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Foreword



Once again I have the privilege to present the Annual Report of the Office of the Director of Public Prosecutions to the public. The report covers the calendar year 2006.

The year continued to be a time of organisational change in the Office. Section 8 of the Garda Síochána Act 2005 was expected to be brought into force in 2006 but in fact was not finally put in place until 1 February 2007. The provision confers on members of An Garda Síochána the power to institute and conduct criminal prosecutions in courts of summary jurisdiction in the name of the Director of Public Prosecutions. The Act also confers on me a statutory power to give both general and specific directions to the Gardaí in respect of such prosecutions. During 2006 a good deal of work

was carried out preparatory to the coming into force of the section as reported in more detail in Chapter 3.

The last remaining recommendation of the Report of the Public Prosecution System Study Group (the Nally Report) to transfer responsibility for the local state solicitor service from the Attorney General to my Office remained unfulfilled in 2006 despite our best efforts to achieve it. At the time of writing (May 2007) I am happy to say that we have finally carried out that transfer. This completes a vital part of the work of transforming the Office into a national prosecution service.

Last year I wrote about the need to establish a prosecution policy unit within the Office. I am pleased to report that in late 2006 I received sanction from the Government to establish such a unit and the Office is now in the process of recruiting staff. When in place this unit will be able to concentrate on fundamental long-term questions which are important for the future of how the Office conducts criminal prosecutions. The unit will address such matters as guidelines, standards and directions for prosecutions, advice concerning the practical implications of proposed criminal legislation when we are asked for such advice, policy towards victims of crime and analysis of prosecutorial decision-making with a view to improving standard-setting and ensuring consistency of approach.

A continuing cause for concern is the Office's accommodation problem. We are still divided between two buildings and the expansion in numbers in the Office means that we are about to have to locate some of our staff in a third. However, the Office of Public

Works has identified suitable accommodation adjacent to the new criminal court complex being built near Heuston Station and we very much look forward to being able to locate the entire Office on a single site when this move takes place.

At the heart of this Annual Report is the statistical information contained in Chapter 9. The year 2006 saw an increase of 5% in the number of files referred to the Office. The report shows an improvement in the response times within which directions are given on files, with 52% of all files received being directed on within two weeks and 84% of all files being dealt with within three months.

Finally, once again I would like to thank my own staff for their dedication and hard work during 2006, and also to thank all the many people and other agencies who worked and cooperated with us during the year in helping us to achieve our goal of delivering a prosecution service that is independent, fair and effective.



James Hamilton

Director of Public Prosecutions

May 2007

MISSION STATEMENT

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

1 THE GENERAL WORK OF THE OFFICE

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

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

1.3 The Office of the Director of Public Prosecutions has three divisions:

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

The Solicitors Division, headed by the Chief Prosecution Solicitor, acts as a solicitor for the Director and the Garda Síochána in the preparation and presentation of cases in the Dublin District and Circuit Courts, the Central Criminal Court and Special Criminal Court, the Court of Criminal Appeal and the High and Supreme Courts. Outside of 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.

1.4 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 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, local 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 of crime.

2 THE YEAR IN REVIEW

- 2.1** The three year cycle of our Strategy Statement 2004 - 2006 concluded in December 2006. During the lifetime of the Strategy Statement significant progress was made by this Office in delivering on our key objectives. This progress was facilitated by the continued implementation of the Civil Service Modernisation Programme which provided a framework for the development of the structures, processes and systems that have underpinned the effective management of the prosecution service.
- 2.2** It is essential for this Office as a prosecution service to continuously strive to enhance the quality of the service that we provide. Our commitments to quality service are set out in our Quality Service Charter and Action Plan.
- 2.3** The core work of this Office is the prosecution of criminal offences and our performance in relation to this work is outlined in detail in Chapter 9 of this report. In this chapter we look at the developments that took place during 2006 which supported and complemented the core work of the Office and gave effect to the commitments outlined in our quality service charter.
- 2.5** Of the €433,825 (4.3% of payroll costs) invested in staff training and development during the year, €127,678 was dedicated specifically to legal training. This included attendance at legal seminars and conferences, both nationally and internationally. The Office also engaged the services of the National Institute for Trial Advocacy, of the University of Miami School of Law in Florida, to provide advocacy training programmes for staff in our Solicitors Division. The training was specifically designed to develop trial skills for solicitors representing the Director in court.
- 2.6** In the interests of enhancing interaction and coordination between the two legal divisions of the Office (currently located in two separate buildings) a programme of Legal Network Meetings was initiated. These afford staff members the opportunity of meeting with colleagues on a regular basis to discuss topical legal issues. They also encourage networking across the two legal divisions. The first meeting took place in November 2006 when an external legal practitioner was invited to give a presentation on circumstantial evidence. This programme of Legal Network Meetings will continue throughout 2007.

Legal Environment

- 2.4** We consider it essential that our professional staff have and maintain a thorough understanding of the applicable laws and of their role in the criminal justice system. For this reason we invest heavily in legal training. During 2006 a top level Legal Training Steering Group was established to monitor and review our training needs and to oversee the development and implementation of a programme of continuous legal education for our professional staff.
- 2.7** A number of interdivisional groups were also established within the Office during 2006, to examine work practices in the Directing and Solicitors Divisions. These groups have been looking at ways to streamline current procedures in order to maximise the efficiency of both legal divisions of the Office.
- 2.8** In 2006 the Library and Information Service, aided by the library management system and its digital archive, as well as a comprehensive suite of electronic resources, continued to provide timely, relevant and up-to-date legal information.

A comprehensive and continually developing electronic collection of court judgments, Garda circulars and internal legal information and research is available to legal staff from their desktops.

2.9 With the libraries of the Office of the Attorney General and the Chief State Solicitor's Office, a Serials Management Project was established to engage a single agent for the supply of journals and law reports to the three libraries in both print and electronic formats for the period January 2006-December 2007. The first phase of this project involving the supply of print material was successfully implemented in 2006.

2.10 The Office launched a Trainee Solicitor Scheme in September 2006. The Scheme is designed to provide an avenue for staff to qualify as solicitors while continuing to work in the Office. The scheme is a logical extension of the Trainee Law Clerk Scheme which the Office introduced in 2004.

Strategic Management

2.11 During 2006 we continued to develop our management information framework in order to enhance the services provided by the Office and to ensure that managers have the necessary tools and information to deliver on the goals and objectives outlined in our Strategy Statement.

2.12 Work commenced on the analysis stage of the project to implement a new Case, Document Management and File Tracking (CDMFT) system in 2006. The contract had been signed in December 2005 with Axxia Systems Limited, a UK company with a proven track record in the provision of case management systems to the legal profession.

2.13 The CDMFT system will act as a consolidated single point of access for our legal cases across both legal divisions, and will provide an integrated system to manage prosecution files across the organisation. All outgoing case-related correspondence will be generated and stored on the system for future reference. Selected incoming correspondence will also be stored on the system in scanned format.

2.14 The analysis stage of the CDMFT project involved the documentation of the business processes of all sections within the Office, along with the examination and resolution of the cross-sectional issues arising from a move from a set of disparate IT systems to one integrated database. There were also extensive technical discussions with Axxia to specify the design changes required to their core system software to deal with the business needs of the Office of the DPP.

2.15 In 2007, the software developed will be installed. This will allow for system testing, project team testing and user acceptance testing. It is envisaged that the system will go live in 2008.

2.16 The accounting system installed in 2004 continued to provide an improved service and greater efficiencies. During 2006 we upgraded our software to allow it to process payments by Electronic Funds Transfer (EFT). The system was tested and the first EFT payments were made in the last quarter of 2006. We are now making regular payments by EFT to a small but growing number of our suppliers and are planning a wider scale rollout, including the rollout of EFT payments for all travel and subsistence claims of staff, in early 2007.

2.17 The Office participated in the implementation of the Civil Service *Peoplesoft* HRMS (Human Resources Management System) upgrade project during 2006. Work on the project took 12 weeks and was completed in September.

2.18 *Peoplesoft* HRMS provides full support for the Civil Service Human Resource needs and specifically assists with administering the workforce, including enabling the Office to meet regulatory requirements on statutory and other types of leave, to meet training, remuneration and other reporting needs as well as automatically generating employment letters.

2.19 Participation in the *Peoplesoft* HRMS upgrade means that the Office is now part of the Civil Service *Peoplesoft* HRMS managed services environment sharing the HRMS database and IT infrastructure.

- 2.20** The introduction in late 2006 of the new integrated Performance Management and Development System (PMDS) will bring a greater level of coherence to the management of staff. The new model incorporates a mechanism for rating staff for purposes of the award of increments as well as suitability for promotion. A sub-group of our Partnership Committee was established to consider and make recommendations in relation to how best to manage the introduction of the new model into the organisation.
- 2.21** Subsequent to training being delivered to all staff the new model was introduced in December 2006. Implementation will be monitored and feedback sought from staff in early 2007.

Governance

- 2.22** The Office recognises its responsibility to ensure that it has appropriate control and governance procedures in place. We continue to provide as much information as possible to the public with regard to how we discharge our functions, through publication of Annual Reports, Strategy Statements, Guidelines for Prosecutors and information booklets. Our website is also a source of information for the public and provides a range of information about how the Office operates.
- 2.23** We are conscious that it is important that there be public confidence in the reliability of the information we provide. Our Audit Committee is therefore charged with the task of systematically reviewing the control environment and governance procedures in the Office and providing reports and advice to senior management. The Committee includes members from outside the public service, one of whom serves as Chairman.
- 2.24** The Audit Committee's work plan is designed to cover all the major areas over a three year cycle. In December 2006 the Committee completed its first three year cycle. During 2006 the Committee produced reports in relation to the project management process for our new Case, Document Management and File Tracking System (CDMFTS); the Procurement of Barrister Services; and the Revenue cycle.

- 2.25** The Civil Service Performance Verification Process provides an opportunity for this Office to report to an external group on the progress we have made in delivering on our commitments under the social partnership agreement. In May 2006 this Office appeared before the Civil Service Performance Verification Group and provided details of a range of initiatives which have been, and are being, undertaken by the Office. We also submitted two progress reports to the Group during the year, as result of which the Group deemed that payment of the general round pay increases was warranted based on the progress achieved during the periods under review.

Interaction with Other Agencies in the Criminal Justice System

- 2.26** Interaction and co-operation with other agencies involved in the criminal justice system are essential to the provision of a cohesive and effective prosecution service. During the year a number of initiatives were implemented which served to strengthen our relationship with other agencies involved in the criminal justice system and ultimately streamlined the provision of services through co-operation and consultation between the agencies involved.
- 2.27** The majority of prosecution files received by this Office are submitted by members of the Garda Síochána. For this reason it is essential that we continue to work with the Garda Síochána to ensure that they are kept informed of legal developments in relation to the prosecution of criminal offences. During 2006 staff from this Office facilitated twenty training sessions for members of the Garda Síochána from Probation Garda level to Superintendent rank. Topics included District Court practice & procedure; fraud investigation; and the role of the DPP.
- 2.28** In preparation for the implementation of section 8 of the Garda Síochána Act 2005 we also facilitated a programme of briefing sessions for approximately 400 members of the Garda Síochána at Station Sergeant and Inspector levels in the Dublin Metropolitan Region. The purpose of the briefing sessions was to ensure that key decision makers in the Garda Síochána are aware

of the policies and guidelines which the Office of the Director of Public Prosecutions expects them to adhere to when initiating prosecutions.

- 2.29** During the year we also worked with a number of specialised investigation agencies in an effort to streamline the submission of prosecution files to this Office in specialised categories of cases. In association with the Department of the Environment, Heritage and Local Government we sought to ensure that all local authorities are aware of our requirements in relation to prosecution cases, in particular planning and waste management prosecutions. We also facilitated training sessions for Enforcement Officers in local authorities in relation to prosecution of offences, in particular those contrary to planning legislation.
- 2.30** A senior lawyer from our Directing Division is representing this Office on a Steering Group established by the Minister for Communications, Marine & Natural Resources to review existing systems and procedures for monitoring, control, provision of management information, case management, and prosecution of sea fisheries.
- 2.31** The Office is also working with the Office of the Revenue Commissioners in relation to streamlining the prosecution of revenue cases in various courts on a national level and establishing protocols in relation to the preparation of revenue prosecution files and the subsequent prosecution of such cases in court.
- 2.32** In association with the Head of Legal Affairs for the newly established Garda Síochána Ombudsman Commission, this Office is currently in the process of establishing a protocol that will underpin the interaction between this Office and the Commission in relation to the preparation and submission of prosecution files.
- 2.33** During 2006 this Office participated in and contributed to various inter-agency groups including the Balance in the Criminal Law Review Group; the Garda Liaison Group; the Criminal Justice Liaison Committee; the Criminal Justice Inter-operability Group; the Supreme Court Computerisation Group; the District Court Efficiency Committee; the Criminal Court Users Group; the Courts Service Customer Forum; the Committee on Language Interpretation within the Criminal Justice System; and the Advisory Group on Crime and Criminal Justice Statistics. We also participated in liaison meetings with the Attorney General.
- 2.34** We are conscious of the important role which the 32 local state solicitors, who represent the Director in criminal cases around the country, play in the prosecution process. In order to provide an opportunity for local state solicitors and staff of the Office to meet and discuss legal issues we again hosted a State Solicitor Seminar in 2006. The seminar focused on recent developments in criminal law and new legislation. There were presentations on aspects of the Criminal Justice Act 2006, the Criminal Law (Insanity) Act 2006, assets seizure and developments in relation to communications with victims of crime. The seminar was attended by almost seventy delegates which is the largest attendance at this event to date.
- 2.35** In May 2006 this Office organised the 7th Annual National Prosecutors' Conference in Dublin Castle. The conference was attended by members of the judiciary; prosecuting counsel; local state solicitors; members of the Garda Síochána; staff from this Office; together with others involved in the criminal justice system. Sir Alasdair Fraser, DPP for Northern Ireland, addressed the conference and spoke about the establishment of the new Prosecution Service for Northern Ireland. Other topics included balancing the rights of the defence and the prosecution; similar fact evidence; and the Criminal Law (Insanity) Act 2006. As always, the conference provided an invaluable opportunity for all those involved in the criminal justice system to come together to discuss topics of mutual interest and to develop essential cross-functional working relationships.
- 2.36** In November 2006 this Office sponsored a seminar organised by the Irish Centre for European Law. The Director and Mr. Justice Nial Fennelly of the Supreme Court chaired the sessions at the seminar. The topic was the European Arrest Warrant and included presentations from Prof. Dermot Walsh, University of Limerick; Thomas O'Malley BL, National University of Ireland Galway; Angelika Mohlig, EUROJUST; and Patrick Gageby SC. The

seminar was attended by staff from this Office; representatives from Government departments; members of the judiciary; solicitors and barristers; and members of the Revenue Solicitors Office.

- 2.37** On an international level we continued to contribute to and participate in the work of international bodies and organisations including EUROJUST; GRECO; OLAF; Eurojustice; the International Association of Prosecutors; and the International Bar Association.
- 2.38** In 2006 the Organisation for Economic Co-operation and Development (OECD) carried out an evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. A lawyer from this Office was assigned to assist in the evaluation process and two representatives from this Office attended three sessions with the evaluation team which were devoted to the prosecution of money laundering and corruption type offences in Ireland. The evaluation has been completed by the OECD and a report will be published in early 2007.
- 2.39** A similar evaluation was carried out on the implementation of the Convention in the Netherlands. A lawyer from this Office was a member of the OECD Evaluation Team and he subsequently participated in the presentation of the evaluators' report to the OECD working group in Paris in June 2006.
- 2.40** In 2006 the Director provided reports for the Council of Europe on amendments to the law of the public prosecutor's service of Moldova and Armenia. In his capacity as a member of the Council of Europe's Commission for Democracy through Law (Venice Commission) the Director also provided opinions on legal questions arising in Georgia and Ukraine and participated in legal training seminars in Poland, Italy and Mozambique.
- 2.41** Representatives from this Office participated in a Council of Europe conference in Ukraine, in relation to money laundering and terrorist financing. While in Ukraine our representatives were invited by the Office of the Prosecutor General in Kiev to participate in discussions on

establishing a training programme for Ukrainian prosecutors. The programme will cover the implementation of anti-money laundering prosecution law and procedure in accordance with recommended EC and international standards.

Public Expectations of Service

- 2.42** In November 2006 this Office published revised editions of our two information booklets *The Role of the DPP* and *Attending Court as a Witness*. The booklets were first published in September 2003 to foster a better understanding of the work this Office does and to try to improve the experience of victims within the criminal justice system. They are written in a question and answer format and answer the questions most often asked of this Office.
- 2.43** In the course of revising the booklets we consulted with a number of agencies, including the Garda Síochána, the Probation Service, the Courts Service, the Forensic Science Laboratory and the National Adult Literacy Agency. The benefit of their advice and co-operation contributed greatly to the quality of the information contained in the booklets.
- 2.44** In order to ensure that the increasing numbers of foreign nationals who are now resident here have access to information in their own languages, the booklets were published on our website in eight foreign languages: Arabic, French, Latvian, Lithuanian, Chinese (Mandarin), Polish, Russian and Spanish. This means the booklets are available in all six official languages of the United Nations as well as three other languages spoken by sizeable immigrant communities in Ireland. The booklets are also available in Braille and audio cassette formats.
- 2.45** The revised booklets were officially launched in Dublin Castle on 13 November 2006 by Mr. Jim McHugh, Chairman of the Commission for the Support of Victims. Attendees included representatives from various agencies involved in the criminal justice system, as well as representatives from a large number of victim support organisations. This proved to be an extremely worthwhile event and provided an opportunity for members of this Office to meet

volunteers from the various agencies involved in the support of victims, as well as other organisations that work with victims of crime.

2.46 In July 2006 we also published a revised edition of our *Guidelines for Prosecutors*. This is reported on in more detail in Chapter 6 of this report.

2.47 The Irish Language Scheme for the Office of the Director of Public Prosecutions was published in 2005 in compliance with our obligations under the Official Languages Act, 2003. In the course of 2006 all correspondence received in the Irish language was responded to through Irish. Court proceedings initiated through Irish were also administered through Irish and cases conducted in the Irish language by counsel on our prosecution panel. The Office maintains a bi-lingual website and publishes all Office publications in both the Irish and English languages. A dedicated e-mail address (gaeilge@dppireland.ie) was established by this Office in 2006 to deal with e-mail correspondence received in the Irish language.

2.48 During the year we established a committee to review how this Office interacts with victims of crime. The Group comprises members of staff from the three divisions of the Office together with a local state solicitor, all of whom are involved in communications with victims at various stages of the prosecution process. The work of the committee and developments in relation to victims of crime are reported on separately in Chapter 7 of this report.

3 LEGAL DEVELOPMENTS 2006

- 3.1** The purpose of this chapter is to give a brief review of the more important or interesting decisions and developments in the area of criminal law in 2006. Some important cases such as *CC and A v. Governor of Arbour Hill* and the undue leniency review in the case of *Wayne O'Donoghue* have been so extensively covered in the media that they will not be referred to here.
- 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. This chapter is not intended to give a comprehensive review of all developments in criminal law during the year.

Delay

- 3.3** One of the most significant cases during the period was the Supreme Court's decision in *H v. Director of Public Prosecutions*, unreported, 31 July 2006. The Court considered the jurisprudence which has developed over the last decade in cases where there has been an accusation of child sexual abuse and a significant delay between the alleged abuse, the complaint, and the preferment of charges against the accused. The Court was of the opinion that a key issue in each case is the constitutional right to a fair trial. In reality the core inquiry is not so much the reason for a delay in making a complaint by a complainant but rather whether the accused will receive a fair trial or whether there is a real or serious risk of an unfair trial. The fact that a person who was the victim of a serious crime had delayed in bringing the commission of that crime to the notice of the State authorities is not of itself a ground upon which the State should refuse to bring a prosecution or the courts to entertain one. Delay can be seen in particular circumstances to affect the credibility of a complainant but that should not in general be a ground for preventing a trial proceeding. The prosecuting authorities should decide whether there is evidence of sufficient weight to warrant a charge being preferred and it is also their duty to consider whether a fair trial can be afforded to an accused person. This is an onerous and strict duty since there are circumstances in which the bringing of a prosecution in respect of offences that are alleged to have happened very many years ago would be to visit a serious injustice on the person accused of them.
- 3.4** In *PM v. Director of Public Prosecutions*, unreported, Supreme Court, 5 April 2006, 34 months had elapsed between the making of a complaint of gross indecency to the Gardá and the charging of the accused. The Court had to consider whether the trial should be prohibited due to the delay by the prosecution alone or whether the accused person should also be required to prove that his rights had been infringed by the delay. The court stated that it must engage in a balancing process between the right of the accused to be protected from stress and anxiety caused by an unnecessary and inordinate delay and the public interest in the prosecution and conviction of those guilty of criminal offences. Prosecutorial delay alone is not enough to prohibit a trial; one or more of the interests protected by the right to expeditious trial must have been interfered with. In the event, the Court found that the applicant's rights had been infringed and his prosecution was prohibited.

Issue Estoppel in Criminal Cases

- 3.5** *Enda Lynch v. His Honour Judge Carroll Morran and Director of Public Prosecutions*, unreported, Supreme Court, 23 May 2006, held that issue estoppel has no role in Irish criminal proceedings either in favour of the prosecution or the defence.
- 3.6** This case concerned issues arising at a re-trial where the first jury had failed to agree on a verdict or the jury was discharged without reaching a verdict. The judge at the first trial may have been called on to make various legal rulings on issues such as the admissibility of evidence. Such rulings are not now binding at the second or subsequent trials which can consider the issues afresh.

Previous Sexual History

- 3.7** Most rulings on issues touching on the cross-examination of a complainant in relation to his or her prior sexual history do not result in written judgements since they arise in the course of a trial.
- 3.8** *Director of Public Prosecutions v. GK*, unreported, Court of Criminal Appeal, 5 July 2006, considered the issue. The accused was charged with sexual offences in relation to a female aged between 10 and 15 years when the offences were alleged to have been committed. She was 16 when examined by a doctor when her hymen was found not to be intact. In a first trial the jury failed to reach a verdict on any count. At a second trial the accused was convicted on a number of counts and the jury disagreed on others. The conviction recorded at the second trial was subsequently quashed by the Court of Criminal Appeal.
- 3.9** Following that second trial a victim impact report was prepared for the sentence hearing which disclosed that the complainant had become sexually active with boys when she was 12 years old. At the third trial, in respect of the counts on which the jury at the second trial had disagreed, the defence sought to cross-examine the complainant on her prior sexual history as disclosed in the victim impact report.

The trial judge refused the application. The Court of Criminal Appeal considered that the trial judge was incorrect in so ruling. The prior sexual history may have been relevant having regard to the ruptured hymen and since it may have provided the possibility of some other motive for identifying the accused as the only person with whom she had sexual relations. The Court considered that its sense of unease was heightened by the knowledge that the complainant had withheld the information from her parents, her family GP, the doctor who carried out the examination at age 16 and also from members of the Gardaí to whom she first brought her complaint. The Court quashed the conviction and, as the accused had been through three trials with two appeals and had spent approximately three and a half years in prison on foot of the convictions, did not direct a re-trial.

Sentencing in Child Pornography Cases

- 3.10** The Court of Criminal Appeal in the case of *Director of Public Prosecutions v. Carl Loving*, unreported, 10 March 2006, considered the severity of a sentence of 5 years with the last 2 years suspended for possession of child pornography. The Court considered that a sentencing court should first have regard to two of the basic mitigating factors, whether the accused accepted responsibility including a plea of guilty and his previous character in particular with reference to the offence in question.
- 3.11** Secondly, it was necessary to consider how serious and numerous were the actual pornographic images. Thirdly, a Court should consider the circumstances and the duration of the activity leading to the possession of the images. Fourthly, whether the accused had ever shown the material to any other person or otherwise circulated or distributed it in any way.
- 3.12** In this particular case the acts of accessing the pornography were committed over a short period of time and then stopped. The pornographic images were left unused thereafter. The accused had ceased to abuse alcohol which had played a large part in his offending. It was not disputed that he was generally remorseful

and ashamed and there was no suggestion that he had shown or circulated the material to another. There was a total of 175 images. While the accused had previous convictions he had none for this type of offence. The Court reduced the sentence to 1 year.

Reckless Possession

3.13 In *Director of Public Prosecutions v. Michael Tanner*, unreported, Court of Criminal Appeal, 30 November 2006, the Court considered the concept of reckless possession. The appellant had rented a car parking space using a false name and always paying in cash. Approximately a year after the space was first rented, drugs were found in the boot of a car parked in the space in question. The value of the drugs was just under €500,000. It was noted that the vehicle was covered in dust. The key of the car in which the drugs were found was found in a car owned by one James Tobin. When the Gardaí phoned the contact number left when the space was rented the message was recorded on Tobin's phone.

3.14 When in custody the appellant was overheard on a phone to say "*If the alarm goes off in my car, you can break a window*". On overhearing this, the Gardaí went to the appellant's home to discover the side window broken and the alarm activated. In the car was found a swipe card used to access the car park.

3.15 The Court remarked that it may be extremely difficult to establish that an accused had precise knowledge of the nature of an object. The Court considered that proof of reckless disregard for what the object might be may also be sufficient to convict and on the above facts upheld the conviction.

The Wearing of Wigs

3.16 In *Director of Public Prosecutions v. Anthony Barnes*, unreported, Court of Criminal Appeal, 21 December 2006, the trial judge, in the absence of the jury, commented on two occasions that neither senior nor junior counsel for the defence was wearing a wig, while praising a recently called barrister who entered the court wearing one, for "*his respect of the traditions of*

his profession". The Court of Criminal Appeal stated that the Oireachtas has clearly specified that advocates were not required to wear a wig in court. Section 49 of the Courts and Courts Officers Act, 1995, provides that: "*A barrister or a solicitor when appearing in any court shall not be required to wear a wig of the kind heretofore worn or any other wig of a ceremonial type*". The Court stated that as counsel were not required to wear a wig, no one in the court should comment on whether they had one on or not. The trial judge is in a powerful position in a trial and counsel less experienced than those in the present case could have felt that in the interests of their client they should conform with the trial judge's preferences and wear a wig.

Section 8 Garda Síochána Act 2005

3.17 Section 8 of the Garda Síochána Act 2005 creates a new oversight role for the Office of the Director of Public Prosecutions with regard to prosecutions taken in the District Court by members of the Garda Síochána. This oversight role provides for the Director issuing both general and specific directions with regard to the approximately 300,000 District Court prosecutions (including indictable cases dealt with summarily) taken by members of the Garda Síochána each year. In addition the Director may give, vary or rescind directions concerning the institution or the conduct of such prosecutions and may prohibit the taking of prosecutions by members of the Garda Síochána in specific types of offences or in specified circumstances. This represents a very significant increase in the responsibilities to be discharged by this Office and a substantial challenge for the future.

3.18 Section 8 of the Garda Síochána Act came into force in February 2007. In preparation for the implementation of the section, the Office of the Director of Public Prosecutions facilitated a programme of briefing sessions for approximately 400 members of the Garda Síochána at Station Sergeant and Inspector levels in the Dublin Metropolitan Region. This Region was chosen for particular training because outside of Dublin prosecution work is undertaken by senior officers of the Garda

Síochána, who are familiar with the Director's requirements through ongoing training provided by his Office. The purpose of the briefing sessions was to ensure that key decision makers in the Garda Síochána are aware of the policies and guidelines which the Office of the Director of Public Prosecutions expects them to adhere to when initiating prosecutions.

- 3.19** On 23 January 2007 the Director issued a general direction under section 8 which had effect from 1 February 2007. The text of the direction can be accessed on the Office's website at www.dppireland.ie.

4 SECTION 49(4) PROSECUTIONS (Use of Evidential Breath Testing - Update)

Drunk Driving

- 4.1 The purpose of this chapter is to provide an update on case law arising out of breath specimen drunk driving prosecutions during 2006.

Constitutional Challenge

- 4.2 In our Annual Report 2005 we referred to the case of *Ashley McGonnell, Oliver Quinlan and John Purcell v. Attorney General and Director of Public Prosecutions* in which the High Court upheld the constitutionality of the intoxilyzer provisions. The case was appealed to the Supreme Court. On 28 November 2006 the Supreme Court delivered judgement dismissing the appeals by the plaintiffs. Murray CJ stated that *"in all the circumstances, in particular conclusions that the statutory procedures for the measuring/providing of breath/alcohol levels are not disproportionate or an impermissible interference with an accused's right to a fair trial, the court dismisses the appeal"*.

The Twenty Minute Observation Period

- 4.3 A number of cases were outlined in our Annual Report 2005 addressing issues that had arisen in relation to the 20 minute observation period in evidential breath testing cases. A further issue was addressed in the case of *Director of Public Prosecutions (at the suit of Garda Shane Curran) v. Garrett Foley*, O'Neill J, unreported, High Court, 31 January 2006, when it was held that *"no additional caution or warning is required at the commencement of the 20 minute period so as to render it lawful"*. The judgement goes on to state that *"the information given and cautions given at the time of arrest and subsequently by the member in charge when the alleged offender is brought to the Garda station, if sufficient to render lawful the*

overall detention, will also be sufficient to render lawful the detention during the period of twenty minute observation".

The Section 17 Certificate

- 4.4 Section 21 of the Road Traffic Act, 1994 provides that the certificate produced by the intoxilyser shall, until the contrary is shown, be sufficient evidence of the facts stated therein and of compliance by the Gardaí with the requirements of the Act. In the case of *Daniel Ruttledge v. District Judge Patrick Clyne and Director of Public Prosecutions*, Dunne J, unreported, High Court, 7 April 2006, the question of errors in section 17 certificates was considered. The particular error in that case was that the section 17 certificate referred to the name of the Garda instead of that of the applicant as the person providing the breath specimen. Following the rationale of the *Andrew Barnes* case, it was held *"that an error of the kind that had been made on the certificate is one which was of such an obvious or trivial or inconsequential nature that it could not have given rise to any confusion or misleading of the accused or indeed imposed any prejudice on him or any injustice"*.

Refusal / Failure Cases

- 4.5 In the case of *John Davitt v. Judge Deery and Director of Public Prosecutions*, Murphy J, unreported, High Court, 20 March 2006, the offence of failing to provide a breath specimen was explored. The Supreme Court decision in the case of *Director of Public Prosecutions v. Bridget Moorehouse* was considered and it was held that *Moorehouse* did decide that, subject to section 23, section 13(2) created an absolute offence in all the circumstances. The Court went on to say that *"it would seem clear that fault is not a*

requirement in order to establish that offence. As it was put by Geoghegan J. in Doyle, non compliance with the requirement was enough.

4.6 The case of *Director of Public Prosecutions (at the suit of Garda James King) v. Christopher Tallon*, MacMenamin J, unreported, High Court, 28 July 2006, considered the question of the District Court's power to amend refusal/failure summonses wherein the defendant had been charged with an offence of failing to provide a breath specimen *"in the manner indicated by the said member of An Garda Síochána"*; the Supreme Court having decided in the *Bridget Moorehouse* case that a charge so phrased was not known to the law. The High Court held that the proposed amendment was *"a matter for the discretion of the District Judge which discretion should be exercised in accordance with the approach set out by Finlay P in The State (Duggan) v. Evans, and Lynch J in Director of Public Prosecutions v. Corbett"*.

Other Cases

4.7 The case of *Director of Public Prosecutions v. Fergal Warren*, Dunne J, unreported, High Court, 18 May 2006, dealt with the issue of the detention of a suspect by an off duty Garda prior to his arrest for drunk driving by another member of the Gardaí who was on duty. The High Court held that the detention by the off duty Garda was an arrest and that it was lawful. In relation to the question of *"arrest upon arrest"*, reference was made to the judgement of MacMenamin J in the case of *O'Mahony v. Ballagh* (2002) 21R 410, wherein it was stated that *"the key issue in relation to re-arrest was whether there was evidence of abuse of process"* and on the facts of the Warren case it was held that there was not and therefore the subsequent arrest was a valid arrest.

4.8 The case of *Director of Public Prosecutions (at the suit of Garda Garry Hallinan) v. Donal Milmo Penny*, Dunne J, unreported, High Court, 27 July 2006, considered the situation wherein a Garda, having formed the opinion necessary to justify an arrest for a section 49 offence, asks the driver to pull in to the side of the road and whether this was an instruction to commit an offence which tainted the arrest or vitiated the section 49 opinion formed. The High Court held that *"as all of the necessary ingredients were present*

for a valid arrest and it has never been suggested otherwise, then, notwithstanding that the Garda required the defendant to continue driving a short distance, nothing occurred which had the effect of prejudicing the defendant in any way".

4.9 The case of *Director of Public Prosecutions v. Sean Kenny*, Herbert J, unreported, High Court, 13 October 2006, considered the question of the proper exercise of the discretion to convict of a section 50 (drunk in charge) offence where a defendant is charged with an offence contrary to section 49 (drunken driving). The Act provides that a person charged with a section 49 offence may be convicted of a section 50 offence. The District Judge acquitted of the section 49 offence on a submission that there was no evidence as to time of driving. The District Judge refused to convict of the section 50 offence stating that a prosecution had been brought for a section 49 offence. The High Court held that *"there is nothing to indicate that the person upon whom the particular discretion is conferred is under an obligation to exercise it in a particular way, but it must be exercised"*.

4.10 In the case of the *Director of Public Prosecutions (at the suit of Garda Richard T O'Connor) v. Brendan Cronin*, De Valera J, unreported, High Court, 13 November 2006, it was held that the District Judge was wrong to dismiss the section 49 charge where the Garda gave evidence that the accused was *"incapable of exercising"* rather than *"incapable of having"* proper control of the vehicle. Judge De Valera stated *"the difference in meaning between the use of the words "exercising" and "having" in the context of this section, and also in the context of the circumstances of the offence and the subsequent arrest, was non-existent"*.

4.11 The case *John Kearney v. Director of Public Prosecutions*, Dunne J, unreported, High Court, 21 December 2006 considered the situation wherein the accused person was not told of the reason for his arrest at the time of arrest in circumstances where he was resisting arrest and had to be physically restrained. The High Court held that *"it was not unreasonable for a member of the Gardaí to concentrate on the restraint of an arrested person rather than explaining the reason for the arrest there and then in circumstances*

where an accused person has, by his own conduct, brought about a situation in which the Gardaí are required to use their energies to restrain him".

Legislation

- 4.12** Random breath testing was introduced by section 4 of the Road Traffic Act 2006. To date, there is no reported case law relating to the introduction of this legislation. An issue, which arose in relation to power of arrest following a refusal of a section 4 requirement, has been addressed in section 1 of the Road Traffic and Transport Act 2006.
- 4.13** Section 5 of the Road Traffic Act 2006 will allow for a person arrested for drink driving with a reading in the lowest category, to accept, firstly, a fixed charge fine, and secondly, a disqualification order which would be equal to the minimum period which he/she would face if convicted in court. This provision is not yet in force.

5 DEVELOPMENT OF THE EUROPEAN ARREST WARRANT

European Arrest Warrant Act, 2003

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

Role of the DPP

5.2 Requests for the preparation of EAWs are submitted to the Office of the Director of Public Prosecutions by the Extradition Unit of the Garda Síochána. A lawyer in our Solicitors Division drafts the warrant and submits it for approval to our Directing Division. On receipt of a direction to proceed with the application, our Solicitors Division applies to the courts for a warrant. Applications for EAWs are normally made to a judge of the High Court sitting in Dublin. When the order has been granted the warrant is then dispatched to the Department of Justice, Equality & Law Reform. The Department then transmits the warrant to the country where it is believed the requested person is residing.

Results to Date

5.3 Since the introduction of the Act in January 2004 approximately 84 European Arrest Warrants were issued by the Irish courts. 76 were transmitted to the UK, 4 to Spain, 3 to the Netherlands and 1 to Belgium.

5.4 56 of the 84 requested persons were Irish nationals, 22 were British, and there was one each of Tunisian, Nigerian, Romanian, American, Lithuanian and Dutch nationality. The offences for which they were sought covered a wide

range of serious offences including murder, sexual offences, drugs offences, thefts and serious assaults.

5.5 Section 33 of the European Arrest Warrant Act, 2003 permits an EAW to be issued only if the offence carries on conviction a term of imprisonment of at least 12 months or, where the requested person is a convicted person, a term of 4 months imprisonment has been imposed. This ensures that applications for EAWs are only made for serious offences.

5.6 Of the 84 warrants issued to date, 38 people have been arrested and extradited back to Ireland. Only one request for extradition was refused. The refusal was based on the passage of time and other considerations. A further 10 have been arrested abroad and are currently before the courts.

5.7 Of the remaining 35 warrants, approximately 5 have been discontinued either because the requested person has been arrested locally in Ireland after the EAW issued or because the requested person or the complainant has died.

5.8 30 warrants remain unexecuted because the location of the requested person is unknown, having moved address at the time the EAW was dispatched to the requesting country. In these cases the Garda authorities will continue to liaise with their colleagues in Interpol in an effort to establish the exact location of the requested person.

Council of Europe and Evaluation

5.9 In June 1997 an action plan to improve the effectiveness of collaboration by member states against organised crime was approved by the European Council. One of its recommendations

proposed the establishment of a system of mutual evaluation of compliance with international instruments and undertakings in criminal matters. A joint action to implement this recommendation was adopted by the Council in December 1997.

- 5.10** In 2006 Ireland became the first country in the EU to be evaluated by the multi-disciplinary group on organised crime in respect of its implementation of the EAW scheme. The evaluation process began with a questionnaire and then involved a visit to Ireland by an expert team made up of prosecutors from member states. The experts met representatives from our Office along with representatives from the Attorney General's Office, the Chief State Solicitor's Office, the Extradition Unit of the Garda Síochána and the Department of Justice, Equality and Law Reform.
- 5.11** The report has not yet been published although the recommendations made to the Office of the DPP have been implemented. The main recommendations made by the expert team was that consideration be given to increasing the numbers of lawyers in the Solicitors Division of the Office of the Director of Public Prosecutions who are available to deal with EAWs. A lawyer from the Office has recently taken part in a similar evaluation of the United Kingdom's implementation of the EAW scheme.

Conclusions

- 5.12** Since the introduction of the EAW scheme in January 2004 Ireland has experienced only one case where a country has refused to surrender an individual. The grounds in that particular case were the passage of time and other considerations unique to the case. From the prosecution point of view the EAW is proving to be a very effective instrument in securing the return of accused persons.
- 5.13** The number of extradition files received from the Gardaí at the Extradition Unit in Garda Headquarters has steadily increased since 2004. In 2004 a total of 13 files were received by the Office from the Gardaí; in 2005 a total of 26 were received; and, in 2006 the total reached 40. If the numbers increase as they have done

the challenge in the future for the Office will be to be prepared to deal effectively with the increased volume of files. Following on from the recommendations of the expert evaluation team from the Council of Europe, arrangements have already been put in place in the Office to deal with the potential increase in EAW files.

- 5.14** One very noticeable feature of the new EAW scheme is the speed with which an individual can be arrested and surrendered. For example our Office has had a number of cases where a person has been extradited to Ireland within two weeks of an EAW being issued.
- 5.15** Since the EAW is a valid document across the EU it is intended to make it much harder for people to use the previous differences between national legal systems to avoid arrest or to find a safe haven in another EU country.
- 5.16** To work as effectively as it has done, the European Arrest Warrant will depend on EU member states continuing to trust each other's legal systems and accepting and recognising the decisions of each other's courts.

6 GUIDELINES FOR PROSECUTORS

- 6.1** The *Guidelines for Prosecutors* was first launched in 2001. In July 2006 a revised edition of the *Guidelines* was published and launched by The Hon. Mrs. Justice Catherine McGuinness, Judge of the Supreme Court and President of the Law Reform Commission. In setting out in general terms principles which should guide the initiation and conduct of prosecutions in Ireland, the primary purpose of the *Guidelines* is to provide a basis for a fair, reasoned and consistent prosecution policy.
- 6.2** In most jurisdictions, prosecutions are initiated and conducted entirely by prosecutors, who not only make prosecution decisions but conduct the prosecutions in court, and may also be responsible for conducting, or at least for supervising, all necessary investigations.
- 6.3** In Ireland the Office of the Director of Public Prosecutions has no investigative role. Investigation is a matter for the Garda Síochána or other specialised agencies. When the Office of the DPP decides to prosecute a case, if it is a serious case being dealt with in a jury court in Dublin, the Solicitors Division in the Office of the DPP handles the case. Outside of Dublin the case is handled by local state solicitors. Their relationship with this Office is that of a solicitor and client. When cases heard before a jury come to court, they are then handled by independent barristers who act on instructions from the Director's solicitors.
- 6.4** The vast majority of criminal cases are, however, heard in the District Court. Some of these cases are prosecuted directly by solicitors employed by this Office but the great majority are prosecuted by members of the Garda Síochána. With the coming into force of section 8 of the Garda Síochána Act 2005 all prosecuting Gardaí will be prosecuting cases in the name of the DPP and will be under a duty to comply both with general instructions given by this Office and with any specific instructions in individual cases. This represents a development with potentially far-reaching consequences for summary prosecutions in Ireland.
- 6.5** The *Guidelines* therefore are directed not only to the staff of this Office but to all those who prosecute in the name of the DPP. With so many different players taking part in the prosecution system the necessity for clear guidelines is obvious. The issuing of guidelines is one mechanism through which the Office can try to achieve consistency.
- 6.6** Another reason for the publication of the *Guidelines* is to contribute to public understanding of the prosecution system within the criminal justice system as a whole. Particularly in a system where victims of crime are not given the reasons for decisions, it can be important that they are given the maximum reassurance as to the principles that are applied in making decisions and that they can be assured those principles were adhered to.
- 6.7** The revised *Guidelines for Prosecutors* is a substantially larger document than the first edition. It includes for the first time a Code of Ethics for prosecutors. This Code has been informed by principles which have been set out by the United Nations, the Council of Europe and the International Association of Prosecutors. The *Guidelines* deal for the first time with the difficult question of accomplice evidence and the granting of immunity to accomplices and with the issue of post-conviction forfeiture, confiscation and disqualifications.

- 6.8** The chapter dealing with the rights of victims and the relatives of victims has been substantially expanded. While the *Guidelines* make clear that the prosecution acts on behalf of the People as a whole and not just in the interests of any one individual, and that therefore the views and interests of the victim cannot be the only consideration in deciding whether or not to prosecute, nevertheless there is an increased recognition of the importance of listening to and considering carefully the views of victims when decisions in which they have a huge interest are being made. The *Guidelines* emphasise the importance of treating victims with consideration, sympathy and respect and having regard to their rights and dignity.
- 6.9** The *Guidelines* will be continually reviewed and updated so as to ensure that they reflect the most up to date information and incorporate any changes in legislation. In this regard we are currently updating the second edition and intend to publish a 3rd Edition of the *Guidelines* in 2007. The *Guidelines for Prosecutors* is available on our website at www.dppireland.ie.

7 VICTIMS OF CRIME



7.1 In our Annual Report for 2005 we reported on the work that was being done by the Office to develop relationships with victim representative groups (now coordinated by the Commission for the Support of Victims of Crime) and our continuing cooperation with the Garda Síochána in the pursuit of effective communications with victims. In 2006 this work continued with participation at various seminars for victim support agencies, and ongoing discussions with the Garda Síochána at senior level.

Review of Procedures

7.2 In 2006 an Office-wide Committee was established to review all of our procedures in respect of communications with victims and where necessary make recommendations for improvements. While existing procedures for communicating with victims appeared to be working well, as a result of this Committee's work a number of changes have been made primarily aimed at ensuring that victims receive information in a timely manner regarding

ABOVE - L-R: Claire Loftus, Chief Prosecution Solicitor; James Hamilton, Director of Public Prosecutions; Assistant Commissioner Al McHugh, An Garda Síochána; Marian Finucane, Commission for the Support of Victims of Crime; Deputy Commissioner Fachtina Murphy, An Garda Síochána

developments in their case and also ensuring that they are made aware of their entitlement to a pre-trial meeting with the prosecution legal team. The work of the Committee is ongoing.

Liaison with Garda Síochána

- 7.3 The Office continues to work closely with the Garda Síochána who have recently appointed a senior Garda to coordinate communications



with victims. This Office continues to adhere to a policy of communicating with victims where possible via the prosecuting member of the Garda Síochána who is generally the person that will have developed a relationship with the victim of crime. The Director welcomes the recent initiative of the Garda Síochána whereby



since December 2006 the Garda IT system PULSE automatically generates letters to the victim providing them with essential information on victim support services and informing them of progress in the case.

Revised Booklets

- 7.4 2006 also saw the revision and publication of the second edition of the information booklets *The Role of the DPP* and *Attending Court as a Witness*. While having these publications is an



achievement in itself we recognise that the real challenge is to ensure that these publications are received by the people who most need them at the appropriate times. We are working closely with the Garda Síochána, the Courts Service and other outlets for public information to try and ensure that this information is available to those who need it.

TOP LEFT - Ellen O'Malley Dunlop, Chief Executive Officer, Rape Crisis Centre

BOTTOM LEFT - L-R: Maeve Ryan, Crime Victims Helpline; Caroline Ryan, Citizens Information Board; Lisa Kennedy, Irish Tourist Assistance Agency

TOP RIGHT - Barry Donoghue, Deputy Director of Public Prosecutions with Rory Benville, State Solicitor, Wicklow East - both members of the Communications with Victims Committee

BOTTOM RIGHT - Chief Superintendent Tom Murphy, An Garda Síochána with Olive O'Neill, Victim Support



Research Project on Effects of Irish Criminal Justice System on Victims

7.5 Following on from the joint conference which was held in Dublin in 2004 by the Office of the DPP, St. Clare's Unit, Children's University Hospital, Temple Street and St. Louise's Unit, Our Lady's Hospital for Sick Children, Crumlin, a significant piece of research was completed in 2006 dealing with the experience of child victims and their families within the criminal justice system. This research, which was undertaken by two doctoral students under the supervision of the School of Psychology in University College Dublin, was the first research of its kind in attempting to qualitatively investigate the views of parents and children, and to assess the perceptions of various professionals working within the criminal justice system.

7.6 The Office of the Director of Public Prosecutions assisted by identifying cases involving child victims of sexual abuse and coordinating with the Garda Síochána so that, on a confidential basis, the child and families' willingness to participate in this research could be ascertained. This research, which it is intended will be published in legal and healthcare journals, was very valuable in presenting the opinions and experiences of children who are at the centre of

such cases. This forms part of a larger ongoing nationwide study. The study will have a larger sample of parents and children.

Victim Impact Reports

7.7 The Court of Criminal Appeal made an important statement on the law in relation to victim impact statements this year and issued guidelines in relation to their use in criminal cases. In the case of *Director of Public Prosecutions v. Wayne O'Donoghue* (18/10/06) they made the following observations:



- While the legislature has provided that a victim impact statement may be given by the living victim of a variety of crimes, no such legislative provision exists for the family or friends of a victim of an unlawful homicide. A practice has developed by which a sentencing judge has a discretion to permit a victim impact statement to be made in such circumstances.



TOP LEFT - L-R: Dr. Derek Deasy, Senior Clinical Psychologist, St. Clare's Unit, Children's University Hospital, Temple Street; James Hamilton, Director of Public Prosecutions; Claire Loftus, Chief Prosecution Solicitor; Dr. Graham Connon, Clinical Psychology Department, UCD.

TOP RIGHT - L-R: Gemma Moran, Solicitors Division, Office of the DPP; Mark Kelly, Director, Irish Council for Civil Liberties; Joan Deane, ADVIC

BOTTOM RIGHT - James Hamilton, Director of Public Prosecutions with Jim McHugh, Chairman of the Commission for the Support of Victims of Crime

- Such a statement should only be permitted on strict conditions: it should be submitted both to the sentencing judge and to the legal representatives of the accused in advance of the reading or making of the statement itself. The person who proposes making the statement should be warned by the sentencing judge that if in the course of making the statement in court they should depart in any material way from the content of the statement as submitted, they may be liable to be found to have been in contempt of court. If it be the case that such departure occurs and involves unfounded or scurrilous allegations against an accused, that fact may be considered by the sentencing judge to be a matter to be taken into account in mitigation of the sentence to be imposed. Every effort must also be made to ensure that the statement is not used to undermine the proper role of the prosecution in a trial, or to seek to place in the public domain unfounded or unproven allegations against a convicted person who is awaiting sentence.

8 FREEDOM OF INFORMATION

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

8.2 The Office continues to make FOI information available as readily as possible. Our section 5 and 6 Reference Book is widely available both in public libraries throughout the country and on our website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept.

8.3 The FOI unit can be contacted by telephone or by e-mail at foi@dppireland.ie. This e-mail address can be used for general queries on FOI but cannot be used to submit a request where an application fee is required.

8.4 During 2006 a total of nine requests were submitted to the Office. Seven of the requests were refused under the Act and one request was withdrawn. A further one request was granted in part. The reason for the refusals was that the records sought did not relate to the general administration of the Office.

8.5 One of the requests was submitted by a journalist, while the other eight requests were made by the general public with a total of seven of these requests relating to criminal files.

8.6 In the seven cases where requests were refused, only one of the people making the request sought an internal review of the original decision. In this case the original decision was upheld. The requester then appealed the decision to the Information Commissioner who also upheld the original decision.

Requests Received 2006	
Refused under section 46(1)(b)	7
Withdrawn/dealt with outside of FOI	1
Requests Granted	1
TOTAL REQUESTS	9

Requesters 2006	
Journalists	1
General Public	8

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

9 STATISTICS

Explanatory Note in Relation to Statistics

- 9.1** 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 statistics. The systems are subject to ongoing development in order to enhance the quality of the data produced.
- 9.2** This chapter 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 2003 and 2005;
 - Charts 12 to 14 provide statistics on Office expenditure.
- 9.3** 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 2006 case outcomes, a large proportion of the cases would still be classified as 'for hearing'.
- 9.4** In this report we have attempted in most instances to include updated versions of the data set out in previous Annual Reports in order to give a fuller account of the progress made since that data was previously published. Because of the continuous change in the status of cases - for example, a case which was pending at the time

of a previous report may now have concluded - information given in this report will differ from that for the same cohort of cases in previous reports. In addition, data from two years may not be strictly comparable because as time goes on more cases are completed so that information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated as of June 2007.

- 9.5** 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.

CLARIFICATION (inserted August 2007)

Please note that charts 8 and 8b of the Annual Report 2006 have been adjusted slightly since the publication of the Report in July 2007. This is to correct a slight discrepancy in relation to the categorisation of offences in these charts that was caused by some field option changes on our computer systems in 2005.

While the overall number of cases and their respective outcomes are unchanged, four specific categories (fatal accidents at work; child pornography; underage sex with a girl; and, revenue offences) were originally included in either the 'other sexual offences' or 'other offences' categories. This has now been corrected and the number of prosecutions for these four categories of offences are instead included under the specific category to which they refer.

Chart 1 shows the total number of files received by the Office of the Director of Public Prosecutions from 1976 to 2006.

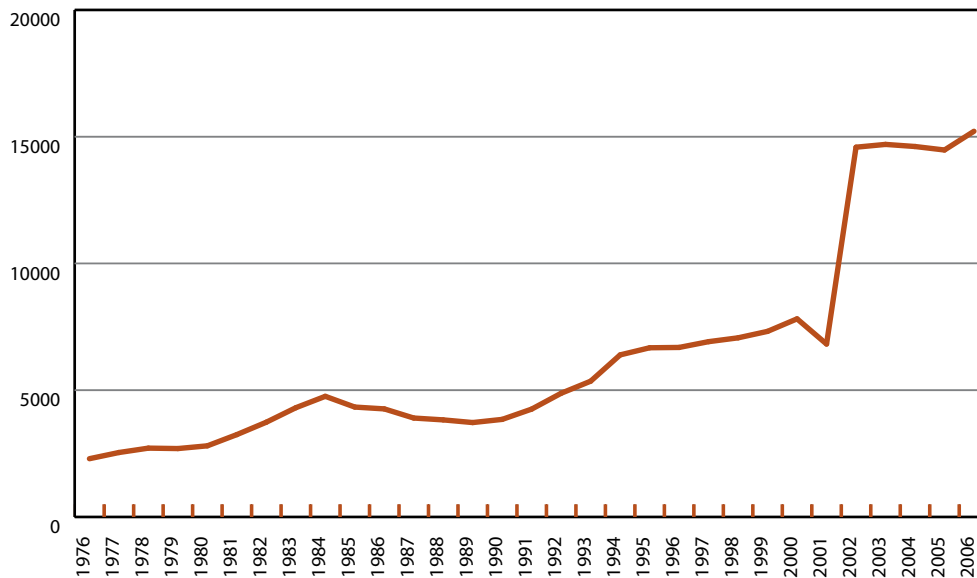
The vast majority of files received in the Office relate to the investigation of crime. The remainder deal with general queries, matters for judicial review or requests for legal advice from the Garda Síochána or local state solicitors. The caseload has increased generally on a year on year basis since 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

Year	Files	Year	Files	Year	Files
1976	2298	1987	3902	1998	7066
1977	2542	1988	3829	1999	7321
1978	2715	1989	3724	2000	7815
1979	2698	1990	3849	2001	6821
1980	2806	1991	4255	2002	14586
1981	3249	1992	4880	2003	14696
1982	3738	1993	5356	2004	14613
1983	4309	1994	6393	2005	14475
1984	4759	1995	6674	2006	15214
1985	4335	1996	6687		
1986	4263	1997	6915		

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

	2006	%	2005	%	2004	%
District Court Prosecution Files	2509	37%	2306	37%	1808	25%
Appeals from District Court to Circuit Court	2132	32%	1885	30%	3130	44%
High Court Bail Applications	1707	25%	1727	27%	1958	27%
Judicial Review Applications	358	5%	373	6%	299	4%
TOTAL	6706		6291		7195	

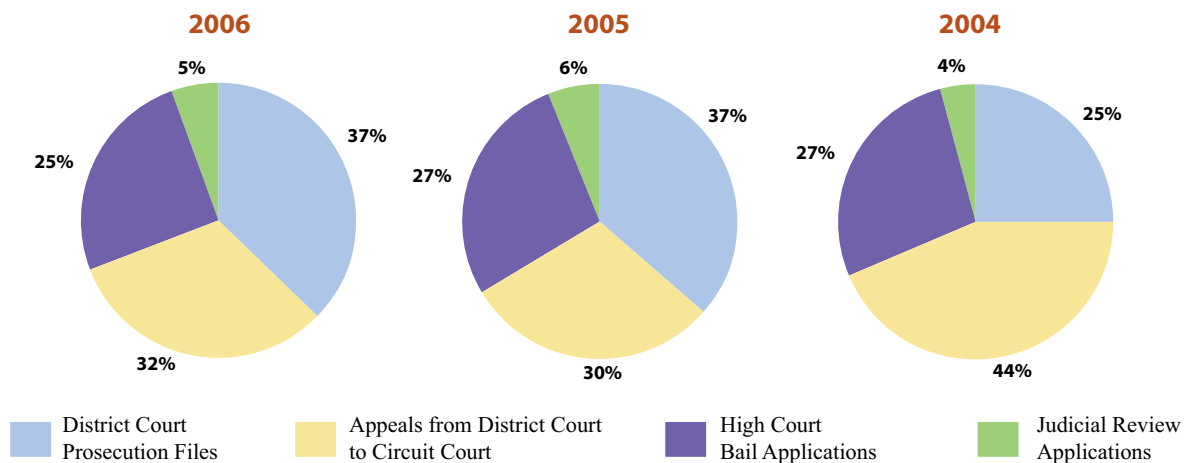
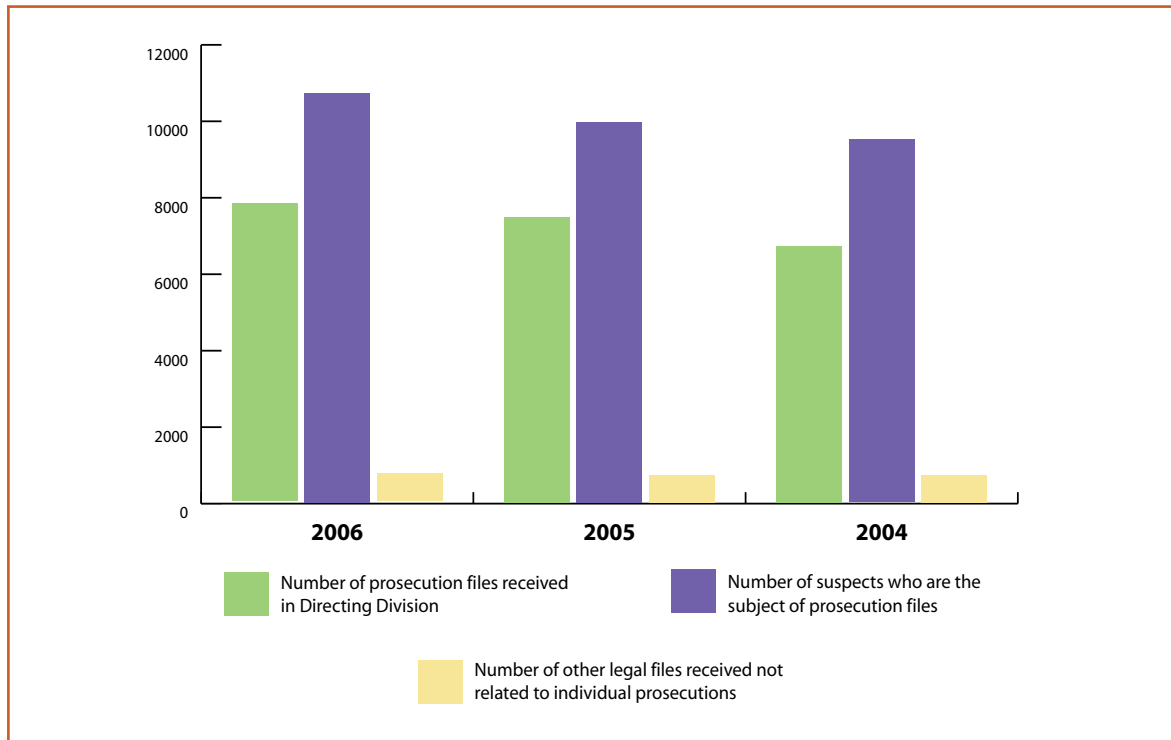


Chart 3 compares the number of files received in the Directing Division to the number of suspects who are the subject of these files. Many files relate to more than one suspect and to treat such a file as a single case can give a misleading impression of the workload of the Office. It is important, therefore,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

NOTE: *There are also a number of files received in the Directing Division each year not relating to prosecutions. These include requests for legal advice from the Garda Síochána and local state solicitors, and judicial review applications received from the Solicitors Division for direction. These files are outlined in the chart as 'other legal files'.*

Chart 3 BREAKDOWN OF FILES RECEIVED IN DIRECTING DIVISION

	2006	2005	2004
Number of prosecution files received in Directing Division	7791	7476	6698
Number of suspects who are the subject of prosecution files	10701	9954	9475
Number of other legal files received not related to individual prosecutions	717	708	720



The following chart shows a breakdown of the disposal of files received in the Directing Division in 2004, 2005 and 2006 (as of June 2007). 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.

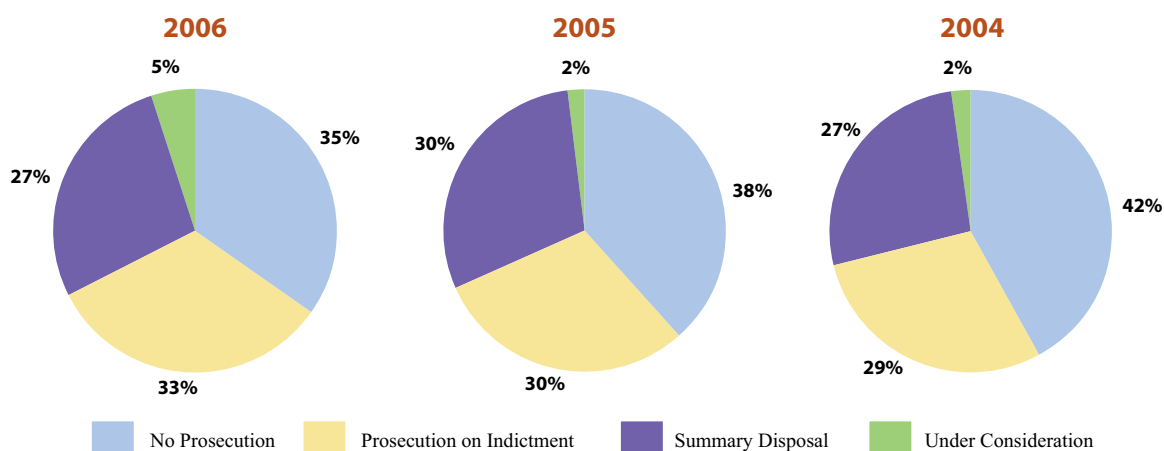
Summary Disposal: The offence is to be prosecuted in the District Court.

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 2004 and 2005 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	2006	%	2005	%	2004	%
No Prosecution	3722	35%	3832	38%	3979	42%
Prosecution on Indictment	3513	33%	2997	30%	2769	29%
Summary Disposal	2932	27%	2945	30%	2542	27%
TOTAL OF FILES DISPOSED	10167	95%	9774	98%	9290	98%
Under Consideration	534	5%	180	2%	185	2%
TOTAL	10701		9954		9475	



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

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

Main Reasons for no Prosecution	2006	%	2005	%	2004	%
Insufficient Evidence	2948	79%	2871	75%	2904	73%
Juvenile Diversion Programme	162	4%	196	5%	224	6%
Public Interest	155	4%	199	5%	176	4%
Sympathetic Grounds	50	1%	74	2%	50	1%
Time Limit Expired	162	4%	193	5%	270	7%
Undue Delay	57	2%	93	2%	119	3%
Other	188	5%	206	5%	236	6%
TOTAL	3722		3832		3979	

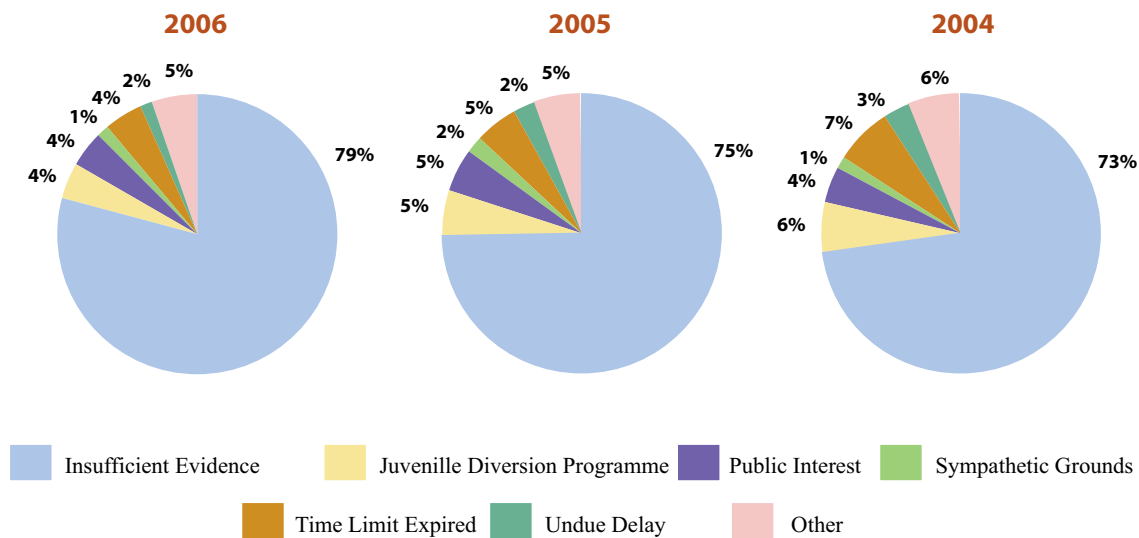


Chart 4b is a breakdown of directions to prosecute on indictment, by the county in which the offence was committed. It includes cases directed to be heard in the Circuit Criminal, Central Criminal and Special Criminal Courts. Please note that a number of cases are still 'Under Consideration' (see Chart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

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

	Population						Cases per 1,000 Persons										3 Year Rolling Average		
	2006 *	2005 *	2004 *	2003 *	2002 *	Population	2006	2005	2004	2003	2002	2006	2005	2004	2003	2002	2004	2003	2002
Carlow	50,349	49,235	47,982	47,035	46,014	Population	30	41	22	23	27	0.60	0.83	0.46	0.49	0.59	0.63	0.59	0.51
Cavan	64,003	60,936	59,959	58,728	56,546	Population	36	28	29	31	44	0.56	0.46	0.48	0.53	0.78	0.50	0.49	0.60
Clare	110,950	107,722	105,612	104,634	103,277	Population	65	70	62	68	51	0.59	0.65	0.59	0.65	0.49	0.61	0.63	0.58
Cork	481,295	471,489	461,745	455,172	447,829	Population	315	320	249	304	295	0.65	0.68	0.54	0.67	0.66	0.62	0.63	0.62
Donegal	147,264	143,983	141,675	138,766	137,575	Population	52	48	39	66	40	0.35	0.33	0.28	0.48	0.29	0.32	0.36	0.35
Dublin	1,187,176	1,160,100	1,144,400	1,133,900	1,122,821	Population	1901	1541	1416	1465	1513	1.60	1.33	1.24	1.29	1.35	1.39	1.29	1.29
Galway	231,670	225,207	218,717	215,333	209,077	Population	97	58	84	46	47	0.42	0.26	0.38	0.21	0.22	0.35	0.29	0.27
Kerry	139,835	138,211	135,355	133,428	132,527	Population	59	61	58	69	45	0.42	0.44	0.43	0.52	0.34	0.43	0.46	0.43
Kildare	186,335	178,456	172,500	167,687	163,944	Population	100	78	102	74	84	0.54	0.44	0.59	0.44	0.51	0.52	0.49	0.51
Kilkenny	87,558	85,785	83,602	81,950	80,339	Population	64	33	55	26	22	0.73	0.38	0.66	0.32	0.27	0.59	0.45	0.42
Laois	67,059	64,074	62,465	60,750	58,774	Population	22	27	33	20	30	0.33	0.42	0.53	0.33	0.51	0.43	0.43	0.46
Leitrim	28,950	27,675	27,231	26,672	25,799	Population	8	13	4	18	2	0.28	0.47	0.15	0.67	0.08	0.30	0.43	0.30
Limerick	184,055	180,700	177,161	175,520	175,304	Population	137	127	84	107	83	0.74	0.70	0.47	0.61	0.47	0.64	0.60	0.52
Longford	34,391	33,331	32,494	31,602	31,068	Population	20	9	13	16	16	0.58	0.27	0.40	0.51	0.51	0.42	0.39	0.47
Louth	111,267	107,714	105,987	103,811	101,821	Population	70	38	73	79	96	0.63	0.35	0.69	0.76	0.94	0.56	0.60	0.80
Mayo	123,839	123,288	119,735	117,883	117,446	Population	53	47	52	27	29	0.43	0.38	0.43	0.23	0.25	0.41	0.35	0.30
Meath	162,831	151,228	146,181	142,103	134,005	Population	70	67	52	54	48	0.43	0.44	0.36	0.38	0.36	0.41	0.39	0.36
Monaghan	55,997	54,891	54,011	52,902	52,593	Population	22	40	22	30	41	0.39	0.73	0.41	0.57	0.78	0.51	0.57	0.58
Offaly	70,868	68,503	66,782	64,949	63,663	Population	19	20	18	29	11	0.27	0.29	0.27	0.45	0.17	0.28	0.34	0.30
Roscommon	58,768	57,505	55,848	54,984	53,774	Population	15	18	23	25	13	0.26	0.31	0.41	0.45	0.24	0.33	0.39	0.37
Sligo	60,894	60,201	59,236	58,020	58,200	Population	49	48	41	41	19	0.80	0.80	0.69	0.71	0.33	0.76	0.73	0.58
Tipperary	149,244	146,823	143,462	141,285	140,131	Population	62	59	46	48	49	0.42	0.40	0.32	0.34	0.35	0.38	0.35	0.34
Waterford	107,961	107,045	104,321	102,260	101,546	Population	72	61	64	96	72	0.67	0.57	0.61	0.94	0.71	0.62	0.71	0.75
Westmeath	79,346	76,992	75,059	72,999	71,858	Population	56	42	25	42	35	0.71	0.55	0.33	0.58	0.49	0.53	0.48	0.47
Wexford	131,749	126,889	123,659	121,217	116,596	Population	51	42	40	50	34	0.39	0.33	0.32	0.41	0.29	0.35	0.36	0.34
Wicklow	126,194	122,716	118,620	115,310	114,676	Population	68	61	63	59	74	0.54	0.50	0.53	0.51	0.65	0.52	0.51	0.56
TOTAL	4,239,848	4,130,699	4,043,799	3,978,900	3,917,203	Population	3513	2997	2769	2913	2820	0.54	0.50	0.53	0.51	0.65	0.52	0.51	0.56

* Population figures for 2002 and 2006 are taken from the census figures published for those years. Population figures for the intervening years are calculated based on the proration of the latest Population & Migration estimates for the Regional Authority Areas as published by the Central Statistics Office in 2006, which includes revised yearly figures for 2003 to 2005

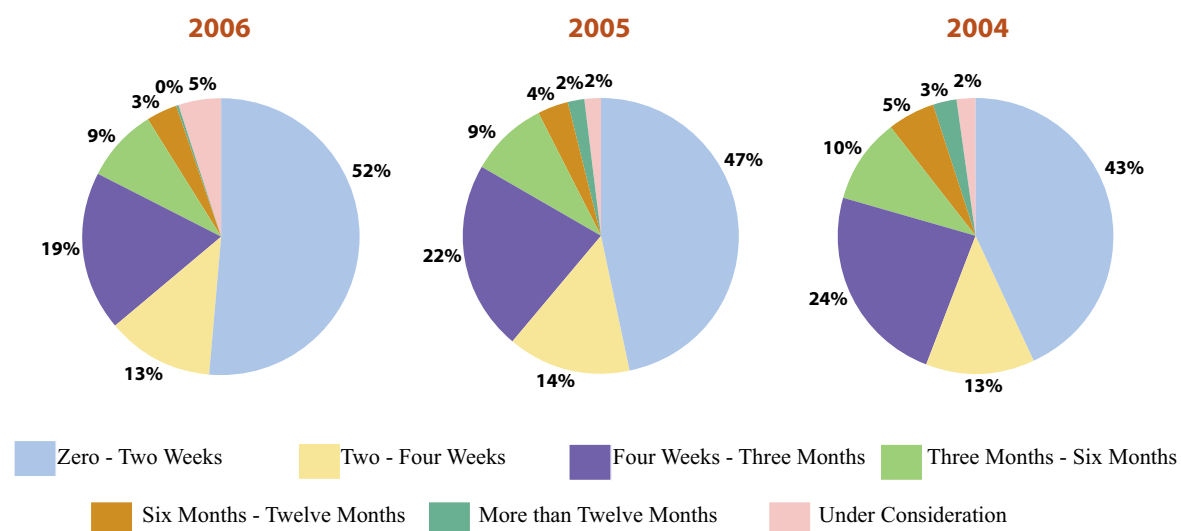
Chart 5 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution of a suspect should be taken or not. It has been decided to show this information by suspect rather than by file since in the case of files containing multiple 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	2006	%	2005	%	2004	%
Zero - Two Weeks	5521	52%	4665	47%	4081	43%
Two - Four Weeks	1338	13%	1423	14%	1220	13%
Four Weeks - Three Months	1999	19%	2227	22%	2234	24%
Three Months - Six Months	910	9%	907	9%	963	10%
Six Months - Twelve Months	369	3%	372	4%	509	5%
More than Twelve Months	30	0%	180	2%	283	3%
TOTAL FILES DISPOSED	10167	95%	9774	98%	9290	98%
Under Consideration	534	5%	180	2%	185	2%
TOTAL	10701		9954		9475	



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

Chart 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

Year of Application	Number of Applications Lodged	Year of Application	Number of Applications Lodged
1994	2	2001	23
1995	2	2002	23
1996	3	2003	26
1997	4	2004	21
1998	12	2005	37
1999	34	2006	41
2000	31		

Number of Applications Lodged

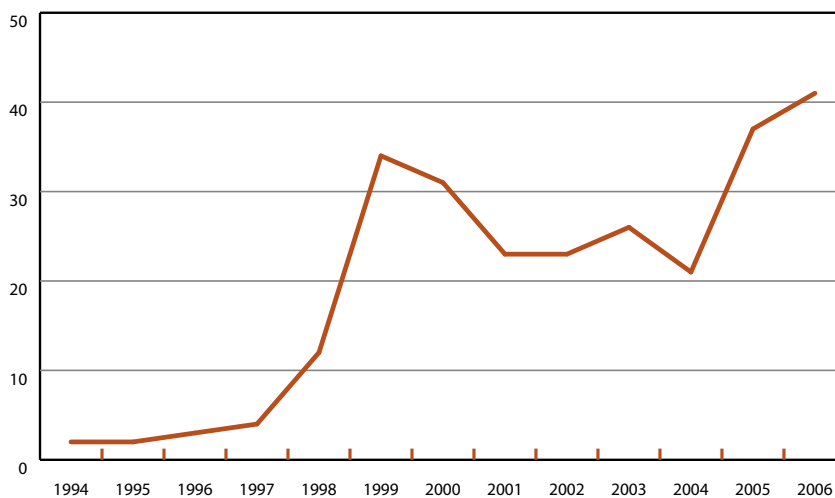


Chart 6a RESULTS OF APPLICATIONS BY YEAR LODGED

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
2005	18	9	2	29
2006	33	15	2	50

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 2003 and 2005. 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 2003 to 2005 (as of June 2007). 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 2006 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	2005	%	2004	%	2003	%
Conviction	1931	64%	1970	71%	2075	71%
Acquittal	120	4%	156	6%	194	7%
Not Yet Heard	858	29%	478	17%	445	15%
Struck Out/Discontinued	88	3%	165	6%	199	7%
TOTAL	2997		2769		2913	

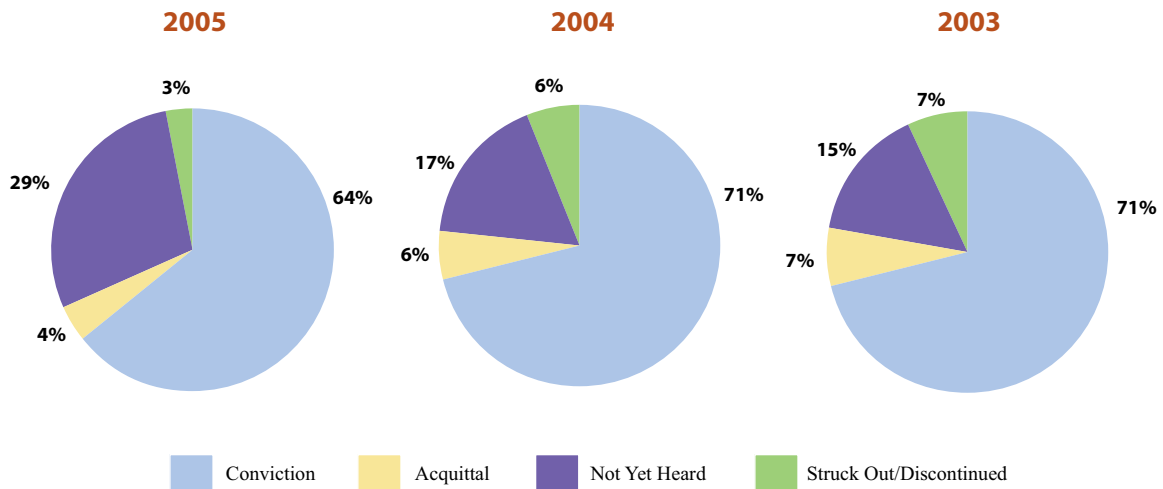


Chart 7a **BREAKDOWN OF CONVICTIONS AND ACQUITTALS (EXCLUDING CASES STILL TO BE HEARD)**

	2005	%	2004	%	2003	%
Conviction by Jury	101	5%	138	6%	148	7%
Conviction Following Plea of Guilty	1830	89%	1832	86%	1927	85%
TOTAL CONVICTIONS	1931	94%	1970	92%	2075	92%
Acquittal by Jury	75	4%	82	4%	119	5%
Acquittal on Direction of Judge	45	2%	74	3%	75	3%
TOTAL ACQUITTALS	120	6%	156	7%	194	8%
TOTAL	2051		2126		2269	

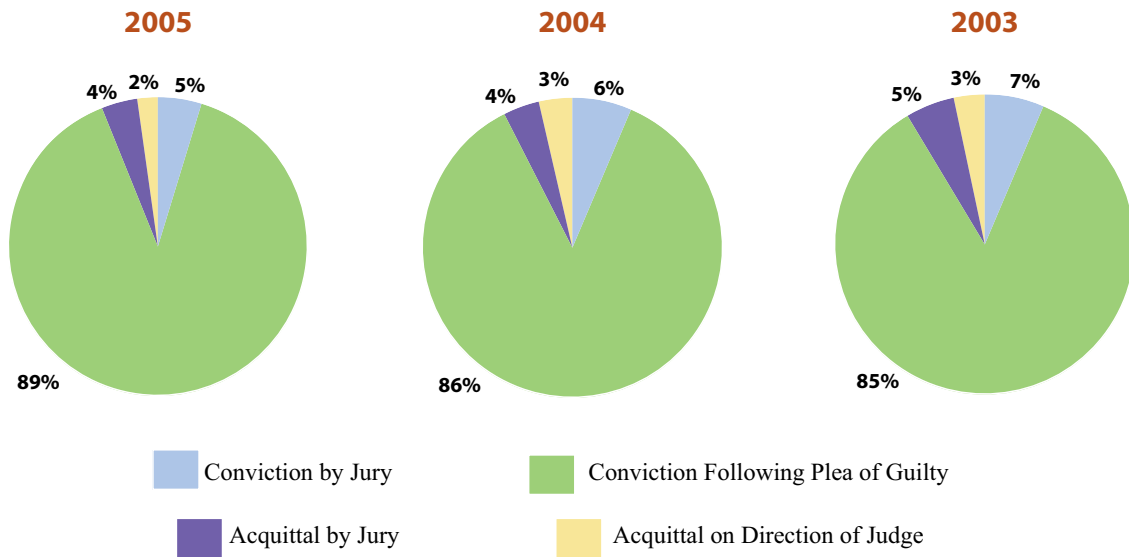


Chart 8 breaks down the prosecutions directed on indictment to be heard in the Circuit Court. The cases categorised as 'For Hearing' are those for which a verdict has not yet been recorded. In some of these cases, a trial may have begun but proceedings have been halted by a Judicial Review application. 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					
	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003			
Fatal Accident at Work	14	8	9	0	0	2	4	4	6	0	0	0	1	0	0	9	4	1	0	0	0
Fatal Road Traffic Accident	53	54	37	6	7	4	20	32	22	2	4	3	6	2	2	19	9	5	0	0	1
Manslaughter	11	8	9	1	3	2	7	1	3	1	1	1	0	1	3	2	2	0	0	0	0
Other Fatal Offences	3	0	2	0	0	0	0	0	1	0	0	0	0	0	0	3	0	1	0	0	0
TOTAL - FATAL OFFENCES	81	70	57	7	10	8	31	37	32	3	5	4	7	3	5	33	15	7	0	0	1
Burglary	286	249	267	1	6	4	198	182	204	4	4	5	8	5	5	68	34	36	7	18	13
Fraud	62	68	52	0	4	0	30	39	35	0	1	0	0	3	3	29	20	12	3	1	2
Robbery	496	404	401	1	3	14	398	320	314	2	5	2	3	8	3	80	45	41	12	23	27
Other Offences Against Property	174	204	235	6	8	4	110	130	148	4	3	5	3	6	9	48	41	45	3	16	24
TOTAL - OFFENCES AGAINST PROPERTY	1018	925	955	8	21	22	736	671	701	10	13	12	14	22	20	225	140	134	25	58	66
Bugger	2	11	5	0	1	1	0	4	3	0	0	0	0	0	0	2	6	1	0	0	0
Child Pornography	8	8	30	0	1	0	4	5	25	0	0	0	0	0	1	4	2	3	0	0	1
Sexual Assault	75	72	86	3	8	5	27	40	47	2	3	10	1	1	2	37	16	13	5	4	9
Sex with an Underage Girl	12	19	18	0	0	0	2	8	12	0	0	0	0	0	0	4	9	3	6	2	3
Other Sexual Offences	8	21	23	0	1	1	5	9	10	0	0	1	0	0	2	3	10	8	0	1	1
TOTAL - SEXUAL OFFENCES	105	131	162	3	11	7	38	66	97	2	3	11	1	1	5	50	43	28	11	7	14
Drug Offences	481	395	451	6	18	13	328	302	345	0	1	3	2	3	7	139	52	68	6	19	15
Firearms and Explosives Offences	116	122	142	3	6	6	69	80	100	3	5	5	2	3	3	38	22	19	1	6	9
Non Fatal Offences Against the Person	706	695	699	35	33	39	380	420	413	40	46	57	14	33	26	204	109	112	33	54	52
Public Order Offences	103	104	88	0	5	3	49	59	35	8	1	6	2	0	2	42	26	27	2	13	15
Revenue Offences	15	14	12	0	1	0	2	4	4	0	1	0	0	1	0	13	6	8	0	1	0
Other Offences	265	213	217	8	7	7	167	159	149	2	1	4	3	1	3	75	42	36	10	3	18
GRAND TOTAL	2890	2669	2783	70	112	105	1800	1798	1876	68	76	102	45	67	71	819	455	439	88	161	190

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

	2005	2004	2003
Accused Deceased	1	1	8
Nolle Prosequi Entered	77	136	118
Struck Out	9	8	17
Charges not Reentered	0	2	12
Charges Withdrawn	0	6	20
Convicted in District Court	0	0	4
Dealt with summarily	0	8	9
Unfit to Plead	0	0	1
Case Terminated by Judicial Review	1	0	1
TOTAL	88	161	190

Chart 8b **TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Conviction		
	2005	2004	2003	2005	2004	2003
Fatal Accident at Work	5	4	8	80%	100%	100%
Fatal Road Traffic Accident	34	45	31	76%	87%	84%
Manslaughter	9	6	9	89%	67%	56%
Other Fatal Offences	0	0	1	N/A	N/A	100%
TOTAL - FATAL OFFENCES	48	55	49	79%	85%	82%
Burglary	211	197	218	94%	95%	95%
Fraud	30	47	38	100%	91%	92%
Robbery	404	336	333	99%	96%	98%
Other Offences Against Property	123	147	166	94%	94%	92%
TOTAL - OFFENCES AGAINST PROPERTY	768	727	755	97%	95%	96%
Buggery	0	5	4	N/A	100%	100%
Child Pornography	4	6	26	100%	100%	96%
Sexual Assault	33	52	64	91%	92%	81%
Sex with an Underage Girl	2	8	12	100%	100%	100%
Other Sexual Offences	5	10	14	100%	100%	79%
TOTAL - SEXUAL OFFENCES	44	81	120	93%	95%	87%
Drug Offences	336	324	368	99%	99%	97%
Firearms and Explosives Offences	77	94	114	94%	91%	93%
Non Fatal Offences Against the Person	469	532	535	88%	85%	84%
Public Order Offences	59	65	46	83%	98%	83%
Revenue Offences	2	7	4	100%	71%	100%
Other Offences	180	168	163	97%	99%	96%
GRAND TOTAL	1983	2053	2154	94%	93%	92%

Chart 9 outlines the result of cases directed for prosecution in the Special Criminal Court.

Chart 9 OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE SPECIAL CRIMINAL COURT

	TOTAL			Conviction by Judges			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Judges			For Hearing		
	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003
Firearms and Explosives Offences	5	0	12	0	0	1	2	0	11	0	0	0	0	0	0	3	0	0
Membership of Unlawful Organisation & Related Offences	6	9	24	2	2	7	1	4	3	0	0	12	1	1	2	2	2	0
TOTAL	11	9	36	2	2	8	3	4	14	0	0	12	1	1	2	5	2	0

Chart 9a BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE' FOR PERSONS CHARGED WITH MEMBERSHIP OF UNLAWFUL ORGANISATION AND RELATED OFFENCES

	TOTAL			Conviction by Jury			Conviction on Plea		
	2005	2004	2003	2005	2004	2003	2005	2004	2003
Firearms and Explosives Offences	0	0	12	0	0	0	0	0	12
TOTAL	0	0	12	0	0	0	0	0	12

Chart 9b TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS

	TOTAL			Conviction		
	2005	2004	2003	2005	2004	2003
Firearms and Explosives Offences	2	0	12	100%	N/A	100%
Membership of Unlawful Organisation & Related Offences	4	7	24	75%	86%	92%
TOTAL	6	7	36	83%	86%	94%

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

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge			Other Disposals			For Hearing			
	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	
Murder	31	33	43	12	14	18	3	4	4	7	5	13	2	1	2	4	0	2	4	0	1	1	7	6	1
Soliciting to Murder	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	62	55	48	9	8	7	19	18	12	3	3	4	4	3	12	0	5	0	0	0	3	8	27	15	5
Attempted Murder	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Attempted Rape	1	1	2	1	0	0	0	1	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0
Aggravated Sexual Assault	1	2	0	0	0	0	1	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
TOTAL CASES	96	91	94	22	22	25	24	24	16	10	8	19	6	5	15	0	7	4	4	0	4	9	34	21	6

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

	TOTAL			Conviction by Jury			Conviction on Plea		
	2005	2004	2003	2005	2004	2003	2005	2004	2003
Manslaughter	6	4	12	2	2	8	0	2	4
Impeding the Apprehension or Prosecution of Another	0	1	0	0	0	0	0	1	0
Withholding Information	0	0	0	0	0	0	0	0	0
Obstructing a Garda	0	0	1	0	0	0	0	0	1
Assault causing Harm	0	0	1	0	0	0	0	0	1
Assault Causing Serious Harm	1	0	0	0	0	0	1	0	0
TOTAL	7	5	14	2	2	8	1	3	6

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

	TOTAL			Conviction by Jury			Conviction on Plea		
	2005	2004	2003	2005	2004	2003	2005	2004	2003
Aggravated Sexual Assault	0	2	1	0	0	0	0	2	1
Sexual Assault	2	1	2	0	0	1	2	1	1
Sex with an Underage Girl	0	0	1	0	0	0	0	0	1
Possession of Firearms with Intent to Endanger Life	0	0	0	0	0	0	0	0	0
Intent to Endanger Life	0	0	0	0	0	0	0	0	0
Attempted Rape	1	0	1	1	0	1	0	0	0
TOTAL	3	3	5	1	0	2	2	3	3

Chart 10c BREAKDOWN OF 'OTHER DISPOSALS'

	2005	2004	2003
Nolle Prosequi Entered	0	4	7
Not fit to be tried	0	0	1
Struck Out	0	0	1
TOTAL	0	4	9

Chart 10d TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS (INCLUDING CONVICTIONS ON A LESSER CHARGE)

	TOTAL			Conviction		
	2005	2004	2003	2005	2004	2003
Murder	24	26	41	92%	88%	85%
Soliciting to Murder	1	0	0	100%	N/A	N/A
Rape	35	37	35	89%	78%	66%
Attempted Murder	0	0	1	N/A	N/A	100%
Attempted Rape	1	1	2	100%	100%	50%
Aggravated Sexual Assault	1	2	0	100%	50%	N/A
TOTAL	62	66	79	90%	82%	76%

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				
	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	2005	2004	2003	
Carlow	16	5	15	2	0	2	14	5	10	5	10	10	0	0	2	0	0	2	0	0	0	0	0	1	
Cavan	12	22	23	1	0	0	10	21	21	10	21	21	0	1	2	0	1	2	1	0	0	0	0	0	
Clare	30	46	49	5	0	3	21	40	38	40	38	40	4	2	7	0	0	4	0	4	0	4	1	1	
Cork	250	193	224	8	13	10	221	164	195	164	195	39	11	0	9	10	16	10	10	16	10	16	10	10	
Donegal	22	29	45	0	2	3	22	26	39	26	39	0	1	3	0	0	0	0	0	0	0	0	0	0	
Dublin	1113	1142	1152	27	46	41	1046	1037	1046	1037	1046	24	33	36	16	26	29	36	16	26	29	16	26	29	
Galway	31	56	31	0	4	0	30	51	27	30	51	1	1	3	0	0	1	3	0	0	0	0	0	1	
Kerry	31	47	50	1	6	1	26	37	41	26	37	41	2	4	5	2	0	5	2	0	2	0	0	3	
Kildare	63	62	45	1	13	4	59	38	37	59	38	37	2	8	4	1	3	4	1	3	0	1	3	0	
Kilkenny	21	35	14	1	9	1	16	24	11	16	24	11	2	1	2	2	1	2	2	1	0	2	1	0	
Laois	16	18	10	0	0	2	15	17	8	15	17	8	1	0	0	0	1	0	0	1	0	0	1	0	
Leitrim	4	3	14	0	0	1	4	3	13	4	3	13	0	0	0	0	0	0	0	0	0	0	0	0	0
Limerick	56	48	60	5	2	2	45	41	49	45	41	49	1	5	5	5	0	5	5	0	5	0	0	4	
Longford	8	8	9	1	0	1	7	8	8	7	8	8	0	0	0	0	0	0	0	0	0	0	0	0	0
Louth	18	53	47	1	2	8	13	47	35	13	47	35	2	2	4	2	0	4	2	2	0	2	2	0	
Mayo	38	37	26	2	5	2	30	25	21	30	25	21	6	6	1	0	1	6	1	0	1	0	1	2	
Meath	52	31	41	2	0	0	46	29	39	46	29	39	2	2	1	2	0	1	2	0	2	0	0	1	
Monaghan	13	16	21	0	0	1	11	14	19	11	14	19	1	1	1	1	1	1	1	1	0	1	1	0	
Offaly	14	9	22	0	0	5	14	7	16	14	7	16	0	1	0	0	1	0	0	1	1	0	1	1	
Roscommon	12	18	17	0	1	0	11	17	17	11	17	17	0	0	0	1	0	0	1	0	0	1	0	0	
Sligo	32	30	37	2	2	3	28	22	32	28	22	32	1	1	0	1	5	0	1	5	2	1	5	2	
Tipperary	20	23	33	3	0	2	15	20	26	15	20	26	2	1	1	0	2	1	0	2	4	0	2	4	
Waterford	35	38	64	4	3	4	27	34	48	27	34	48	3	0	7	1	1	7	1	1	5	1	1	5	
Westmeath	22	18	28	4	0	2	17	16	23	17	16	23	1	0	3	0	2	3	0	2	0	0	2	0	
Wexford	17	23	39	0	2	7	15	18	23	15	18	23	2	3	4	0	0	4	0	0	5	0	0	5	
Wicklow	37	43	29	0	2	0	37	37	25	37	37	25	0	3	2	0	1	2	0	1	2	0	1	2	
TOTAL	1983	2053	2145	70	112	105	1800	1798	1867	1800	1798	1867	68	76	102	45	67	71	45	67	71	45	67	71	

Chart 11a **TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Conviction		
	2005	2004	2003	2005	2004	2003
Carlow	16	5	15	100%	100%	80%
Cavan	12	22	23	92%	95%	91%
Clare	30	46	49	87%	87%	84%
Cork	250	193	224	92%	92%	92%
Donegal	22	29	45	100%	97%	93%
Dublin	1113	1142	1152	96%	95%	94%
Galway	31	56	31	97%	98%	87%
Kerry	31	47	50	87%	91%	84%
Kildare	63	62	45	95%	82%	91%
Kilkenny	21	35	14	81%	94%	86%
Laois	16	18	10	94%	94%	100%
Leitrim	4	3	14	100%	100%	100%
Limerick	56	48	60	89%	90%	85%
Longford	8	8	9	100%	100%	100%
Louth	18	53	47	78%	92%	91%
Mayo	38	37	26	84%	81%	88%
Meath	52	31	41	92%	94%	95%
Monaghan	13	16	21	85%	88%	95%
Offaly	14	9	22	100%	78%	95%
Roscommon	12	18	17	92%	100%	100%
Sligo	32	30	37	94%	80%	95%
Tipperary	20	23	33	90%	87%	85%
Waterford	35	38	64	89%	97%	81%
Westmeath	22	18	28	95%	89%	89%
Wexford	17	23	39	88%	87%	77%
Wicklow	37	43	29	100%	91%	86%
TOTAL	1983	2053	2145	94%	93%	92%

Chart 12 shows the breakdown of office expenditure for 2006, 2005 & 2004.

Salaries & Wages: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2006 was 168.53.

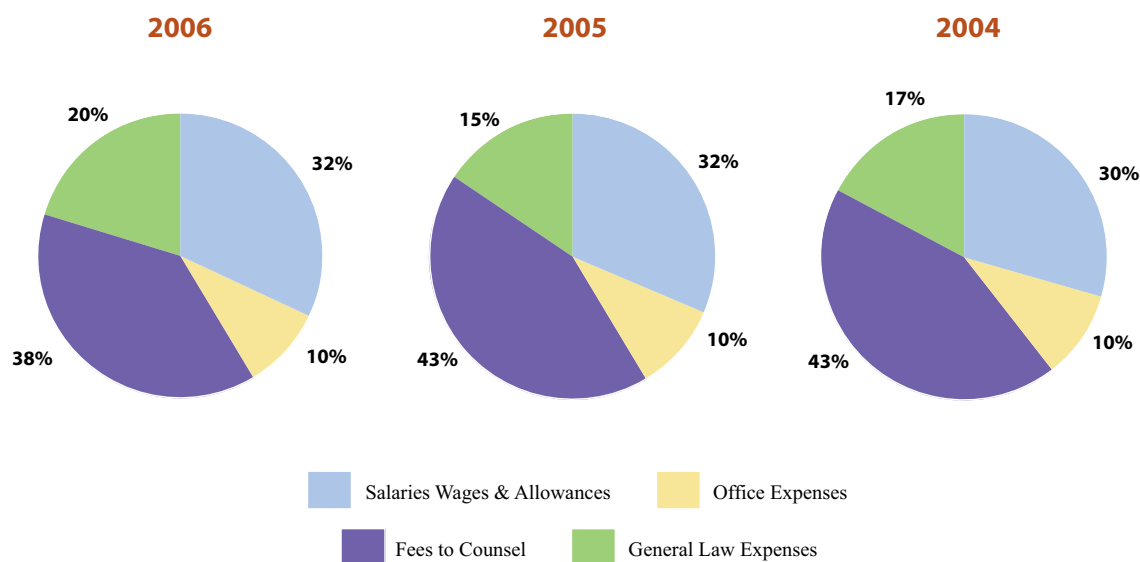
Office Expenses: This relates to general office administration costs e.g. purchase and maintenance of office equipment, office supplies, library costs, office premises maintenance, travel and other incidental expenses.

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

	2006 €	%	2005 €	%	2004 €	%
Salaries Wages & Allowances	10,132,015	32%	9,527,979	32%	8,458,701	30%
Office Expenses	2,960,447	10%	3,011,535	10%	2,926,165	10%
Fees to Counsel	12,085,966	38%	13,004,323	43%	12,374,056	43%
General Law Expenses	6,304,827	20%	4,615,021	15%	4,902,298	17%
TOTAL	31,483,255		30,158,858		28,661,220	



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

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

Chart 13 FEES TO COUNSEL PAID BY COURT

	2006 €	%	2005 €	%	2004 €	%
Circuit Court	5,969,616	50%	6,136,922	48%	5,659,687	46%
Central Criminal Court	3,388,237	28%	4,052,328	31%	3,961,620	32%
High Court	1,370,451	11%	1,446,021	11%	1,496,433	12%
Supreme Court	278,533	2%	158,891	1%	217,260	2%
Court of Criminal Appeal	845,148	7%	763,712	6%	710,182	6%
Special Criminal Court	208,341	2%	415,263	3%	267,303	2%
District Court	25,640	0%	31,188	0%	61,571	0%
TOTAL	12,085,966		13,004,325		12,374,056	

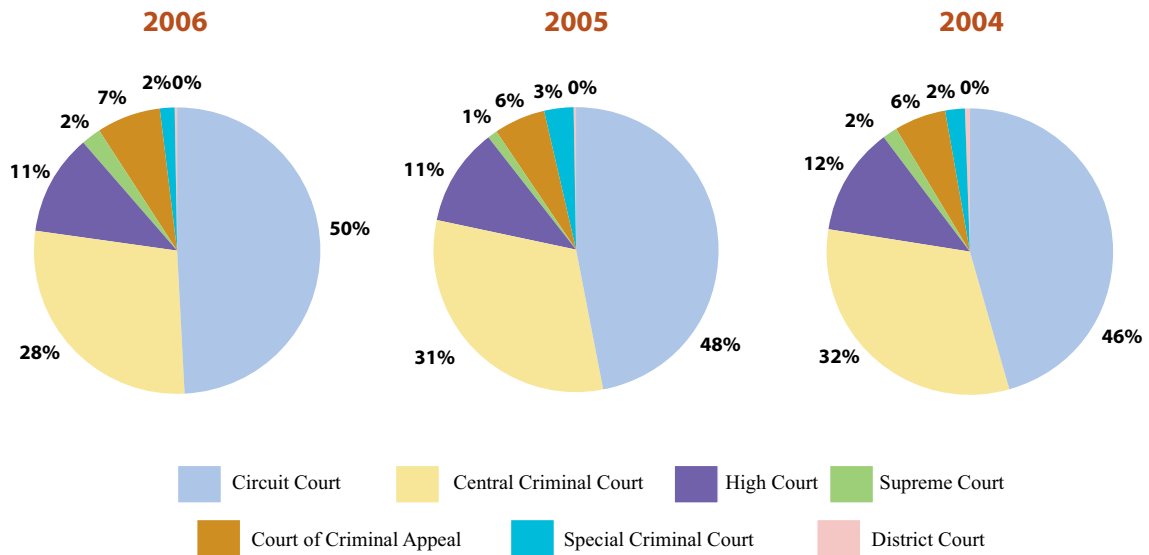
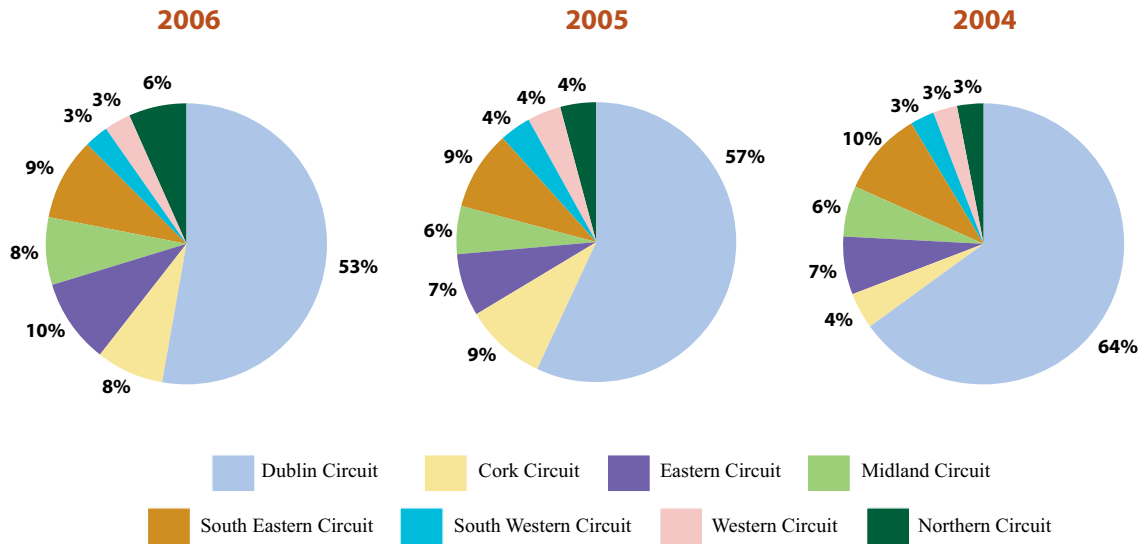


Chart 14 FEES TO COUNSEL PAID BY CIRCUIT

	2006	%	2005	%	2004	%
	€		€		€	
Dublin Circuit	3,154,658	53%	3,510,505	57%	3,688,480	64%
Cork Circuit	475,056	8%	572,634	9%	226,288	4%
Eastern Circuit	566,842	10%	435,435	7%	384,148	7%
Midland Circuit	476,537	8%	350,921	6%	337,059	6%
South Eastern Circuit	558,824	9%	555,370	9%	548,822	10%
South Western Circuit	167,750	3%	221,661	4%	147,058	3%
Western Circuit	186,221	3%	237,047	4%	169,800	3%
Northern Circuit	383,728	6%	253,349	4%	158,032	3%
TOTAL	5,969,616		6,136,922		5,659,687	



10 EXTRACT FROM APPROPRIATION ACCOUNT 2005

Account of the sum expended, in the year ended 31 December 2005, 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	10,107	9,528	-
A.2. Travel and Subsistence	232	141	17
A.3. Incidental Expenses	1,483	1,086	8
A.4. Postal and Telecommunications Services	286	231	5
A.5. Office Machinery and Other Office Supplies	1,035	1,057	21
A.6. Office Premises Expenses	877	511	46
OTHER SERVICES			
B. Fees to Counsel	16,571	13,004	2,472
C. General Law Expenses	3,080	4,615	2,587
Gross Total	33,671	30,173	5,156
<i>Deduct -</i>			
D. Appropriations-in-Aid	15	14	-
Net Total	33,656	30,159	5,156

SURPLUS TO BE SURRENDERED €3,497,142

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

Operation of the Act in the Period 1 January 2006 to 31 December 2006

- 11.1 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 state solicitor's report in each case.
- 11.2 In the period in question, the Office made 14 late payments in excess of €317.50. The total value of these payments was €25,695.63. The total value of late payments in the year amounted to €26,065.63 out of total payments of €3.17 million and interest thereon came to €669.53.

the matter is brought to the attention of management so that any necessary remedial action can be taken.

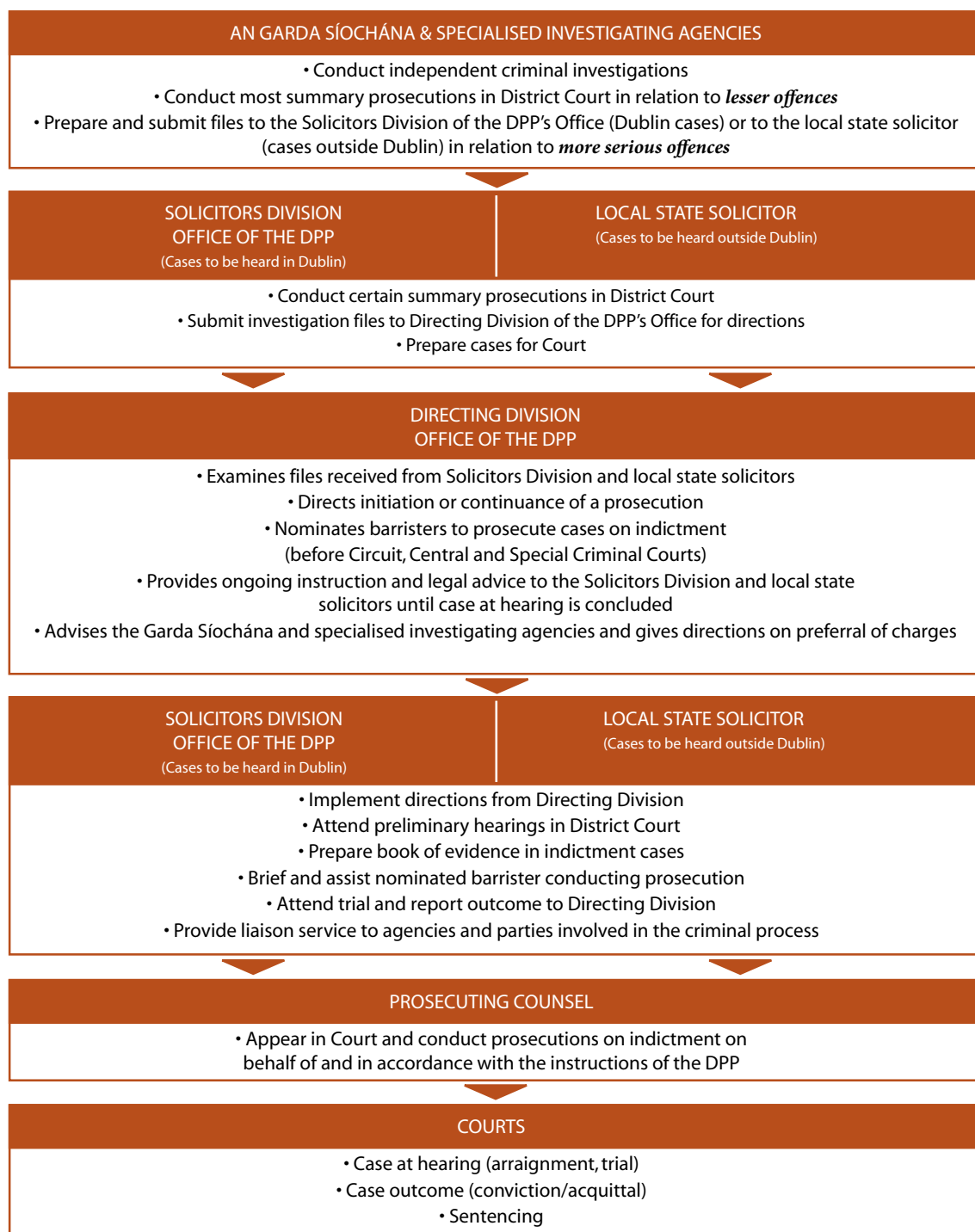
- 11.5 The procedures which have been put in place can only provide reasonable and not absolute assurance against material non-compliance with the Act.

Barry Donoghue
Accounting Officer
May 2007

Statement of the Accounting Officer

- 11.3 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.
- 11.4 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,

12 OUTLINE OF THE CRIMINAL PROSECUTION PROCESS



13 ORGANISATION STRUCTURE

