from that discharged by the District Court in the past. The court ruled that there was no fundamental alteration in function and that questions of admissibility in evidence were to be determined as part of the trial process and not as part of the preliminary examination.
- 3.8 The Circuit Court judge had correctly ruled that the question of the validity of the search warrant and the admissibility of evidence obtained on foot of it were not matters he could consider as part of the preliminary examination. The High Court said that the purpose of the preliminary examination procedure was to enable an accused to apply to have the case dismissed where the prosecution evidence was so weak that there

was no probable cause to believe that the accused might be guilty.

Evidence

- 3.9 The duty of the prosecutor to call witnesses was considered by the Court of Criminal Appeal in *Director of Public Prosecutions v. Raymond Casey and Anthony Casey* (unreported, 14 December 2004). In that case the prosecution in a trial for murder decided not to call a witness whose statement had been included in the book of evidence as it deemed him unreliable. He was a cousin of one of the accused who had given conflicting statements, having claimed that one statement was made as a result of intimidation. The court followed the earlier Supreme Court decision of Paul O'Regan and ruled that the prosecution was not obliged to call a relevant witness if they formed the view that he was unreliable. On the facts of the case the prosecution was entitled to form that view and there was nothing to suggest any oblique motive on the part of the prosecution in not calling the witness.

Time Limits

- 3.10 The normal time limit for the commencement of summary prosecutions is six months from the date of the alleged offence. There is in general no time limit within which a case prosecuted on indictment must be commenced. However, many indictable offences are prosecuted in the District Court every year. The question arises as to whether they are subject to the time limit of six months. Section 7 of the Criminal Justice Act, 1951 makes clear that the six months time limit does not apply to an 'indictable offence'. The 1951 Act contains a schedule of indictable offences which can be tried in the District Court. It was always accepted that section 7 would apply to any such offences. But does the section also apply to indictable offences which are not included in the schedule?
- 3.11 Over time when new indictable offences are created there has been a tendency not to include

them in the schedule of the 1951 Act, but to set out in the new legislation the method by which they can be tried in the District Court by way of provisions similar to those contained in the Act. An example of this is the Criminal Justice (Theft and Fraud Offences) Act, 2001. If an indictable offence under this Act is dealt with summarily in the District Court, does the six months time limit apply or is it saved by section 7 of the Criminal Justice Act, 1951? In *Director of Public Prosecutions v. Timmons* (unreported, 21 December 2004) the High Court ruled that the six months time limit did not apply to such an offence.

New Evidence on Appeal

3.12 The question of whether new evidence, which had not been considered by the court of trial could be considered on appeal by the Court of Criminal Appeal, arose in the case of *Director of Public Prosecutions v. George Redmond* (unreported, 6 July 2004). The new evidence in issue related to bank records. The court concluded that this was not a case where the prosecution had failed to disclose evidence in its possession. It was assumed by both sides at the commencement of the trial that there were no bank records because of lapse of time. The existence of the evidence only became known by a reference from a witness during the trial. In those circumstances defence counsel could not be faulted for not embarking on an inquiry of a witness or seeking to have the jury discharged. Accordingly, the new evidence could be introduced at the appeal.

Self Defence

3.13 In *Director of Public Prosecutions v. Richard O'Carroll* (unreported, 6 July 2004) the trial judge in a murder case had put the defence of self defence to the jury on an erroneous basis but one that was favourable to the defence. The judge had said that if the jury found that the degree of force used appeared necessary to the accused the jury should find him not guilty. The trial judge should have said that if the accused had used a degree of force that seemed necessary to him but which was reasonably

speaking excessive a verdict of manslaughter could be returned. In the event the jury convicted the accused of murder.

3.14 Prosecuting counsel raised this issue with the trial judge at the time. Defence counsel did not do so. The Court of Criminal Appeal stated that the duties of prosecution counsel and defence counsel are different. It is the responsibility of prosecution counsel to advise the trial judge as to the correctness of the direction to the jury. There does not appear to be an equivalent duty on the defence counsel in a situation where to so advise the trial judge could be to put the accused at a disadvantage.

3.15 The court noted that prosecution counsel had pointed out to the trial judge the misdirection to the jury, being one that was favourable to the defence. Defence counsel acted correctly in refraining from criticising or casting doubt on the valid requisitions of the prosecution. The court concluded that the misdirection by the trial judge had left the jury with an incorrect view of the role of self-defence, one in favour of the defence. The jury should have been directed that the appropriate verdict was manslaughter rather than one of acquittal. The conviction was quashed and a retrial ordered.

Provocation

3.16 Provocation is a defence which can result in a murder charge being reduced to manslaughter. It will be a matter for the trial judge to decide on the evidence whether there is a proper basis for the defence to be put to the jury. Sometimes a murder charge can be defended on the basis of the defences of both self-defence and provocation.

3.17 In *Director of Public Prosecutions v. John James Kelly* (unreported, 6 February 2004) the accused was convicted of murder and appealed to the Court of Criminal Appeal. The trial judge had refused to allow the defence of provocation be put to the jury. During the trial the accused's main line of defence was that he thought that the deceased was carrying a large and dangerous knife and that was why he brought the kitchen knife with him to the encounter.

He also said that during the struggle that he thought that the deceased had reached for that knife. He also claimed that he intended to stab the deceased in the hip. In fact he had stabbed him four times under the arm.

3.18 The Court of Criminal Appeal accepted that to raise the defence of provocation an accused had a very low threshold to overcome. In the present case there was a sufficient basis to raise this defence and accordingly the defence should have been put to the jury by the trial judge. The conviction was overturned and a new trial ordered.

4 SECTION 49(4) PROSECUTIONS

(Use of Evidential Breath Testing)

- 4.1 The legislation governing drunk driving prosecution is contained in the Road Traffic Act, 1994, which came into force on 2 December 1994.
- 4.2 Prior to the 1994 Act, the scientific methodology employed to establish if a driver was “over the limit” was blood or urine analysis. Under the 1994 Act evidential breath testing became another method by which a driver could be prosecuted for the offence commonly known as “drunk driving”. Evidential breath testing is the determination of alcohol concentration in an expired breath. Since the introduction of the 1994 Act, a Garda can request a person arrested for drunk driving to provide a blood (or at his or her option a urine specimen) and / or a breath specimen.
- 4.3 The Medical Bureau of Road Safety is the statutory body responsible under the legislation for the approval, supply and testing of the evidential breath testing instruments in this jurisdiction and the instruments themselves remain the property of the Medical Bureau of Road Safety although maintained at Garda Stations. At this stage, evidential breath testing machines are in operation in all Garda divisions although not in all Garda Stations.
- 4.4 There are two types of apparatus approved by the Medical Bureau of Road Safety for use in this jurisdiction:
- The Intoximeter EC/IR
 - The Lion Intoxilyser 6000IRL
- 4.5 They are both evidential breath testing machines which determine the alcohol concentration in expired breath. The mandatory disqualification period is determined by the level of the reading as follows;
- 35 - 43 ug/100ml – 3 months disqualification
 - 44 - 65 ug/100ml – 1 year disqualification
 - 66+ ug/100ml – 2 years disqualification
- 4.6 When a blood or urine specimen is provided, it is divided into two parts and the arrested person is given the opportunity to retain one of the samples. By contrast, there is no such opportunity to retain breath specimens. This in itself has led to a constitutional challenge to the procedure in the case of *Ashley McGonnell, Oliver Quinlan and John Purcell v. Attorney General and Director of Public Prosecution* (see below).
- 4.7 As with the introduction of blood and urine analysis in the 1960’s the introduction of evidential breath testing has led to judicial scrutiny from the outset. The following is a brief summary of the issues which have been the subject of High Court or Supreme Court judgements.

Challenges to the Scientific Calculation of the Result from Evidential Breath Testing

- 4.8 For the purpose of determining the level of alcohol, the suspect is required to provide two specimens of breath within a three-minute cycle. 17.5% is subtracted from the lower of the two results and this reduced figure is used for prosecution purposes. (There is no such automatic deduction in the U.K.).
- 4.9 This methodology was the subject matter of a case stated to the High Court in the case of *Director of Public Prosecutions v. David Syron* 2IR (2001) page 105 wherein it was submitted that the absence of regulations governing the calculation of the concentration of alcohol in the accused's breath was fatal to the prosecution. The High Court (O'Higgins J.) held that a section 17 certificate showing whether an arrested person is over the limit, is *prima facie* evidence until the contrary is proved.
- 4.10 The Syron case was followed by another case stated, *Director of Public Prosecutions v. Sheila Curry*, heard before Carney J. on 14/03/02. The case established that the 17.5% reduction was legally permissible, Judge Carney noting that "the calculation effected by the Intoximeter has the effect of providing a margin of error for the benefit of the accused".

Presumption Regarding the Approval of the Intoxilyser by the Medical Bureau of Road Safety

- 4.11 The case of *Director of Public Prosecutions v. Adrian Daly* High Court, 10/12/01 establishes that there is a presumption that the Intoximeter was a device approved by the Medical Bureau of Road Safety.

The Twenty Minute Observation Period

- 4.12 On the basis of guidelines issued to the Garda Síochána from the Medical Bureau of Road Safety, arrested persons are usually observed for twenty minutes prior to the test being administered to ensure "nil by mouth".

- 4.13 In the case of *Director of Public Prosecutions v. Michael Finn*, 19/02/03, the Supreme Court decided that the onus is on the prosecution to justify in law recourse to a procedure involving such a prescribed minimum period of detention and observation for a forensic purpose. Such a period of detention must be justified by objective reasons.

- 4.14 During that case it was stated that if the procedure according to which an arrested person must be observed for twenty minutes is capable of being justified, it must be justified by a competent witness who can give appropriate evidence. There followed speculation as to how such appropriate evidence could be established or who could give such appropriate evidence. This led to a further case stated directly thereafter to the Supreme Court in order to clarify this issue – *Director of Public Prosecutions v. Damien McNeice*, 14/07/03. In this case it was held that it was a matter for the judge hearing the case to decide on the sufficiency of evidence to establish the lawful detention of the accused for the twenty minute observation period but noted that the evidence given by the Garda taking the breath sample, accepted by the court, who had been trained in the use of the Intoxilyser, demonstrated objectively that the twenty minute observation period was reasonably necessary in order to take effective or reliable samples of breath.

Disclosure of Material to the Defence

- 4.15 This is an area which is the subject of much ongoing debate in the District Court. There are certain "generic" documents that are provided to the defence on request as a matter of course. They relate to service and maintenance records. Such documents are available through the local Garda Superintendent.

- 4.16 The furnishing of these documents was approved by the High Court in the constitutional challenge: *Ashley McGonnell, Oliver Quinlan and John Purcell v. Attorney General and Director of Public Prosecutions*, 16 September 2004 (see below).

- 4.17 However, often much more extensive disclosure requests are made by the defence, which lead to hearings to determine the relevance of the material sought in the District Court.
- 4.18 However in the *McGonnell* case the High Court did not consider the parameters of such an inspection and the various possible levels of inspection were not addressed. The different types of inspection are as follows:
- (a) An external inspection of the instrument in the presence of the relevant Garda.
 - (b) An inspection of the instrument involving a demonstration of the instrument in self-test mode or similar carried out by the Garda supervisor in the Garda Station.
 - (c) An expert nominated by the defence to inspect (externally) the instrument which involves certain tests to be carried out by a forensic scientist from the Medical Bureau of Road Safety in the Garda Station in the defence expert's presence.
 - (d) An expert nominated by the defence to inspect the instrument whereby the expert requires anything to be introduced into the instrument as a result of which there is a requirement to open the casing or examine the serviceable parts of the instrument.
- 4.19 The forensic integrity of the instrument must be ensured at all times and therefore the practical difficulties involved with any internal inspection of the instrument are self-evident.
- 4.21 In a lengthy judgement delivered on 14 September 2004, McKechnie J. considered a number of aspects including the legislation, the apparatus, its methodology, the situation in other jurisdictions and the constitutional aspects applicable to this jurisdiction.
- 4.21 He heard various expert witnesses on behalf of the plaintiffs and defendants. He concluded that the overall system did not infringe any constitutional legal rights of the plaintiffs. He identified the following as affording reasonable protection for the rights of plaintiffs:
- (a) The statutory requirement under Section 17(1) of the 1994 Act to take the lower reading of both breath specimens.
 - (b) The 17.5% deduction from this reading.
 - (c) The practice of waiting twenty minutes before commencing the cycle.
 - (d) The self-diagnostic tools within both machines to include the other tolerance levels previously discussed as well as the two simulator checks in every cycle.
- This case is currently under appeal.

Constitutional Challenge

- 4.20 The case of *Ashley McGonnell, Oliver Quinlan and John Purcell v. Attorney General and Director of Public Prosecutions* challenged the evidential breath testing system on the basis that it was trial by certification. The plaintiffs claimed that the lack of any specimen which could be given to the defendant for independent analysis and the fact that crucial evidence was given by means of a certificate deprived the plaintiffs of the opportunity to challenge the method whereby the purported level of alcohol concentration was arrived at.

5 CONFISCATION OF CRIMINAL ASSETS

- 5.1 The work of the Criminal Assets Bureau is well known. The Bureau operates a system of civil forfeiture and its powers can be very effective because assets can be seized where a court is satisfied on the civil burden of proof (on the balance of probabilities), that they represent the proceeds of crime, even though the person from whom the assets are seized has not in fact been convicted. The relatively high profile of the Criminal Assets Bureau may have directed attention away from the fact that there also exists a system of criminal forfeiture whereby assets may be seized from persons convicted of crime, and that the Office of the Director of Public Prosecutions has responsibility for seeking the necessary orders.
- 5.2 The divestment of convicted criminals of their accumulated assets, profits and instruments of crime has been demonstrated to be an effective deterrent to the commission of further criminal offences. It is for this reason that the Office, in its Annual Report of 2002, identified the legal remedies of **Criminal Confiscation** and **Forfeiture of Instrumentalities** as meriting special attention.

Criminal Confiscation

- 5.3 Part II of the Criminal Justice Act, 1994 (as amended) empowers a court of trial, following conviction and sentence, to assess the benefit accruing to the convicted person from that offence and thereafter to make a confiscation order. The amount set by the court becomes a

debt payable to the State. Provision is also made, under Part III, for the granting of a restraint (freezing) order to avoid the dissipation of assets, and for the appointment of a receiver or the imposition of a consecutive prison term in the event of non-payment. Since 1999 the provisions relating to drug trafficking offences are more onerous, the court of trial being mandated to make the enquiry in all cases, with the benefit being assessed not just for the particular offence but for all receipts in connection with drug trafficking over the previous six years. The legislation is primarily aimed at convicted persons and their profit from criminal activity rather than specific property. The evidential proof on such issues is the balance of probabilities, as opposed to the usual burden in criminal matters, beyond reasonable doubt.

Results to Date

- 5.4 To date, almost three quarters of a million euro (€735,925.72) has been collected and paid to the Department of Finance from eight separate cases. Another €320,000.00 approximately has been realised and dispatched to other sources, including victims, while there is approximately €400,000.00 outstanding, with a reasonable chance for collection, either within or without this jurisdiction. Requests have been made to authorities in Austria, the United Kingdom and Northern Ireland to issue and put into effect orders which correspond to both restraint and confiscation orders which have been made in

this jurisdiction. Approximately €600,000.00 was originally frozen by the authorities in Austria, at the request of the Office, which funds were eventually forfeit by those authorities. Furthermore sums in excess of GBP£150,000.00 are being tracked in the United Kingdom and Northern Ireland, a receiver having just been appointed within the former jurisdiction. There are also a number of imminent or ongoing applications and a total of eleven restraint orders currently in effect.

5.5 While the remedy has proved effective, it has tended to be involved in only a small number of high profile cases. However the statutory provisions require the trial judge in all drug trafficking offences to enquire whether a confiscation order should be made. Of course, most convicted of drug trafficking offences are relatively low down in the criminal organisation and often are not a mark for the making for such an order. The court is entitled, following a preliminary examination, to refrain from making an order and cannot make an order where funds are not available to meet it. However the question should be asked in every case.

Strategy

5.6 The Office has adopted a comprehensive strategy aimed at the pursuit of such criminally tainted assets, the primary aim of which is:

- i) to inform those, (both within and outside the Office) for whom the Act has relevance;
- ii) to provide facilities for the necessary education and skill development;
- iii) and finally, to put in place the necessary organisational framework.

5.7 The Office has accordingly engaged with all relevant stakeholders resulting in the establishment of the following initiatives:

- In conjunction with the Garda Síochána, a comprehensive training programme was established, both at senior level encompassing all superintendents and chief superintendents, and at a more junior level aimed at the training of specialised Garda liaison officers assigned to each regional area with

responsibility to promote, develop and assist in enquiries into the “profit” element in the course of all serious criminal investigations.

- The subject was specifically addressed at our Annual State Solicitors' Seminar in January 2004 whereby a presentation was given to all state solicitors followed by continued monitoring on the developing use of the remedy.
- Ongoing communications with the Judiciary ensuring that they are familiar with the responsibility under the statutory provisions.
- Ongoing instruction, communication and consultation with counsel briefed by the State to ensure the effective operation of the remedies and a consistency of presentation.

5.8 The organisational framework within the Solicitors Division of our Office has also been adapted to ensure trained and skilled personnel are assigned to address the anticipated increase in work load, ongoing monitoring to ensure a consistent approach, and an audit system to follow and track funds.

Forfeiture of Instrumentalities

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

5.10 The remedy is most often used to forfeit proscribed substances, cash, weighing machines or drug paraphernalia, following conviction for drug trafficking offences. However it is felt that greater use of the general application, a remedy more utilised in other jurisdictions, particularly the United States, might merit consideration.

The Office is currently embarking on a research programme to investigate how the existing statutory procedures can be utilised more effectively, with particular references to vehicles being used for the illegal transportation of drugs or people and the use of property, including dwelling houses, in pursuit of criminal aims.

Conclusion

5.11 While Ireland has been seen as one of the leading countries in effecting a successful criminal asset seizing policy, especially since the establishment of the Criminal Assets Bureau, the tendency has been to concentrate resources on a number of the more serious criminals. It is the intention of the Office to expand the operation of such remedies, ensuring that the question of ‘benefit’ is at least raised in every prosecution on indictment, and where appropriate the profits of the criminal activity, and instruments used to facilitate such criminality, are identified and confiscated.

6 ASPECTS OF SENTENCING

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 The onus of proof rests on the Director to show undue leniency, and the sentence will only be varied if there is a substantial departure from what could be regarded as an appropriate sentence.
- 6.5 This was evident in the case of *Director of Public Prosecutions v. D(G)* (unreported, 13 July 2004) which was a prosecution appeal on grounds of undue leniency in sentencing. The respondent pleaded guilty to one count of raping another male contrary to section 4 of the Criminal Law (Rape) (Amendment) Act, 1990 and was sentenced to three years detention. At the time of sentencing, the accused had spent two months in detention already and the trial judge suspended the entirety of the balance of the sentence; the respondent's young age at the time of the offence, his plea of guilty and remorsefulness, and the positive psychological evaluations of the respondent after he attended treatment. These factors supported the conclusion of the trial judge and brought this case within an exceptional category of cases where a non-custodial sentence was justified.
- 6.6 The trial judge must give sufficient weight to any mitigating factors when imposing sentence. *Director of Public Prosecutions v. O'Meara ex tempore* (10 March 2003) was an appeal against a sentence of six months imprisonment where the applicant had pleaded guilty to an offence under section 3 of the Non-Fatal Offences Against the Person Act, 1997, and contended that the trial judge had not taken into account the fact that he had no prior convictions and the fact that a custodial sentence would end his army career. The Court of Criminal Appeal allowed the appeal and substituted the sentence

Review of Sentencing, Undue Leniency

- 6.4 The onus of proof rests on the Director to show undue leniency, and the sentence will only be

of six months imprisonment for a six month suspended sentence. The court considered that the judge had erred in principle in not giving sufficient weight to the character of the applicant or to the consequences to the applicant, were the court to impose a custodial sentence.

Proportionality in Sentencing

- 6.7 *Director of Public Prosecutions v. Sean Mackey* (unreported, 24 November 2004) was an application for leave to appeal against severity of sentence imposed on the applicant by Judge White. The Court of Criminal Appeal held *inter alia* that the learned trial judge had correctly set out the principles and policies that govern the imposition of a proportionate sentence on the offenders before the court. The judge had weighed the aggravating and mitigating factors with great care and had reached a fair and just balance in imposing sentence and did not err in principle in the sentence he imposed.
- 6.8 *Director of Public Prosecutions v. Garrett Cooney* (unreported, 27 July 2004) was an application for leave against severity of sentence where the applicant had been charged with murder, but pleaded guilty to manslaughter and sentenced to fourteen years' imprisonment. Counsel for the applicant argued that the trial judge had erred in principle in failing to provide cogent reasons for his decision in his sentencing judgment by not appearing to have considered any of the mitigating matters raised by the applicant or by not imposing a proportionate sentence referable to the circumstances of the case, the nature of the offence, its effect on the victim and the circumstances of the convicted person.
- 6.9 The Court of Criminal Appeal held that whilst it couldn't submit that a sentencing judge is under an obligation to give reasons for a particular sentence that he or she imposes, it is a desirable practice as public confidence in the criminal justice system is enhanced when reasons for sentences are provided and it also facilitates review of the sentence by an appellate court.

- 6.10 However, the court concluded that the trial judge erred in not properly considering the established relevant factors when imposing sentence. The court also found that the sentence was excessive, and imposed as the appropriate sentence a period of eight years' imprisonment.

Reactivation of Sentences

- 6.11 *Director of Public Prosecutions v. Stewart, ex-tempore* (12 January 2004) was an appeal against an order made by Judge Dunne in December 2001 activating certain suspended sentences, amounting to ten years. These had been imposed earlier by Judge O'Connor (now retired) and it is evident from the transcripts that Judge O'Connor did extend some leniency to the applicant.
- 6.12 The first issue that the Court of Criminal Appeal addressed was whether Judge Dunne should have activated the suspended sentences and secondly whether the sentences be partially, not totally activated. In rejecting the appeal, the court held that Judge Dunne had not erred in principle in her decision to activate the sentences where there was a breach of certain conditions. The court further held that Judge Dunne had no jurisdiction to activate only part of the sentence and was constrained by the terms on which the original sentences were suspended.
- 6.13 In a similar case of *Director of Public Prosecutions v. Murray, ex-tempore* (18 March 2003) the applicant sought leave to appeal sentences of four years and three years imposed respectively with regard to two offences of threatening with intent contrary to section 5 of the Non-Fatal Offences Against the Person Act, 1997. The second offence had been committed while the applicant was on bail in respect of the first offence. Both sentences were to run consecutively which were reviewed by the trial judge and the applicant was released under certain conditions. When these conditions were breached he was brought before the trial judge and the sentence was reactivated.

6.14 In dismissing the appeal the court held that the trial judge had no discretion to reactivate only part of the original sentences imposed, the entire sentence came into effect once reactivated. It may be that the executive could remit part of the sentence, but this was not a matter for the courts.

Statistics

6.15 Statistics in relation to applications made under section 2 Criminal Justice Act, 1993 are set out on page 40 of this document.

7 THE TREATMENT OF CHILDREN'S EVIDENCE IN CRIMINAL PROSECUTIONS

- 7.1 A conference entitled 'Children in an Adult World - The Treatment of Children's Evidence in Criminal Prosecutions' was held jointly with St. Clare's Unit (Children's University Hospital, Temple Street, Dublin) and St. Louise's Unit (Our Lady's Hospital for Sick Children, Crumlin) on 5 and 6 November 2004.

Background

- 7.2 Since it was set up in 2001 the Solicitors Division of the Office of the Director of Public Prosecutions, led by the Chief Prosecution Solicitor, has had increasing contact with the doctors, psychiatrists, psychologists and social workers who make up the two units with whom we co-hosted the conference. In that time we have also tried to improve communications with various groups representing the interests of witnesses, injured parties and those who work with them. This has been reported on in previous Annual Reports. The conference built on some aspects of the National Prosecutors Conference of 2002 when the issues arising in the criminal prosecution of sexual abuse cases generally were discussed.
- 7.3 Much valuable work has been done with the two units to improve the service which we provide and to improve the flow of information to victims and their families.

Aim

- 7.4 The aim of the conference was to increase the mutual understanding of the respective professional disciplines, something which is essential to improve the overall outcome for everyone. We might all be better able to deal with child witnesses and their families who frequently experience both worry and incomprehension at the legal system which they face.
- 7.5 Approximately 200 healthcare professionals and lawyers working in various parts of the country attended the conference. Most of these come face to face with child victims on a daily basis.

Programme

- 7.6 The conference was launched by the Minister of State at the Department of Health with special responsibility for children, Mr. Brian Lenihan, TD.
- 7.7 A very eminent group of speakers was assembled including both a medical and a legal speaker from abroad. These were the Right Honourable Lord Mackay of Drumadoon, a judge of the High Court of Justiciary in Scotland, and Dr. Danya Glaser, Consultant Child and Adolescent Psychiatrist from Great Ormond Street Hospital for Children, London. The conference benefited enormously from the different perspectives provided by these international experts.

7.8 The programme of the conference also included addresses by prosecutors (Gardaí, barristers and solicitors) and psychiatrists, psychologists and social workers working with child victims. There was a presentation on the approach adopted by the Office of the Director of Public Prosecutions in evaluating cases involving children when deciding whether or not to prosecute. There was also discussion of the legal provisions governing admissibility of children's evidence; the provisions for taking this evidence by alternative means e.g. by video link; and the law surrounding expert evidence.

7.9 On the healthcare side the overall process of assessment of children's memory, suggestibility and inconsistent accounts and other factors associated with determining credibility were addressed.

Interaction

7.10 The interaction both formal and informal between the two groups of professionals proved extremely valuable and a number of misconceptions and gaps in information were highlighted.

Conclusions

7.11 The most important and indeed worrying conclusion that flowed from the discussion at the conference was the immense difficulty which faces all professionals and injured parties in seeking to progress a prosecution which depends on a child witness within the criminal justice system in Ireland. The many legal obstacles arising at various stages of the process, together with the rights of the defendant which have to be vindicated, can result in significant trauma for the child witness. This is quite apart from the ordeal of having to give evidence at the trial in court. The discussion regarding the context in which healthcare professionals evaluate children's evidence was very illuminating for prosecutors present given that, apparently, children can recall the details of an incident or incidents in more detail every time they recount it. This presents particular problems for prosecutors and the Garda Síochána who generally have to rely on the earliest account

of the offence complained of for legal reasons. Perceived 'changes' in the child's account can result in very robust cross examination, or even the loss of the case.

Study

7.12 A very useful interdisciplinary analysis was done of cases of child sexual abuse presented to the Office of the Director of Public Prosecutions in 2002. This research was conducted by Dr. Derek Deasy, clinical psychologist, on foot of data supplied by the Office of the DPP. His findings at the conference were commented on by Liam Mulholland, Principal Prosecution Solicitor (Head of Circuit Court Trials Section) who gave an insight into the various stages of the criminal process from the time the defendant is charged. In explaining the various stages of the process (including the potential for judicial review applications) it was hoped to put into context what might otherwise be seen by the victim and his or her family as significant delays in the processing of the case. Chief Superintendent Martin Donnellan, Head of the National Bureau of Criminal Investigation, also spoke explaining the steps taken in Garda investigations prior to a file being submitted for decision in these cases.

7.13 Data was also gathered in regard to the most frequently reported factors influencing a decision to prosecute or not to prosecute. Over and above the sufficiency of the evidence, issues such as the credibility of the witness or a lack of co-operation were influential in deciding not to prosecute. It was made clear that in assessing the credibility of the complainant in particular, subject to any comments on this matter by the Garda Síochána, the Office generally is not doubting of the veracity of the complaint. Rather there is an obligation on the Office to assess carefully whether the complainant will come across as a truthful and confident witness, particularly in the face of a robust cross examination in court. Sometimes the tender age of the complainant will be a factor in this.

The Future

7.14 Overall the conference was felt to be very successful and hopefully interaction can develop

further in the years ahead. The existing liaison with St. Clare's and St. Louise's Units will continue.

7.15 One specific initiative that has flowed from the conference is a decision by the Office of the Director of Public Prosecutions to publish an information booklet to inform older children and the parents or guardians of all child complainants about the process that they are involved in. It will also be aimed at the professionals caring for these children. There are already in existence booklets aimed primarily at adults. However there are legal provisions aimed at child complainants specifically which cannot be dealt with in any detail in booklets for a wider audience. The views of the professionals attending the conference on such a booklet were gathered by way of questionnaire and this will be followed by consultation with the various interest groups prior to publication.

8 EUROJUSTICE CONFERENCE

- 8.1 The annual Eurojustice Conference was established in 1998 by the member states of the European Union in order to foster and improve co-operation between prosecution agencies across Europe and to encourage mutual understanding of the different legal systems in existence in member states.
- 8.2 The conference provides a forum for heads of prosecution services and top-level prosecutors across Europe to discuss issues relating to European criminal law policy, management and best practice. It can identify problems and offer solutions from the prosecutors' point of view.
- 8.3 In October 2004 the Office of the Director of Public Prosecutions had the honour of hosting the 7th Annual Eurojustice Conference in Dublin. The conference was attended by 80 delegates, representing twenty six European countries including eight of the ten new members states, together with representatives from the Council of Europe, EUROJUST (the permanent network of European prosecutors), OLAF (the European Union's Anti-Fraud Office) and the International Association of Prosecutors.
- 8.4 The conference was opened by the Minister for Justice, Equality & Law Reform, Mr. Michael McDowell, TD on 7 October 2004 in Dublin Castle Conference Centre. Over the course of the two day conference there were presentations and workshop sessions on a number of topics of interest to prosecutors across the European Union.
- 8.5 The following were the conclusions of the Conference:

The Relationship Between Prosecutors and Police

- 8.6 In considering the relationship that exists between prosecutors and police in member states the conference recognised that there are different approaches to this important issue depending on the various legal systems and national practices across the European Union. While the police have the knowledge and technical expertise necessary to carry out investigations the importance of directives given by the public prosecutor must be emphasised. While there is a necessity for close co-operation between the two institutions in the interests of the proper functioning of the criminal justice system, the conference concluded that it is essential that this should not compromise the power of prosecutors to make decisions in their own sphere of operation in an independent manner.

European Arrest Warrant

- 8.7 In discussing the operation of the European Arrest Warrant procedure the conference noted that the new system had not, at the time of the conference, been in operation long enough to arrive at definite conclusions and that there are a number of matters which have given rise to problems. Nevertheless, it was recognised that the system appears to be working relatively well in those countries which have made use of it to a significant extent. The conference agreed to keep the operation of the system under consideration and if necessary to make proposals to the relevant authorities at a future date in order to assist in solving any problems which may emerge. The delegates felt that

the apparently successful operation of the new system to date augured well for future improvements in co-operation between criminal justice systems in Europe intended to combat cross-border crime. In this regard the conference concluded that mutual recognition would be a better tool than the harmonisation of legislation.

Assistance to Victims

8.8 The conference discussed how the European Framework Decision on Victim Assistance has proved a valuable tool in improving the position of the victim in European criminal justice systems. It noted the importance of ensuring the widest possible provision of information and assistance to victims consistent with the necessity to ensure the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights.

8.9 There was a general consensus that the broad principles of the Framework Decision were helpful: victims do need to be closer to the centre of the criminal justice system and prosecutors need to take a more victim orientated approach. Prosecutors need to be more engaged with victims and with support organisations. The attitude of public prosecutors is vital and they must work for a better position for victims of crime. However, the conference recognised that prosecutors must not forget that most victims are witnesses and it is necessary to focus on their needs as witnesses and the wider needs of the justice system in securing their evidence. Neither must prosecutors neglect the tension between the rights of victims and the rights of the accused, especially under Article 6 of the European Convention on Human Rights, and prosecutors must remember their wider responsibilities as prosecutors in the public interest.

Good Governance

8.10 In their deliberations on the question of good governance and the management of prosecution services, and in particular on systems designed to measure and assess performance, the conference concluded that while qualitative

assessment of the work of prosecutors can raise difficulties it is nonetheless important in the interests of accountability and the effectiveness of public prosecution that such measures be adopted to the maximum extent possible.

8.11 The next Eurojustice Conference will take place in Lisbon, Portugal in October 2005. It will provide a forum for prosecutors to further develop ideas discussed at the Dublin conference and to discuss legal issues affecting member states in the future.

9 FREEDOM OF INFORMATION

9.1 Section 46 (1)(b) of the Freedom of Information Act provides a right of access to records which relate to the general administration of the Office. This in effect means that records concerning criminal investigation or prosecution files are not accessible under the FOI Act.

9.2 The Office has continued to make FOI information available as readily as possible. Our Reference Book (required to be provided by section 15 and 16 of the Act in line with the new legislation) is widely available in public libraries throughout the country and also on the Office website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept.

9.3 The FOI Unit can be contacted by telephone at +353 1 678 9222 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 where an application fee is required.

9.4 During 2004 a total of eight requests were submitted to the Office. Seven of the eight requests were refused under the Act and one request was withdrawn and dealt with outside of FOI. The reason for six of the seven refusals was that the records sought did not relate to the general administration of the Office.

Requests Received 2004	
Refused under section 46(1)(b)	6
Requests Refused	1
Withdrawn/dealt with outside of FOI	1
TOTAL REQUESTS	8

9.5 One of the requests was submitted by a journalist and the other seven by the general public. All requests related to criminal files.

Requesters 2004	
Journalist	1
General Public	7

9.6 The Office received one request for an internal review and the original decision was upheld. The requester then appealed this decision to the Information Commissioner who also upheld the original decision.

Reviews	
Requests for Internal Review	1
Requests to the Information Commission for Review	1

10 STATISTICS

Explanatory Note in Relation to Statistics

The statistics outlined in this report have been compiled from data taken from our IT systems which are primarily used as a case tracking system and were not designed for the principal purpose of generating criminal statistics. The systems are subject to ongoing development in order to enhance the quality of the data produced.

The chapter on statistics is broken down into three distinct sections:

- Charts 1 to 6 relate to the receipt of files in the Office and include details on the types of directions made;
- Charts 7 to 11 provide details on the results of cases prosecuted on indictment by the Director in respect of files received in the Office between 2001 and 2003;
- Charts 12 to 14 provide statistics on Office expenditure.

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 7 to 11 is to take account of the time difference between a direction being made and a trial verdict being recorded. If statistics were to be provided in respect of 2004 case outcomes, a large proportion of the cases would still be classified as 'for hearing'.

In this report we have attempted in most instances to include updated versions of the data set out in the Annual Report 2003 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 June 2005.

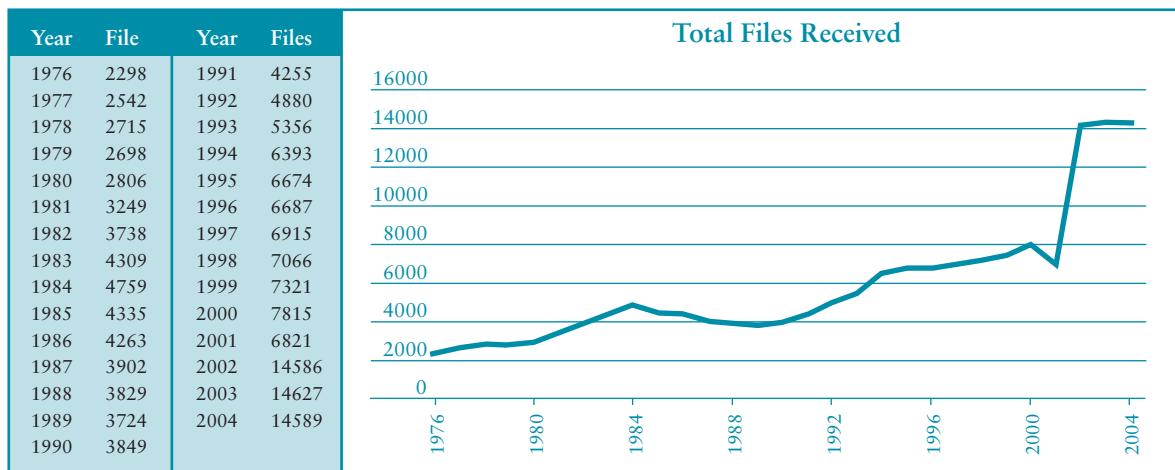
Caution should be exercised when considering these statistics in light of statistics published by other organisations such as the Courts Service or the Garda Síochána. The statistics published here are based on our own classification and categorisation systems and may in some cases not be in line with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

Chart 1 shows the total number of files received by the Office of the Director of Public Prosecutions from 1976 to 2004.

The vast majority of files received in the Office 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 that have to be addressed.

The significant drop of over 1,000 files from 2000 to 2001 was the result of 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. The sharp increase in figures from 2001 to 2002 is due to the transfer of the Criminal Division of the Chief State Solicitor's Office to the Office of the Director of Public Prosecutions in December 2001 to form the Solicitors Division of the Office.

Chart 1 TOTAL FILES RECEIVED



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.

Chart 2 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.

The Solicitors Division also deals with judicial review applications. While some of these applications are dealt with solely by 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. Those applications which required a direction are also included in the figures for the Directing Division (Chart 3) under the category 'other legal files'. Judicial Reviews may be taken by the Director or be taken against him.

Chart 2 FILES DEALT WITH BY SOLICITORS DIVISION

	2004	%	2003	%	2002	%
District Court Prosecution Files	1847	26%	2403	34%	2163	30%
Appeals from District Court to Circuit Court	3064	43%	2281	33%	2064	29%
High Court Bail Applications	1957	27%	2002	29%	2445	35%
Judicial Review Applications	299	4%	278	4%	438	6%
TOTAL	7167	100%	6964	100%	7110	100%

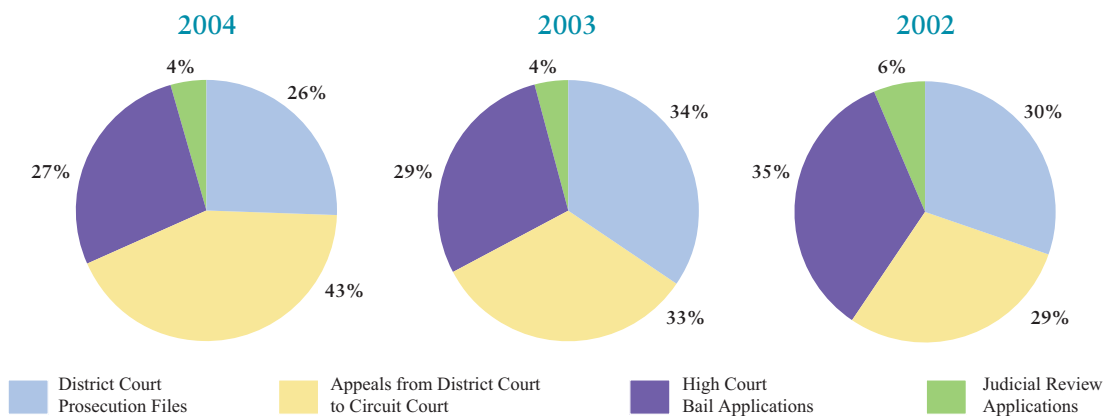
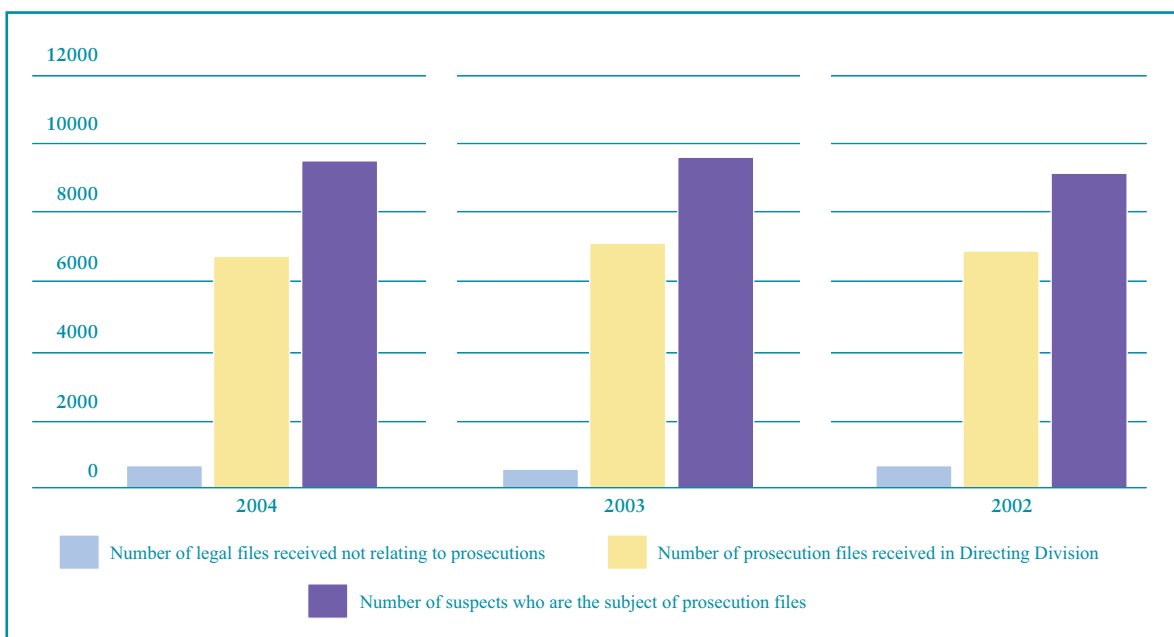


Chart 3 compares the number of files received in the Directing Division to the number of suspects who are the subject of these files. Many files relate to more than one suspect and to treat such a file as a single case can give a misleading impression of the workload of the Office. It is important, therefore, to look at the total number of suspects as well as the total number of files.

NOTE: *The figure for the number of files received in the Directing Division is now broken down into 'prosecution files' and 'other legal files'. The reason for the breakdown is to allow the number of suspects subject of a prosecution file to be directly matched against the actual number of such files. The 'other legal files' include requests for legal advice from the Garda Síochána and local state solicitors and Judicial Review applications received from the Solicitors Division for direction.*

Chart 3 BREAKDOWN OF FILES RECEIVED IN DIRECTING DIVISION

	2004	2003	2002
Number of other legal files received not relating to prosecutions	690	651	666
Number of prosecution files received in Directing Division	6732	7012	6810
Number of suspects who are the subject of prosecution files	9512	9698	9277



The following chart shows a breakdown of the disposal of files received in the Directing Division in 2002, 2003 and 2004 (as of June 2005). 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.

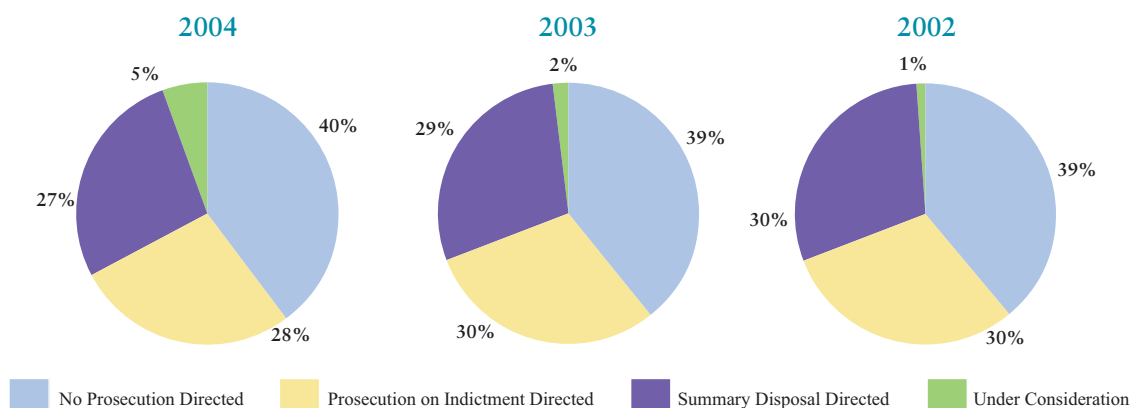
Summary Disposal: The offence is to be prosecuted in the District Court.

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 2002 and 2003 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 and cases where the judge of the District Court refused jurisdiction, notwithstanding the fact that the Director initially elected for summary disposal.*

Chart 4 DISPOSAL OF DIRECTING DIVISION FILES BY NUMBER OF SUSPECTS SUBJECT OF FILES RECEIVED

Direction Made	2004	%	2003	%	2002	%
No Prosecution Directed	3788	40%	3822	39%	3610	39%
Prosecution on Indictment Directed	2619	28%	2906	30%	2826	30%
Summary Disposal Directed	2600	27%	2784	29%	2756	30%
TOTAL OF FILES DISPOSED	9007	95%	9512	98%	9192	99%
Under Consideration	505	5%	186	2%	85	1%
TOTAL	9512	100%	9698	100%	9277	100%



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

Chart 4a BREAKDOWN OF MAIN REASONS FOR A DIRECTION NOT TO PROSECUTE

Main Reasons for no Prosecution	2004	%	2003	%	2002	%
Insufficient Evidence	2784	73%	2896	76%	2593	71%
Juvenile Diversion Programme	217	6%	157	4%	199	6%
Public Interest	171	5%	197	5%	182	5%
Sympathetic Grounds	47	1%	54	1%	57	2%
Time Limit Expired	260	7%	288	8%	337	9%
Other	309	8%	230	6%	242	7%
TOTAL	3788	100%	3822	100%	3610	100%

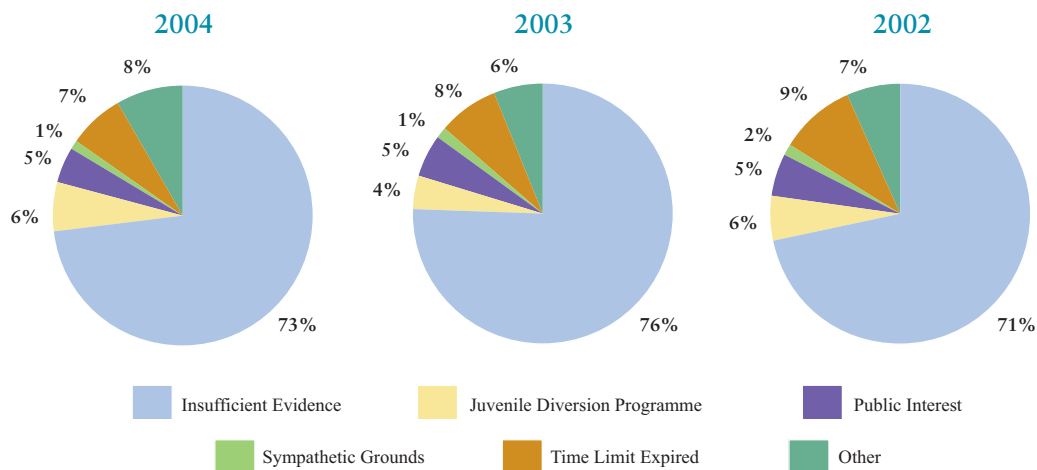


Chart 4b is a breakdown of directions to prosecute on indictment, by the county in which the offence was committed. It includes cases directed to be heard in the Circuit Criminal, Central Criminal and Special Criminal Courts. Please note that a number of cases for 2004 are still "Under Consideration" (see Chart 4). It is not possible to determine how many of these cases may eventually result in a direction to prosecute on indictment.

Chart 4b BREAKDOWN OF NUMBER OF PROSECUTIONS ON INDICTMENT DIRECTED PER COUNTY OF OFFENCE

	Population*										Cases Per 1,000 Persons										3 Year Rolling Average		
	2004	2003	2002	2001	2000	2004	2003	2002	2001	2000	2004	2003	2002	2001	2000	2002-2004	2001-2003	2000-2002					
Carlow	19	23	29	17	15	41	0.50	0.63	0.37	0.33	0.51	0.50	0.63	0.37	0.33	0.51	0.50	0.44					
Cavan	27	30	45	26	21	0.48	0.53	0.80	0.46	0.37	0.60	0.60	0.53	0.46	0.37	0.60	0.60	0.54					
Clare	60	64	51	28	38	0.58	0.62	0.49	0.27	0.37	0.56	0.46	0.62	0.49	0.37	0.56	0.46	0.38					
Cork	240	301	299	275	294	0.54	0.67	0.67	0.61	0.66	0.63	0.65	0.67	0.61	0.66	0.63	0.65	0.65					
Donegal	36	65	42	38	73	0.26	0.47	0.31	0.28	0.53	0.35	0.35	0.47	0.31	0.53	0.35	0.35	0.37					
Dublin	1,122,821	1,350	1,485	1,524	1,418	1,605	1.20	1.32	1.36	1.43	1.29	1.31	1.32	1.36	1.43	1.29	1.31	1.35					
Galway	82	49	47	61	91	0.39	0.23	0.22	0.29	0.44	0.28	0.25	0.23	0.29	0.44	0.28	0.25	0.32					
Kerry	55	68	44	42	84	0.42	0.51	0.33	0.32	0.63	0.42	0.39	0.51	0.33	0.63	0.42	0.39	0.43					
Kildare	121	93	123	92	107	0.74	0.57	0.75	0.56	0.65	0.69	0.63	0.57	0.56	0.65	0.69	0.63	0.65					
Kilkenny	53	26	23	41	41	0.66	0.32	0.29	0.51	0.51	0.42	0.37	0.32	0.29	0.51	0.42	0.37	0.44					
Laois	31	22	30	17	20	0.53	0.37	0.51	0.29	0.34	0.47	0.39	0.51	0.29	0.34	0.47	0.39	0.38					
Leitrim	4	18	2	4	7	0.16	0.70	0.08	0.16	0.27	0.31	0.31	0.08	0.16	0.27	0.31	0.31	0.17					
Limerick	85	107	83	89	91	0.48	0.61	0.47	0.51	0.52	0.52	0.53	0.61	0.47	0.51	0.52	0.53	0.50					
Longford	10	16	16	8	16	0.32	0.51	0.51	0.26	0.51	0.45	0.43	0.51	0.26	0.51	0.45	0.43	0.43					
Louth	63	77	97	71	93	0.62	0.76	0.95	0.70	0.91	0.78	0.80	0.76	0.95	0.70	0.91	0.80	0.85					
Mayo	49	27	29	18	47	0.42	0.23	0.25	0.15	0.40	0.30	0.21	0.23	0.25	0.15	0.40	0.21	0.27					
Meath	48	55	48	54	45	0.36	0.41	0.36	0.40	0.34	0.38	0.39	0.41	0.36	0.40	0.38	0.39	0.37					
Monaghan	19	30	40	40	38	0.36	0.57	0.76	0.76	0.72	0.56	0.70	0.76	0.76	0.72	0.56	0.70	0.75					
Offaly	17	29	11	31	18	0.27	0.46	0.17	0.49	0.28	0.30	0.37	0.46	0.17	0.49	0.30	0.37	0.31					
Roscommon	20	25	13	19	21	0.37	0.46	0.24	0.35	0.39	0.36	0.35	0.46	0.24	0.35	0.36	0.35	0.33					
Sligo	39	41	19	46	48	0.67	0.70	0.33	0.79	0.82	0.57	0.61	0.70	0.33	0.79	0.57	0.61	0.65					
Tipperary	43	49	49	43	76	0.31	0.35	0.35	0.31	0.54	0.34	0.34	0.35	0.35	0.31	0.34	0.34	0.40					
Waterford	62	94	72	52	102	0.61	0.93	0.71	0.51	1.00	0.75	0.72	0.93	0.71	0.51	0.75	0.72	0.74					
Westmeath	23	45	34	48	50	0.32	0.63	0.47	0.67	0.70	0.47	0.59	0.63	0.47	0.67	0.47	0.59	0.61					
Wexford	39	49	34	54	50	0.33	0.42	0.29	0.46	0.43	0.35	0.39	0.42	0.29	0.46	0.35	0.39	0.39					
Wicklow	24	18	22	20	11	0.21	0.16	0.19	0.17	0.10	0.19	0.17	0.16	0.19	0.17	0.19	0.17	0.15					
TOTAL	2619	2906	2826	2652	3102																		

* 2002 Census Figures

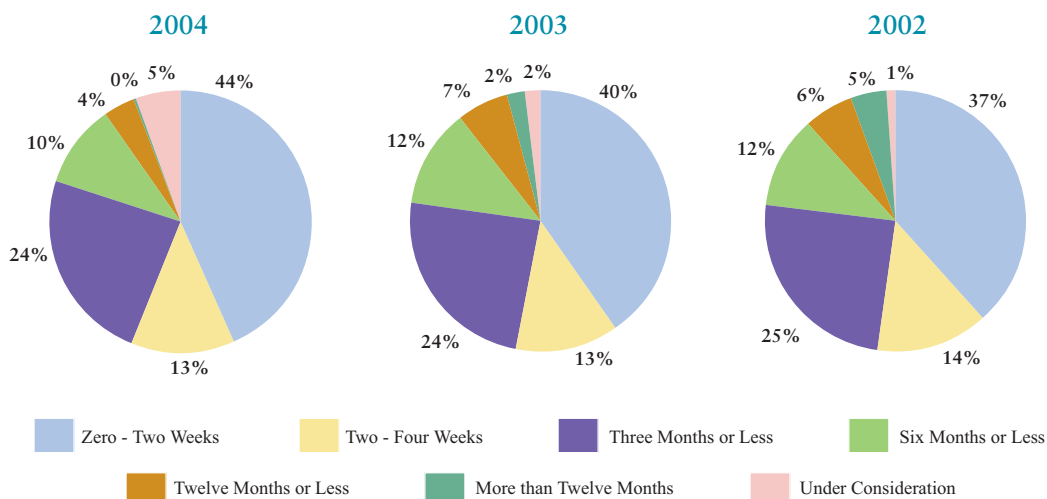
Chart 5 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution of a suspect should be taken or not. It has been decided to show this information by suspect rather than by file since in the case of files containing multiple 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	2004	%	2003	%	2002	%
Zero - Two Weeks	4126	44%	3914	40%	3564	37%
Two - Four Weeks	1232	13%	1257	13%	1287	14%
Three Months or Less	2273	24%	2340	24%	2289	25%
Six Months or Less	971	10%	1168	12%	1074	12%
Twelve Months or Less	362	4%	637	7%	550	6%
More than Twelve Months	43	0%	196	2%	428	5%
TOTAL FILES DISPOSED	9007	95%	9512	98%	9192	99%
Under Consideration	505	5%	186	2%	85	1%
TOTAL	9512	100%	9698	100%	9277	100%



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 6 below details the number of applications made since the introduction of the Act.

In previous reports 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 has therefore been decided, from the year 2003 onwards, to set out the results of applications according to the year in which they were **heard**.

Chart 6a below 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 6b outlines the results of applications, from the year 2003 onwards, by the year in which the application was **heard**.

Chart 6 APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

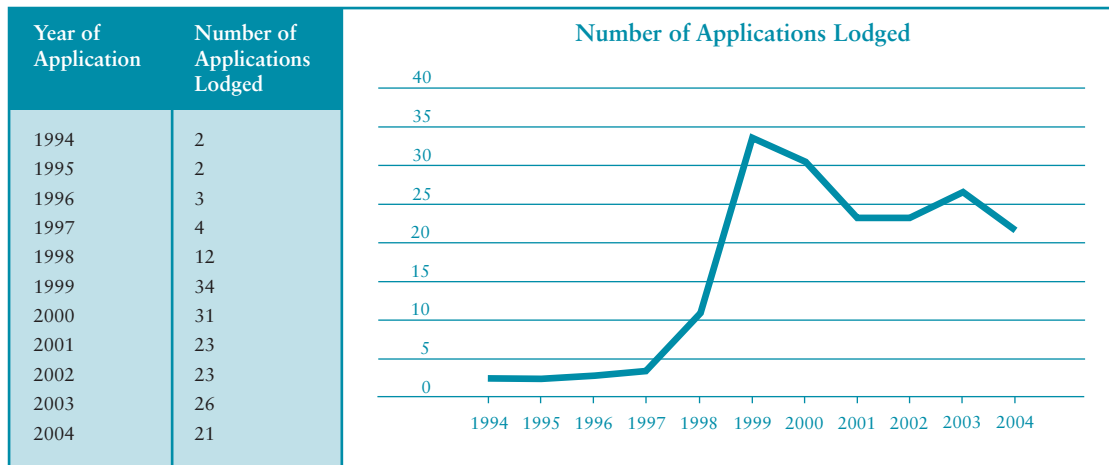


Chart 6a RESULTS OF APPLICATIONS BY YEAR LODGED

Year of Application Lodged	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 6b 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

OUTCOMES OF PROSECUTIONS TAKEN ON INDICTMENT

Charts 7 to 11 provide information for prosecutions on indictment taken by the Director in respect of files received in the Office between 2001 and 2003. As referred to in the initial explanatory note, care should be taken before a comparison is made to figures provided by any other organisation, as they are likely to be compiled on a different basis.

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.

Statistics are provided on the basis of one outcome per suspect; this is irrespective of the number of charges that the suspect may have been prosecuted for in respect of that file. Where a suspect is convicted on any charge, he will be categorised as 'convicted' regardless of whether the conviction is in respect of the main charge or for a lesser charge or charges on the indictment. Where a suspect is categorised as 'acquitted', this means that the suspect has been acquitted of all charges. In respect of cases heard in the Central Criminal Court for rape and murder, a further breakdown is given in respect of convictions for a lesser offence (e.g. manslaughter instead of murder). This information is not available within our computer systems in respect of the other courts so care should be taken in interpreting their statistics. Suspects tried before these courts are categorised on the basis of the most serious offence they are charged with, but the offence or offences they are convicted for may be different from that under which they are categorised in the charts.

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 our statistics as a conviction.

Care should be taken in relation to interpreting the rates of conviction and acquittal in respect of later 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 7 shows the results of prosecutions on indictment taken in relation to defendants in respect of whom prosecutions were commenced in the years 2001 to 2003 (as of June 2005). 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 2004 as the 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 7 CASE RESULTS - PROSECUTIONS ON INDICTMENT

Outcome	2003	%	2002	%	2001	%
Conviction	1715	59%	1972	70%	1889	71%
Acquittal	107	4%	120	4%	114	4%
Not Yet Heard	993	34%	630	22%	549	21%
Struck Out/Discontinued	91	3%	104	4%	100	4%
TOTAL	2906	100%	2826	100%	2652	100%

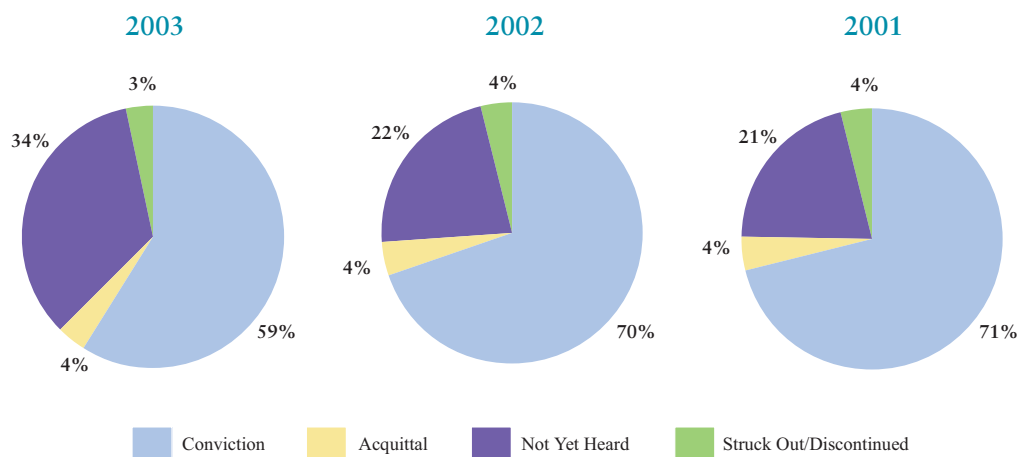


Chart 7a BREAKDOWN OF CONVICTIONS AND ACQUITTALS (EXCLUDING CASES STILL TO BE HEARD)

	2003	%	2002	%	2001	%
Conviction by Jury	90	5%	173	8%	167	8%
Conviction Following Plea of Guilty	1625	90%	1799	87%	1722	87%
TOTAL CONVICTIONS	1715	95%	1972	95%	1889	95%
Acquittal by Jury	62	3%	72	3%	67	3%
Acquittal on Direction of Judge	45	2%	48	2%	47	2%
TOTAL ACQUITTALS	107	5%	120	5%	114	5%
TOTAL	1822	100%	2092	100%	2003	100%

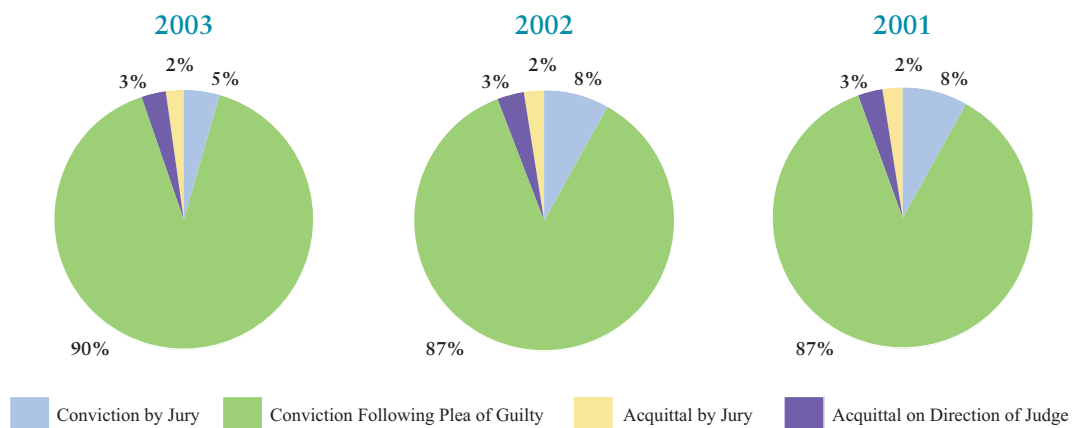


Chart 8 breaks down the prosecutions directed on indictment to be heard in the Circuit Court. The cases categorised as 'For Hearing' are those for which a verdict has not yet been recorded. In some of these cases, a trial may have begun but proceedings have been halted by a Judicial Review application. 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 9-11. Where a trial results in a disagreement the case is treated as still being 'For Hearing' unless a *nolle prosequi* is entered.

Chart 8 OUTCOMES OF CASES PROSECUTED IN THE CIRCUIT CRIMINAL COURT

	Total			Conviction by Jury			Conviction on Plea			Acquittal by Jury			Acquittal by Direction of Judge			For Hearing			Other Disposals		
	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001
	8	5	5	2	0	1	5	5	3	0	0	1	0	0	0	1	0	0	1	0	0
Fatal Accident at Work	37	47	32	4	6	9	21	32	18	1	2	2	2	4	1	9	2	1	0	1	1
Fatal Road Traffic Accident	9	15	17	1	2	8	2	10	7	0	1	0	0	0	1	6	2	1	0	0	0
Manslaughter	2	1	0	0	0	0	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0
Other Fatal Offences	56	68	54	7	8	18	29	47	28	1	3	3	2	4	2	17	5	2	0	1	1
Total -Fatal Offences	267	268	226	2	6	12	181	196	141	5	2	3	3	0	5	74	62	60	2	2	5
Burglary	51	24	47	0	1	1	27	16	28	0	0	0	2	0	3	21	7	14	1	0	1
Fraud	406	486	526	10	12	8	283	339	377	1	3	5	3	4	2	99	118	127	10	10	7
Robbery	236	260	241	3	14	7	126	174	153	4	4	4	5	8	2	91	53	66	7	7	9
Other Offences Against Property	960	1,038	1,040	15	33	28	617	725	699	10	9	12	13	12	12	285	240	267	20	19	22
Total - Offences Against Property	5	5	2	1	0	0	2	2	2	0	1	0	0	0	0	2	2	0	0	0	0
Buggery	31	16	3	0	1	0	21	11	2	0	0	0	1	0	0	9	4	1	0	0	0
Child Pornography	84	83	94	3	6	9	33	39	51	6	6	8	1	1	3	40	23	19	1	8	4
Sexual Assault	19	21	16	0	1	1	11	11	9	0	1	0	0	1	1	7	7	4	1	0	1
Sex with an underage girl	21	27	22	0	0	2	8	15	11	0	1	2	0	1	1	13	10	4	0	0	2
Other Sexual Offences	160	152	137	4	8	12	75	78	75	6	9	10	2	3	5	71	46	28	2	8	7
Total - Sexual Offences	455	427	463	11	15	12	310	318	336	3	2	3	5	4	6	122	87	101	4	1	5
Drug Offences	150	88	50	5	8	1	89	58	38	1	1	2	3	0	0	49	19	8	3	2	1
Firearms and Explosives Offences	702	688	515	27	55	33	346	398	312	31	35	19	15	20	20	258	146	100	25	34	31
Non Fatal Offences Against the Person	85	45	67	1	0	2	23	17	49	3	2	5	1	0	0	50	21	11	7	5	0
Public Order Offences	13	25	4	0	1	0	0	5	3	0	0	0	0	0	0	13	18	0	0	1	1
Revenue Offences	221	160	177	1	8	6	119	104	129	2	5	0	2	3	0	88	37	40	9	3	2
Other Offences	2,802	2,691	2,507	71	136	112	1,608	1,750	1,669	57	66	54	43	46	45	953	619	557	70	74	70
GRAND TOTAL																					

Chart 8a BREAKDOWN OF 'OTHER DISPOSALS' FROM CHART 8

	2003	2002	2001
Accused Deceased	3	4	7
Nolle Prosequi Entered	56	63	48
Struck Out	11	7	12
Withdrawn	0	0	3
TOTAL	70	74	70

Chart 8b PROPORTION OF CONVICTIONS & ACQUITTALS FOR CASES FINALISED

	Total			Conviction			Acquittal		
	2003	2002	2001	2003	2002	2001	2003	2002	2001
Fatal Accident at Work	7	5	5	100%	100%	80%	0%	0%	20%
Fatal Road Traffic Accident	28	44	30	89%	86%	90%	11%	14%	10%
Manslaughter	3	13	16	100%	92%	94%	0%	8%	6%
Other Fatal Offences	1	0	0	100%	N/A	N/A	0%	N/A	N/A
Total - Fatal Offences	39	62	51	92%	89%	90%	8%	11%	10%
Burglary	191	204	161	96%	99%	95%	4%	1%	5%
Fraud	29	17	32	93%	100%	91%	7%	0%	9%
Robbery	297	358	392	99%	98%	98%	1%	2%	2%
Other Offences Against Property	138	200	166	93%	94%	96%	7%	6%	4%
Total - Offences Against Property	655	779	751	96%	97%	97%	4%	3%	3%
Buggery	3	3	2	100%	67%	100%	0%	33%	0%
Child Pornography	22	12	2	95%	100%	100%	5%	0%	0%
Sexual Assault	43	52	71	84%	87%	85%	16%	13%	15%
Sex with an underage girl	11	14	11	100%	86%	91%	0%	14%	9%
Other Sexual Offences	8	17	16	100%	88%	81%	0%	12%	19%
Total - Sexual Offences	87	98	102	91%	88%	85%	9%	12%	15%
Drug Offences	329	339	357	98%	98%	97%	2%	2%	3%
Firearms and Explosives Offences	98	67	41	96%	99%	95%	4%	1%	5%
Non Fatal Offences Against the Person	419	508	384	89%	89%	90%	11%	11%	10%
Public Order Offences	28	19	56	86%	89%	91%	14%	11%	9%
Revenue Offences	0	6	3	N/A	100%	100%	N/A	0%	0%
Other Offences	124	120	135	97%	93%	100%	3%	7%	0%
GRAND TOTAL	1779	1998	1880	94%	94%	95%	6%	6%	5%

Chart 9 outlines the result of cases directed for prosecution in the Special Criminal Court. Please note that in respect of the files received in 2003, none of the cases had reached a trial verdict at the time these statistics were collated.

Chart 9 OUTCOMES OF CASES PROSECUTED IN THE SPECIAL CRIMINAL COURT

	Total		Conviction by Judges		Conviction on Plea		Acquittal by Judges		For Hearing		
	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	
Firearms and Explosives Offences	5	2	0	2	0	0	0	0	0	5	0
Membership of Unlawful Organisation & Related Offences	11	14	0	2	0	7	3	0	0	11	5
Threat to Kill or Harm	0	0	0	0	0	0	0	0	0	0	0
TOTAL	16	16	0	4	0	7	9	0	0	16	5

Chart 9a PROPORTION OF CONVICTIONS & ACQUITTALS FOR CASES FINALISED

	Total		Conviction		Acquittal	
	2003	2002	2003	2002	2003	2002
Firearms and Explosives Offences	0	2	N/A	100%	N/A	0%
Membership of Unlawful Organisation & Related Offences	0	9	N/A	100%	N/A	0%
Threat to Kill or Harm	0	0	N/A	N/A	N/A	N/A
TOTAL	0	11	N/A	100%	N/A	0%

Chart 10 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 10 OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE CENTRAL CRIMINAL COURT

Most Serious Offence Charged	Total		Conviction by Jury		Conviction on Plea		Conviction on Lesser Charge		Acquittal by Jury		Acquittal by Director of Judge		Other Disposals		For Hearing										
	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001							
Murder	40	54	36	15	18	16	4	9	5	5	15	7	0	0	5	2	1	0	1	0	2	13	11	1	
Rape	46	64	72	3	6	9	8	22	30	0	4	9	5	6	8	0	1	2	3	3	7	27	22	7	
Attempted Murder	1	0	3	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Attempted Rape	1	1	3	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
TOTAL CASES	88	119	114	18	24	25	13	32	37	5	19	16	5	6	13	2	2	2	4	3	9	40	33	12	

Chart 10a BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE' FOR CASES CATEGORISED AS MURDER

	Total		Conviction by Jury		Conviction on Plea	
	2003	2002	2001	2003	2002	2001
Manslaughter	5	14	7	1	8	7
Burglary	0	1	0	0	1	0
TOTAL	5	15	7	1	9	7

Chart 10b BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE' FOR CASES CATEGORISED AS RAPE

	Total			Conviction by Jury			Conviction on Plea		
	2003	2002	2001	2003	2002	2001	2003	2002	2001
Sexual Assault	0	2	7	0	0	2	0	2	5
Sex with an Underage Girl	0	1	2	0	0	0	0	1	2
Possession of Firearms with Intent to Endanger Life	0	1	0	0	0	0	0	1	0
TOTAL	0	4	9	0	0	2	0	4	7

Chart 10c BREAKDOWN OF 'OTHER DISPOSALS'

	2003	2002	2001
Nolle Prosequi Entered	4	2	5
Accused Deceased	0	1	0
Struck Out	0	0	2
Case Withdrawn	0	0	2
TOTAL	4	3	9

Chart 10d PROPORTION OF CONVICTIONS & ACQUITTALS FOR CASES FINALISED (INCLUDING CONVICTIONS ON A LESSER CHARGE)

	Total			Conviction			Acquittal		
	2003	2002	2001	2003	2002	2001	2003	2002	2001
Murder	26	43	33	92%	98%	85%	8%	2%	15%
Rape	16	39	58	69%	82%	83%	31%	18%	17%
Attempted Murder	0	0	2	N/A	N/A	100%	N/A	N/A	0%
Attempted Rape	1	1	0	100%	100%	N/A	0%	0%	N/A
TOTAL	43	83	93	84%	90%	84%	16%	10%	16%

Chart 11 breaks down the case verdicts for each circuit criminal court. Unlike Chart 8, 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 11 OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE CIRCUIT CRIMINAL COURT BY COUNTY

	Total		Conviction by Jury			Conviction on Plea			Acquittal by Jury			Acquittal by Direction of Judge		
	2003	2002	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001
Carlow	14	17	2	9	1	10	7	11	2	1	1	0	0	1
Cavan	17	37	0	0	1	16	36	13	1	0	0	0	1	0
Clare	22	40	3	7	2	17	30	18	2	1	1	0	2	1
Cork	189	206	10	11	13	165	182	147	6	3	2	8	10	3
Donegal	39	25	0	1	1	37	24	20	2	0	0	0	0	0
Dublin	1006	1116	22	58	50	945	1019	989	18	25	27	21	14	23
Galway	25	31	0	1	4	21	27	34	3	2	1	1	1	0
Kerry	40	37	1	1	1	34	27	26	3	7	2	2	2	2
Kildare	42	54	4	2	3	34	48	33	4	4	2	0	0	0
Kilkenny	10	18	0	0	2	9	14	17	1	3	2	0	1	2
Laois	10	25	2	7	5	8	18	6	0	0	1	0	0	0
Leitrim	12	3	1	1	1	11	2	3	0	0	1	0	0	0
Limerick	28	49	2	2	5	24	41	32	0	3	5	2	3	4
Longford	4	16	0	0	0	4	16	10	0	0	0	0	0	0
Louth	42	56	8	3	1	30	44	27	4	8	0	0	1	1
Mayo	19	15	1	0	0	17	14	12	1	0	0	0	1	1
Meath	38	41	0	9	5	37	28	27	1	2	3	0	2	2
Monaghan	15	23	1	2	0	13	19	24	1	1	0	0	1	0
Offaly	19	9	5	1	4	14	7	16	0	0	0	0	1	0
Roscommon	17	6	0	0	1	17	6	8	0	0	0	0	0	1
Sligo	34	9	3	2	4	29	7	31	0	0	2	2	0	0
Tipperary	29	39	2	6	1	22	33	31	1	0	1	4	0	1
Waterford	46	40	2	2	4	40	32	34	2	2	2	2	4	1
Westmeath	22	20	1	1	1	19	19	35	2	0	0	0	0	1
Wexford	20	28	1	5	2	17	21	38	2	1	1	0	1	1
Wicklow	20	38	0	5	0	18	29	27	1	3	0	1	1	0
TOTAL	1779	1998	71	136	112	1608	1750	1669	57	66	54	43	46	45

Chart 11a PROPORTION OF CONVICTIONS & ACQUITTALS FOR CASES FINALISED

	Total			Conviction			Acquittal		
	2003	2002	2001	2003	2002	2001	2003	2002	2001
Carlow	14	17	14	86%	94%	86%	14%	6%	14%
Cavan	17	37	14	94%	97%	100%	6%	3%	0%
Clare	22	40	22	91%	93%	91%	9%	8%	9%
Cork	189	206	165	93%	94%	97%	7%	6%	3%
Donegal	39	25	21	95%	100%	100%	5%	0%	0%
Dublin	1,006	1,116	1,089	96%	97%	95%	4%	3%	5%
Galway	25	31	39	84%	90%	97%	16%	10%	3%
Kerry	40	37	31	88%	76%	87%	13%	24%	13%
Kildare	42	54	38	90%	93%	95%	10%	7%	5%
Kilkenny	10	18	23	90%	78%	83%	10%	22%	17%
Laois	10	25	12	100%	100%	92%	0%	0%	8%
Leitrim	12	3	5	100%	100%	80%	0%	0%	20%
Limerick	28	49	46	93%	88%	80%	7%	12%	20%
Longford	4	16	10	100%	100%	100%	0%	0%	0%
Louth	42	56	29	90%	84%	97%	10%	16%	3%
Mayo	19	15	13	95%	93%	92%	5%	7%	8%
Meath	38	41	37	97%	90%	86%	3%	10%	14%
Monaghan	15	23	24	93%	91%	100%	7%	9%	0%
Offaly	19	9	20	100%	89%	100%	0%	11%	0%
Roscommon	17	6	10	100%	100%	90%	0%	0%	10%
Sligo	34	9	37	94%	100%	95%	6%	0%	5%
Tipperary	29	39	34	83%	100%	94%	17%	0%	6%
Waterford	46	40	41	91%	85%	93%	9%	15%	7%
Westmeath	22	20	37	91%	100%	97%	9%	0%	3%
Wexford	20	28	42	90%	93%	95%	10%	7%	5%
Wicklow	20	38	27	90%	89%	100%	10%	11%	0%
TOTAL	1,779	1,998	1,880	94%	94%	95%	6%	6%	5%

Chart 12 shows the breakdown of office expenditure for 2004, 2003 & 2002.

Salaries & Wages: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2004 was 166.5.

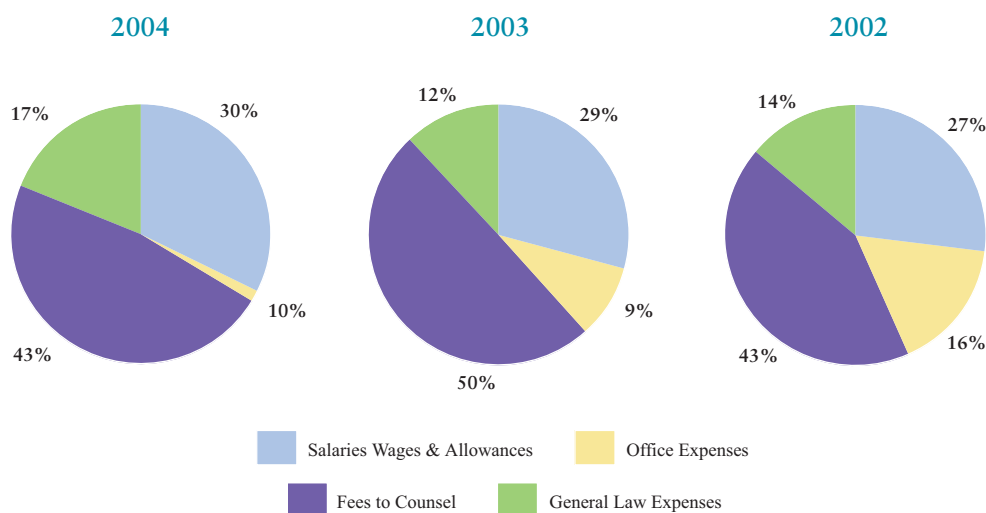
Office Expenses: This relates to general office administration costs e.g. purchase and maintenance of office equipment, office supplies, library costs, office premises maintenance, travel and other incidental expenses.

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.

Chart 12 OFFICE EXPENDITURE

	2004 €	%	2003 €	%	2002 €	%
Salaries Wages & Allowances	8,458,701	30%	7,651,069	29%	6,345,508	27%
Office Expenses	2,926,165	10%	2,435,150	9%	3,824,600	16%
Fees to Counsel	12,374,056	43%	12,997,392	50%	10,034,317	43%
General Law Expenses	4,902,298	17%	3,121,648	12%	3,231,528	14%
TOTAL	28,661,220	100%	26,205,259	100%	23,435,953	100%



Charts 13 & 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 13 FEES TO COUNSEL PAID BY COURT

	2004 €	%	2003 €	%	2002 €	%
Circuit Court	5,659,687	46%	5,086,664	39%	4,923,561	50%
Central Criminal Court	3,961,620	32%	4,753,747	37%	3,031,286	30%
High Court	1,496,433	12%	1,479,486	11%	1,177,006	12%
Supreme Court	217,260	2%	178,963	1%	94,363	1%
Court of Criminal Appeal	710,182	6%	834,134	6%	547,982	5%
Special Criminal Court	267,303	2%	596,072	5%	236,639	2%
District Court	61,571	0%	68,326	1%	23,480	0%
TOTAL	12,374,056	100%	12,997,392	100%	10,034,317	100%

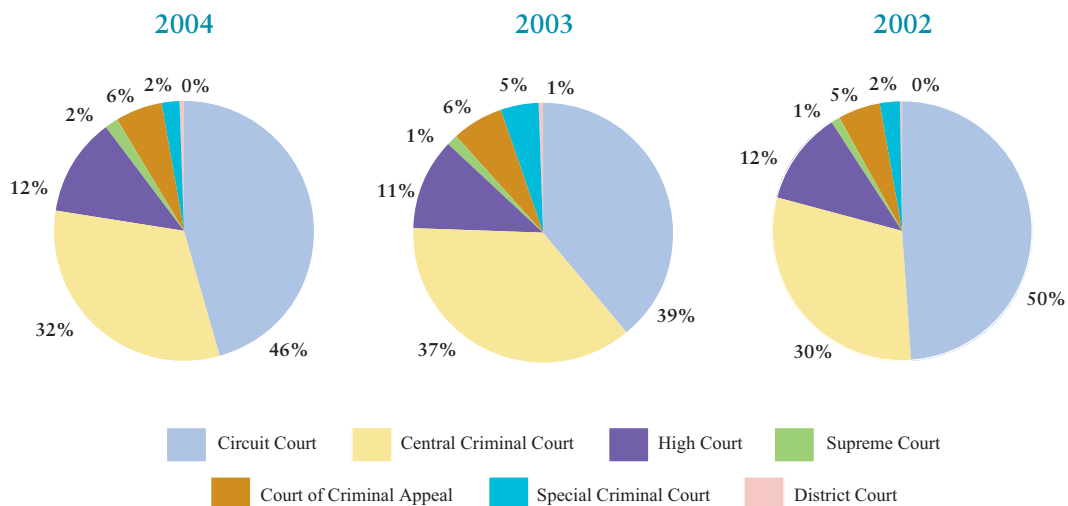
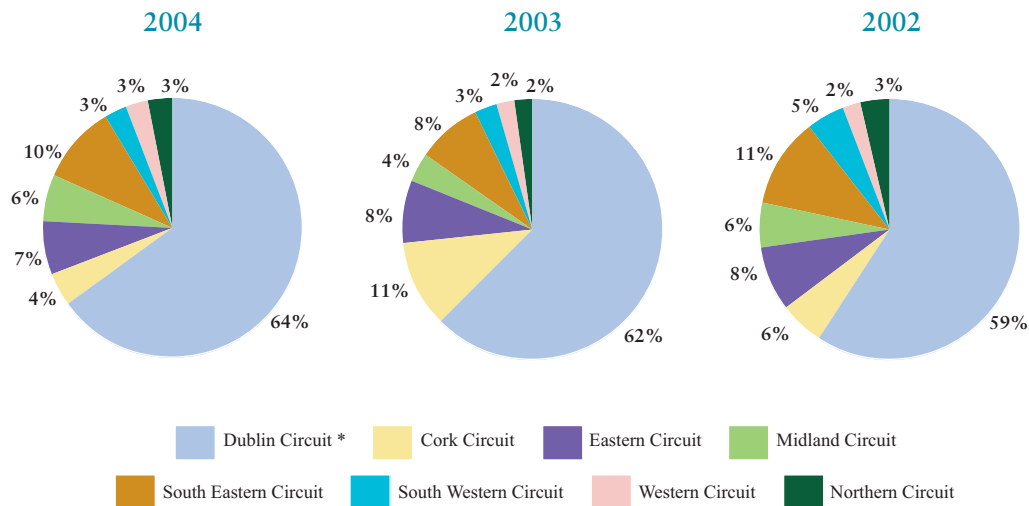


Chart 14 FEES TO COUNSEL PAID BY CIRCUIT

	2004 €	%	2003 €	%	2002 €	%
Dublin Circuit *	3,688,480	64%	3,188,025	62%	2,918,243	59%
Cork Circuit	226,288	4%	548,147	11%	280,078	6%
Eastern Circuit	384,148	7%	389,966	8%	392,516	8%
Midland Circuit	337,059	6%	184,909	4%	272,795	6%
South Eastern Circuit	548,822	10%	420,950	8%	549,324	11%
South Western Circuit	147,058	3%	138,093	3%	223,562	5%
Western Circuit	169,800	3%	115,019	2%	121,299	2%
Northern Circuit	158,032	3%	101,555	2%	165,744	3%
TOTAL	5,659,687	100%	5,086,664	100%	4,923,561	100%

* Added €49,761 to Dublin Circuit totals to account for re-issued payable orders.



11 EXTRACT FROM APPROPRIATION ACCOUNT 2003

The following is an extract from the Annual Report of the Comptroller and Auditor General and Appropriation Accounts 2003.

Office of the Director of Public Prosecutions Vote 14

ACCOUNT of the sum expended, in the year ended 31 December 2003, 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	8,363	7,651	-
A.2. Travel and Subsistence	148	115	8
A.3. Incidental Expenses	1,006	1,002	36
A.4. Postal and Telecommunications Services	260	242	23
A.5. Office Machinery and Other Office Supplies	482	462	12
A.6. Office Premises Expenses	499	702	(327)
OTHER SERVICES			
B. Fees to Counsel	16,042	12,997	2,513
C. General Law Expenses	<u>2,608</u>	<u>3,122</u>	<u>2,480</u>
Gross Total	29,408	26,293	4,745
<i>Deduct -</i>			
D. Appropriations-in-Aid	15	88	-
Net Total	29,393	26,205	4,745
SURPLUS TO BE SURRENDERED €3,187,741			

12 PROMPT PAYMENT OF ACCOUNTS ACT, 1997 Late Payments in Commercial Transactions Regulations 2002

Operation of the Act in the Period 1 January 2004 to 31 December 2004

12.1 The Office of the Director of Public Prosecutions makes payments to suppliers after the goods or services in question have been provided satisfactorily and within 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 45 days of receipt of the local state solicitor's report in each case.

12.2 In the period in question, the Office made 56 late payments in excess of €317.50. The total value of these payments was €87,716.29. The total value of late payments in the year amounted to €87,951.80 out of total payments of €3 million and interest thereon came to €2,052.37.

Statement of the Accounting Officer

12.3 The Office of the Director of Public Prosecutions is one of the organisations which is subject to the terms of the Prompt Payment of Accounts Act, 1997 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.

12.4 All invoices from suppliers are date stamped on receipt. Invoices are approved and submitted for payment in a timely manner to ensure that

payment is made within the relevant period. When the invoices are being paid the date of receipt and the date of payment are compared, and if the relevant time limit has been exceeded, an interest payment is automatically generated. In cases where an interest payment is required, the matter is brought to the attention of management so that any necessary remedial action can be taken.

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

Barry Donoghue
Accounting Officer
March 2005

13 OUTLINE OF THE CRIMINAL PROSECUTION PROCESS



14 ORGANISATION STRUCTURE

