

Oifig an
Office of the



Stiúrthóra Ionchúiseamh Poiblí
Director of Public Prosecutions

Annual Report 2010



This Report is also available in the Irish Language

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Foreword



This is the last time I shall write a foreword to an annual report of the Office of the Director of Public Prosecutions as I am due to retire in November 2011 after more than twelve years as Director and over thirty years service in the law offices of the State. I hope it will not be regarded as self-indulgent if I use this occasion for some reflections.

Firstly, I have been enormously privileged to be given the opportunity to serve the People of Ireland as the Director of Public Prosecutions. I found the role of DPP a challenging one and I believe the position is one of great importance in the legal system. I was fortunate to take over from my predecessor, Eamonn Barnes, our first DPP who served in the office for almost twenty-five years. His great legacy was to establish the independence of the office on a sure basis, to such an extent that at no time during my period in office have I been subject to any pressure from the political world to decide any case in any particular way. On the other hand there has on occasion been considerable

pressure from some elements in the media, occasionally driven by a sensationalist and populist approach to crime.

I have been fortunate in my time in office to have had a very dedicated and competent management team in the office and to have been supported by a loyal, hard-working, conscientious and innovative staff, both on the legal side and among the administrative staff whose contribution is vital to the functioning of the Office. The popular perception of public servants as tied to tradition, resistant to change and lacking in imagination is certainly not one I would recognise as applying to the staff of the DPP.

The last twelve years have been a time of change and innovation. The Office I entered in 1999 was seriously under-resourced and not well equipped to meet the challenges of the new century. Fortunately the then Government decided around the time of my appointment to implement the report of the expert group chaired by the late Dermot Nally, former Secretary General of the Government, which had recommended sweeping changes in the structure of the Office, including the transfer of the criminal division of the Chief State Solicitor's Office and the local state solicitor service from the Attorney General to the Office of the DPP. The successful implementation of the Nally recommendations took up much time over the next few years.

Of course, the expansion of the Office from a staff of about 35 to nearly 200 necessitated extensive organisational change. During the same period the Office successfully implemented the general civil service reforms in such areas as performance management and business planning and also established an IT case management system, which has transformed the way we do business.

During the last decade the position of the victim within the criminal justice system has improved greatly, although there remains room for improvement. The Office has invested considerable effort in trying to provide more general information about its work, in particular through the use of its website, information booklets, as well as participation in seminars and conferences and maintaining links with other organisations which play a role in the criminal justice system. The Office has moved from its former refusal to ever give reasons for decisions not to prosecute through a project whereby reasons are given in a limited category of cases (those involving fatalities occurring after 21 October 2008) where this can be done without damage to third parties. The project has been successful, although quite demanding on resources, and the Office is now assessing the feasibility of extending this project into the area of sexual offences.

A particular ambition of mine over the past few years has been to secure a new headquarters for the whole Office in the former Department of Defence building next to the new Criminal Courts of Justice complex. I am pleased to say that I have now received a commitment from the Minister of State with responsibility for the Office of Public Works, Mr. Brian Hayes, TD, for this project to go ahead. The move is intended to take place on a phased basis over the next twelve to eighteen months. When completed it will be much easier to make changes to the organisation of the Office's work. At present the location on two different sites is an obstacle to this as well as being wasteful of time and resources.

Finally, at a time of great uncertainty in the legal profession generally, I want to pay tribute to the legal professionals to whom much of the Office's work is outsourced - both the local state solicitors who work for the Office on a contract basis, and the members of the Bar who do much of our advocacy

work. The ability to use the services of the Bar means that, unlike the situation in many other countries, the People of Ireland have equally as skilled and effective representation as have accused persons. An independent Bar and solicitors' profession are as vital to the proper operation of the criminal justice system and the rule of law as is the independence of the judiciary, and we should be careful not to take for granted something which does not exist in many parts of the world today.



James Hamilton
Director of Public Prosecutions
October 2011

MISSION STATEMENT

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

PART 1:

GENERAL WORK OF THE OFFICE

1.1 GENERAL WORK OF THE OFFICE

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

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

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

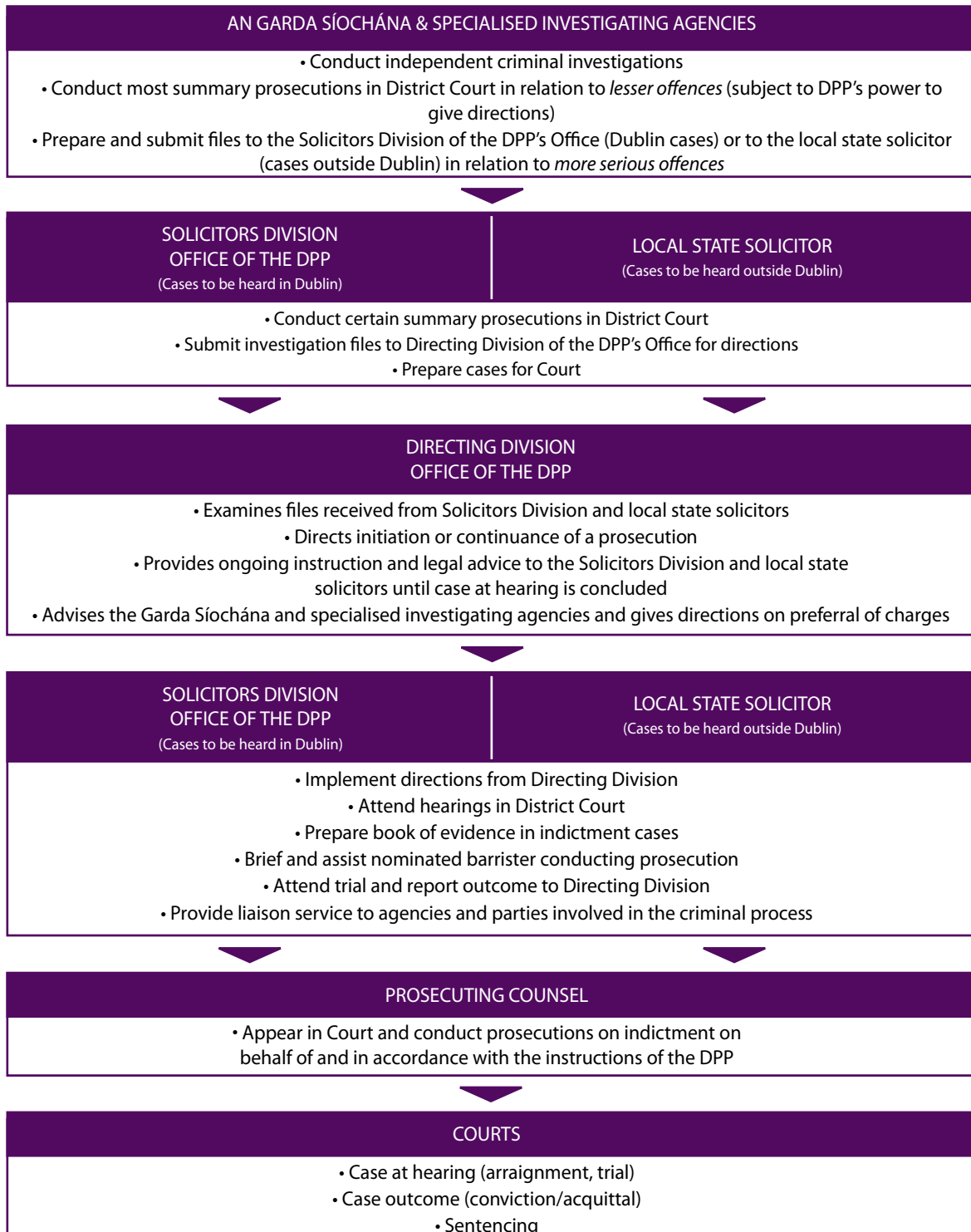
The Directing Division determines, following an examination of an investigation file, whether there should be a prosecution or whether a prosecution commenced by the Garda Síochána should be maintained. The direction which issues indicates the charges, if any, to be brought before the courts. In some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

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

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

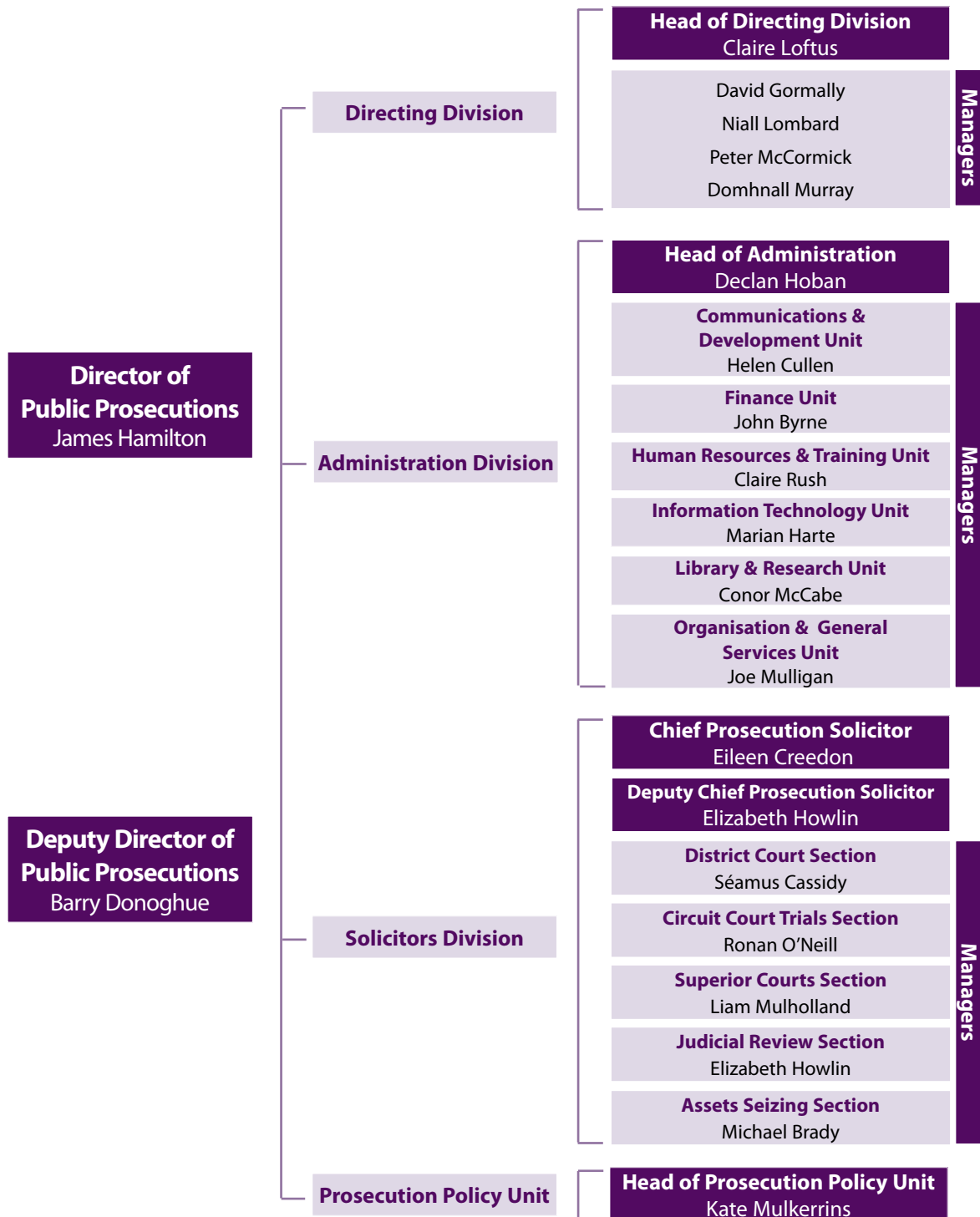
The Administration Division provides the organisational, infrastructural, administrative and information services required by the Office and also provides support to both the Directing and Solicitors Divisions.

1.2 OUTLINE OF THE CRIMINAL PROSECUTION PROCESS



1.3 ORGANISATION STRUCTURE

(AS OF JUNE 2011)



PART 2:

YEAR IN REVIEW

2.1 YEAR IN REVIEW

2.1.1 The role of the Office of the Director of Public Prosecutions (DPP) is to provide an independent, fair and effective prosecution service on behalf of the People of Ireland. Detailed statistics in relation to the prosecution files dealt with during the year and case outcomes are set out in Part 4 of this report. This chapter reviews the management structures which underpin the effective and efficient operation of the Office so as to ensure the provision of a quality prosecution service.

2.1.2 During a time of significant reductions in public spending a major challenge for the Office is to ensure that the prosecution of serious crime is not compromised and that available resources are allocated as effectively as possible.

2.1.3 On 1 January 2010 the staff complement of the Office of the DPP was slightly down from 1 January 2009. In addition to its directly employed staff the Office also relies on the State Solicitor service and barristers in private practice. The State Solicitor Service comprises 32 solicitors in private practice who are contracted to the Office of the DPP to represent the Director in the courts outside Dublin. The Office also has a panel of 168 barristers who are contracted on a case by case basis to prosecute cases on behalf of the Director in the various criminal courts.

2.1.4 The total cost of running the prosecution service for 2010 was approximately €41m. Fees paid to counsel who prosecute cases on behalf of the Director in the various criminal courts account for 36% of this amount, while 29% is paid in salaries & wages to staff in the Office of the DPP. A further 15% represents the amount paid in legal costs awarded by the courts.

STRATEGIC MANAGEMENT

2.1.5 The cost of the prosecution service for 2010 was approximately €3.5m less than in 2009. This is a reflection of the initiatives implemented by the Office under the terms of the Public Service Agreement to achieve greater efficiencies and savings. Public sector pay cuts imposed during 2010, together with an 8% reduction in the rate of legal fees from 1 April 2010, resulted in a reduction in the cost of the overall service. Significant savings were also achieved during 2010 in relation to the payment of legal costs awarded by the courts. Legal costs paid in 2010 were approximately €1.2m less than those paid in 2009.

2.1.6 The reduction in legal costs was to a large extent due to the pro-active role taken by this Office in seeking to reduce the amount paid in costs. The Office will continue to vigorously implement this initiative. However, there are factors outside our control which may at any stage adversely impact on the level of costs which we must pay.



Delegates pictured at the Annual State Solicitors' Seminar in the Coach House, Dublin Castle on 30 January 2010



James Hamilton, Director of Public Prosecutions, meets President Mary McAleese on her arrival to launch the 'Rape Law: Victims on Trial?' conference on 16 January 2010 in Dublin Castle. The conference was jointly hosted by the Dublin Rape Crisis Centre and Trinity College, to mark the 30th Anniversary of Dublin Rape Crisis Centre. Also pictured are Ellen O'Malley-Dunlop, CEO, Dublin Rape Crisis Centre, and The Honourable Mr. Justice Paul Carney.

2.1.7 In the interests of improving business processes across the organisation and to gain efficiencies, the Office continued during 2010 to further develop the initiative to devolve prosecutorial decision-making. Under this initiative, responsibility for deciding whether certain prosecutions should be taken is delegated to solicitors in our Solicitors Division. In 2010 a total of 107 files were processed in the District Court Section of the Solicitors Division without reference to the Directing Division. At the end of 2010 judicial review decisions were delegated to the Judicial Review Section without reference to the Directing Division. This restructuring of work has served to eliminate duplication of effort between the two legal Divisions of the Office.

2.1.8 During 2010 the Office also achieved further efficiencies through the use of technology to deliver a more effective and timely service to our stakeholders. The automation of the majority of payments of fees to counsel in Autumn 2010 has speeded up the payment

of fees. The introduction of electronic remittances to suppliers in December 2010 has provided suppliers with a more expeditious service and reduced postage costs for the Office.

2.1.9 The computerised Case, Document Management and File Tracking System, initially introduced in October 2008, provides managers and staff across the organisation with a single point of access for all prosecution files. The system has at this stage been rolled out to all sections in the Office. During 2010 a formal review of the operation of the system on a section by section basis was undertaken. Arising from this review a number of enhancements to the system were implemented across the organisation. This review will continue throughout 2011 so as to ensure that the system is operating to maximum effect and can accommodate new developments in prosecution procedures as required.



Eileen Creedon, Chief Prosecution Solicitor and James Hamilton, Director of Public Prosecutions pictured with speakers Remy Farrell BL (2nd left) and Dr. Sheila Willis, Director General, Forensic Science Laboratory (1st right) at the 11th Annual National Prosecutors' Conference in Dublin Castle on 24 April 2010

- 2.1.10** A further development during 2010 was the establishment of a link within our computer network in the new Criminal Courts of Justice complex. This allows our staff to view and work on their cases remotely in between court sessions, which has improved access to information and increased efficiency.
- 2.1.11** The Civil Service Performance Management & Development System (PMDS) continued to play a key role in providing both managers and staff with an opportunity to evaluate performance against agreed targets. This assisted in ensuring that files were dealt with in a timely manner and agreed deadlines were met. The system also promoted staff development through mentoring and structured training programmes.
- 2.1.12** During 2010 the Office introduced a programme of staff mobility with a view to offering staff opportunities to expand their work experience, in addition to providing the Office with a means of sharing knowledge and expertise across the two legal divisions of the Office. The programme initially focused on a number of senior legal positions with staff moving between the two legal divisions of the Office. During 2011 it is intended to effect further exchanges of legal staff and extend the programme to administrative staff across the organisation in an effort to provide them with a broader experience base and greater development opportunity.

LEGAL ENVIRONMENT

- 2.1.13** One of the key objectives for this Office in delivering a quality service is to ensure that staff understand the law and context of operation of the Office. The legal environment in which we operate is continuously evolving. We need to constantly keep abreast of legal developments, both nationally and internationally, and to take account of the ongoing increase in complexity of criminal law and practice.
- 2.1.14** While the training budget for the Office has been reduced considerably in the last two years, it is imperative that we ensure the continued professional development of staff. During 2010 a total of €241,329 was invested in staff training of which €26,594 was allocated to legal-specific training while €61,789 was invested in attendance at seminars, conferences and training courses. Where appropriate, in-house training was provided whereby staff with expertise in particular areas of law or new areas of legislation facilitated familiarisation sessions for frontline staff.
- 2.1.15** In addition, the Office again organised the Annual State Solicitors' Seminar in January 2010 and the 11th Annual National Prosecutors Conference in May 2010. Both these events have proved to be extremely beneficial in providing opportunities for staff of this Office



Úna Ní Raifeartaigh BL, Law Library, and Detective Inspector Paul Gillen, Garda Computer Crimes Investigation Unit, both of whom presented papers at the 11th Annual National Prosecutors' Conference in Dublin Castle on 24 April 2010

and those involved in the prosecution of crime on a national level to come together on an annual basis to discuss topical issues and new legal developments. They are also a very cost effective means of providing customised Continuing Professional Development training to a wide stakeholder group.

- 2.1.16** Our Library and Research service plays a key role in ensuring that up-to-date information on legal developments is made available in a timely manner and also provides a research service to support the work of legal staff. Staff have desktop access to all electronic library resources, including our internal collection of scanned judgments, Garda circulars, policy documents, internal circulars, research documents and counsel opinions. The Library hardcopy collection comprises criminal law text books, journals and legislation.
- 2.1.17** The Prosecution Policy Unit continued to concentrate on the development of internal policy guidelines in relation to both fatal offences and disclosure. When finalised, the guidelines will provide a comprehensive resource for professional staff and will contribute to a consistency of approach in dealing with these particular areas of criminal law.

2.1.18 The Unit also undertook a number of internal research projects for the purpose of providing information which will inform future internal Office policy and procedures. The projects involved the collation of files relating to rape offences for the years 2005 to 2007; examination of sample cases concerning child victims of rape, defilement, cruelty and neglect; and a complete review of 2007 homicide cases.

2.1.19 During 2010 the Policy Unit continued the work it commenced in 2009 to monitor applications made to adduce evidence of the previous sexual experience of the complainant in rape trials. The results show a steady rise in applications, the overwhelming majority of which were granted. 15 applications were made in 2010 (in the context of 38 trials). The prosecution fully contested 6 applications and partly contested one. 14 of the applications were granted and one was withdrawn.

GOVERNANCE

2.1.20 One of the factors that underpins the reliability of the information provided by the Office of the DPP is the extent to which we have developed internal control and governance procedures. The Office places great importance on having an Audit Committee with independent members, to plan and oversee internal audits.



John Rea, Public Prosecution Service Northern Ireland pictured with Paul McDermott SC, Law Library, at the 11th Annual National Prosecutors' Conference in Dublin Castle on 24 April 2010

2.1.21 The Committee met four times during 2010. Five internal Audit Reports were completed during the year covering Computer Controls; Payroll; Revenue; and two reports on the status of previous Audit Recommendations. Each of these reports was presented to the Audit Committee for discussion.

2.1.22 The Audit Committee also discussed Risk Management at each of their meetings. Risk Registers for the Office were reviewed and updated by the Management Advisory Committee at their meeting in May 2010.

2.1.23 The Chairman of the Audit Committee, Mr. Tom O'Higgins retired at the December meeting of the Committee. Mr. O'Higgins served as Chairman since the establishment of the Committee in 1994. He was replaced as Chairman by Mr. Peter Lacy. Mr. Lacy is a fellow of the Institute of Chartered Accountants in Ireland.

2.1.24 On 24 March 2010 this Office was invited to appear before the Public Accounts Committee to discuss the Annual Report 2008 of the Comptroller & Auditor General and in particular Vote 14 of the Appropriation Accounts 2008 in relation to this Office.

2.1.25 The meeting afforded the Committee an opportunity to enquire as to the effective allocation of resources provided to the Office. It also presented an opportunity for the Accounting Officer to outline the principal areas of expenditure under the Vote and to appraise the Committee of the challenges facing the Office into the future.

INTERACTION WITH OTHER AGENCIES

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

2.1.27 On a day-to-day basis the Office of the Director of Public Prosecutions works with a number of investigative agencies from whom we receive investigation files. The vast majority of these files are submitted to this Office by An Garda Síochána. We therefore work closely with An Garda Síochána in the area of legal developments. During 2010 staff from this Office delivered training to members of An Garda Síochána on a variety of topics



L-R: Peter Lacy, newly appointed Chairperson of the Audit Committee; Tom O'Higgins, outgoing Chairperson; Barry Donoghue, Deputy Director of Public Prosecutions and Accounting Officer

including District Court Practice & Procedure; File Preparation; Fraud & Money Laundering; Organised Crime; and Criminal Assets Seizure. In addition, during the year there were visits to the Garda Technical Bureau and the Forensic Science Laboratory by staff from the Office of the DPP.

2.1.28 During 2010 our Prosecution Policy Unit engaged in discussions with specific investigative agencies in relation to developing service level agreements which will assist such agencies in streamlining the submission of materials to this Office and thereby ensure a more effective and efficient service.

2.1.29 The Unit has also facilitated students from a number of our national universities under the Student Internship Programme and other programmes, including the University of Tulsa Summer School and the NUI Galway Clinical Placement Programme. A total of 9 students took up placements of varying lengths in

the Office during the year. These initiatives provide the students with valuable practical work experience and enables the Policy Unit to enhance its research capacity.

- 2.1.30** The Office also participates in the training of trainee solicitors. During 2010 staff from this Office delivered 90 hours training to law students in the Law Society of Ireland on various topics including criminal litigation; criminal advocacy; road traffic legislation; judicial review; indictable offences; and evidence.
- 2.1.31** The Office continues to participate in and contribute to various inter-agency groups including: The Criminal Law Advisory Committee; the DPP/Garda Liaison Group; the Advisory Group on Crime and Criminal Justice Statistics; various Courts Service User Groups; the Interagency Group on Restorative Justice; the Intergovernmental Support for Victims of Crime Project Advisory Group; the Criminal Law Committee of the Law Society; McFarlene Article 13 Implementation Group; the Criminal Justice and Social Diversity Project Advisory Group; the Smyth Committee Advisory Group on the Interviewing of Suspects; and the Criminal Justice Act Steering Group.
- 2.1.32** During 2010 the Office continued to contribute to the development of criminal law at an international level and participated in a number of initiatives involving international organisations. We also continued to contribute to the work of international bodies and organisations including EUROJUST; GRECO; OLAF; Eurojustice; the International Association of Prosecutors; the International Bar Association; and the International Society for the Reform of Criminal Law.
- 2.1.33** The Director, Mr. James Hamilton, was elected President of the International Association of Prosecutors at its annual conference in The Hague in September 2010. His election as President is for a three year term. The Director outlines the work of the Association in chapter 2.2 of this report.

- 2.1.34** In the year under review the Office participated in a European research project in relation to racist and hate crime. Available data and information on racist and related hate crime was examined by our Policy Unit, in particular cases and individuals charged with racially motivated and related offences; the number of prosecutions; and the outcome of such cases. The appropriately anonymised material was provided to external researchers for inclusion in a comparative EU Study due to be published in Summer 2011.

PUBLIC EXPECTATIONS OF SERVICE

- 2.1.35** The pilot phase of the implementation of the policy on giving reasons for decisions not to prosecute in cases involving a death continued throughout 2010. This new policy represents a departure from previous practice whereby reasons for decisions not to prosecute were given only to the Gardaí but not to families of the deceased. It is hoped that in giving reasons in such cases, it may assist families in understanding why a prosecution could not be brought.
- 2.1.36** The Office website continues to provide victims of crime, witnesses, and the public generally with information on the work of the Office and the criminal justice system in general. The website was enhanced in 2009 to incorporate a user-friendly Brief Guide to the Criminal Justice System and a dedicated section for Victims & Witnesses. Visits to these sections during 2010 accounted for 23% of the traffic on our website.
- 2.1.37** Revised editions of the information booklets on *'The Role of the DPP'* and *'Going to Court as a Witness'* were published by this Office in June 2010. We hope the booklets will be of great assistance to victims and witnesses involved in criminal prosecutions and also provide the public generally with a better understanding of the work of the Office. A total of 57,000 copies of each of the new editions of the booklets were distributed on a national level to various organisations and agencies including Garda Stations, Courts Service, Citizens Information Centres, and Victim Support Groups.

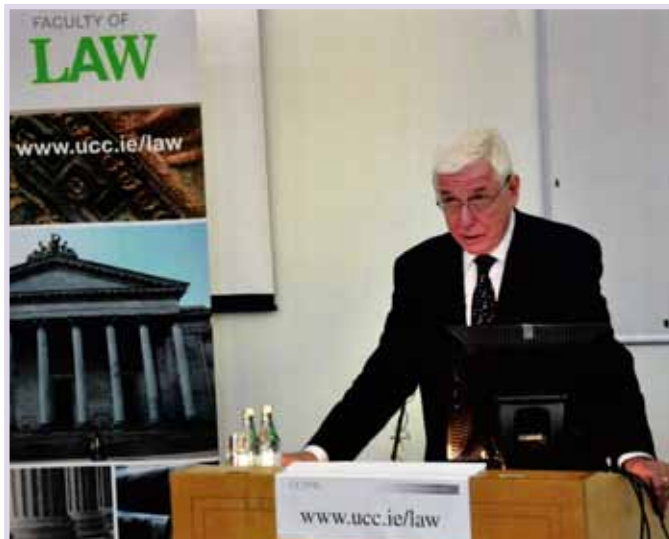
2.1.38 The Office also assisted the Victims of Crime Office in the Department of Justice & Law Reform in revising the prosecution service section of the Victims Charter which was launched by the Minister in July 2010. The Charter sets out the service that victims can expect from each of the main state agencies in the criminal justice system.

2.1.39 During 2010 staff from this Office presented papers at a number of conferences and seminars on various topics relating to criminal law. These included presentations by the Head of Policy at a conference hosted by the Scottish Equality Authority titled 'Without Fear or Favour: A Voice for Rape Victims in the Criminal Justice System?'; and a paper entitled 'Women and the Law' delivered in October 2010 to the Annual Conference of the Association for Criminal Justice Research & Development.

2.1.40 The Director presented a number of papers during the year including a paper on 'Prosecuting Corruption in Ireland' at the Burren Law School in May 2010; and a paper on 'Accommodating Victims in the Criminal Justice System: an inclusionary or punitive logic' at the 4th Annual Criminal Law Conference at the Centre for Criminal Justice and Human Rights in University College Cork in June 2010. Both papers are available on our website at www.dppireland.ie.

2.1.41 The 3rd Irish Language Scheme for the Office was published in April 2010 and is available on our website at www.dppireland.ie. The scheme builds on the commitments set out in the previous two schemes published under the Official Languages Act 2003. All publications produced by the Office are bilingual and the Office website is fully bilingual. During 2010 the Office dealt with a number of cases in the Irish language. These included 3 District Court cases; 13 High Court cases; and 4 Supreme Court cases. Our Irish Language Officer dealt with 7 letters and 1 e-mail in the Irish language. There were 3

telephone calls during the year which were dealt with by staff on our in-house panel of Irish speakers.



James Hamilton, Director of Public Prosecutions, speaking at the 4th Annual Criminal Law Conference at the Centre for Criminal Justice and Human Rights in University College Cork in June 2010

2.2 INTERNATIONAL ASSOCIATION OF PROSECUTORS



Mr. James Hamilton (front row, second from right) at the Annual General Meeting of the International Association of Prosecutors in the Hague, at which he was appointed President of the Association. Mr. Hamilton is pictured with the incoming Executive Committee including (front row, first from right) outgoing President Mr. François Faletti, Procureur Général of the Cour d'Appel, Paris.

The text which follows is a shortened version of a speech given by the Director in his capacity as President of the International Association of Prosecutors (IAP) at the first IAP Regional Conference for North America and the Caribbean.

2.2.1 As Director of Public Prosecutions for Ireland, I was honoured to be appointed President of the International Association of Prosecutors at the Annual Conference of the Association in the Hague in September 2010.

2.2.2 The IAP is now 15 years old. Before that, there was no organisation of prosecutors operating on a worldwide scale. Indeed, I think it is very unlikely that there were many

even operating regionally. Prosecutors tended to work very much in isolation and without much contact with, or knowledge of, their colleagues abroad or the manner in which they worked. Some prosecutors at the time, including my predecessor, the former DPP for Ireland, Eamonn Barnes, believed that there were enough issues of concern and interest to prosecutors to justify the holding of regular conferences. They and others got together to form the nucleus of what became the IAP founded at the United Nations offices in Vienna in 1995.

2.2.3 So, 15 years on, has the IAP justified its existence and do we still need such an organisation?

- 2.2.4** Firstly, the annual conferences have not lost their central importance and usefulness in the life of the organisation. Most participants at an IAP conference find it an invaluable opportunity to learn about the experience of colleagues in other parts of the world. Very often this learning can be of direct practical experience as prosecutors learn of problems similar to their own and how they have been tackled or surmounted in other jurisdictions. Prosecution systems, and indeed criminal justice systems generally, can vary considerably throughout the world. At first sight it might seem that a prosecutor in Ireland might have little in common with a prosecutor in Korea or Romania. But the exchange of information and experience tends to show that this is not so, and that despite differences in organisation, justice systems, and the different resources available to different prosecution services, the fundamental underlying principles and purposes of criminal prosecution tend to be much the same throughout the world.
- 2.2.5** One of the useful things the IAP can do is to give prosecutors an opportunity to consider what might be borrowed from other systems and to force us to examine whether the way we do things is necessarily the most rational and well organised or whether we should consider changing our practices. It is a valuable source of innovation and ideas. It is truly said that in order to properly know and understand your own country and system you must know others as well.
- 2.2.6** The need for external contact and influence from outside is of particular importance in small jurisdictions which might otherwise tend to become very isolated and inward looking and not aware of new developments in the wider world. One of the most obvious examples of this for our jurisdiction was in seeing developments in other common law jurisdictions in relation to the giving of reasons for decisions in certain cases where there is no prosecution.
- 2.2.7** All of this becomes of particular importance in an increasingly globalised environment. Looking around the world in 2010 it is sometimes difficult to realise how much has changed in the last 15 or 20 years. Criminal law and prosecution has been no exception. Twenty years ago most prosecutors could have carried on their work with virtually no contact with prosecutors from any other jurisdiction barring the occasional extradition request. There was not at all the same amount of movement of persons and capital around the globe. Most crimes took place in a single jurisdiction and were conceived by persons who lived in that jurisdiction against victims who also lived in the same place.
- 2.2.8** We have seen a rapid explosion in crimes such as people, arms and drug trafficking, the growth of international terrorism, Internet crime which typically can be organised, planned and carried out in a number of different jurisdictions and against victims in jurisdictions which the perpetrators may never even have visited. Internet crime did not even exist 20 years ago. Finally, globalisation has led to ever greater opportunities for international white collar crime.
- 2.2.9** The response to these phenomena cannot be a purely national one. Cyber crime in particular demands a global response, because the Internet has no frontiers and as long as some states remain outside any system there will remain a weakness which makes it too easy to exploit for the benefit of criminals.
- 2.2.10** It can be invaluable when dealing with an urgent case with an international dimension to pick up a phone and speak to somebody whom you know personally and whom you know from personal contact to be a trustworthy colleague. Of course, this is a resource to be used sparingly and not in routine cases, but when the need arises it can be extremely useful.
- 2.2.11** Sometimes more than mere networking and contact is required. It is not unknown for prosecutors to be leaned upon or pressured to make decisions which are contrary to the ethics of prosecutors and in the interests of powerful people or governments. The IAP has consistently seen itself as the global voice of the prosecutors' profession and on occasions

when improper pressures have been brought to bear on prosecutors, the support generated by the IAP and by colleagues in other countries has helped prosecutors in a vulnerable situation to withstand unreasonable demands. Sometimes the knowledge on the part of the authorities or governments that they are being watched from outside can have an effect on their behaviour.

2.2.12 The IAP in its annual awards has recognised the courage of prosecutors such as Paul Ngarua of Swaziland and Vusumzi Pikoli of South Africa, who were dismissed from office because they fulfilled their duty to the law and the people whose interests they served as prosecutors.

2.2.13 One of the activities of the IAP has been its work in helping to maintain standards within the profession of prosecutor. The Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors' were developed within the Association and were approved by the IAP in 1999. The Standards serve as an international benchmark for the conduct of individual prosecutors and of prosecution services, which should be applied by prosecutors worldwide regardless of what the system of justice is. Organisational members of the IAP are required to commit to the maintenance of the Standards. Together with the United Nations Havana Principles and the Council of Europe's Recommendation Rec (19) (2000), the IAP Standards represent major attempts to codify and set out in writing the ethical standards which prosecutors should adhere to. Standard setting can be particularly important for an individual prosecutor who is put under pressure in the course of his professional life.

2.2.14 During my term as President I look forward to developing and promoting the work of the IAP in co-operation with my colleagues in prosecution agencies around the world. It is only in working together that we can address the challenges presented in successfully prosecuting crime in the globalised environment in which we now operate.

2.3 OFFICE EXPENDITURE

Chart 2.3.1 shows the breakdown of office expenditure for 2010, 2009 and 2008.

Salaries & Wages: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2010 was 194.3.

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

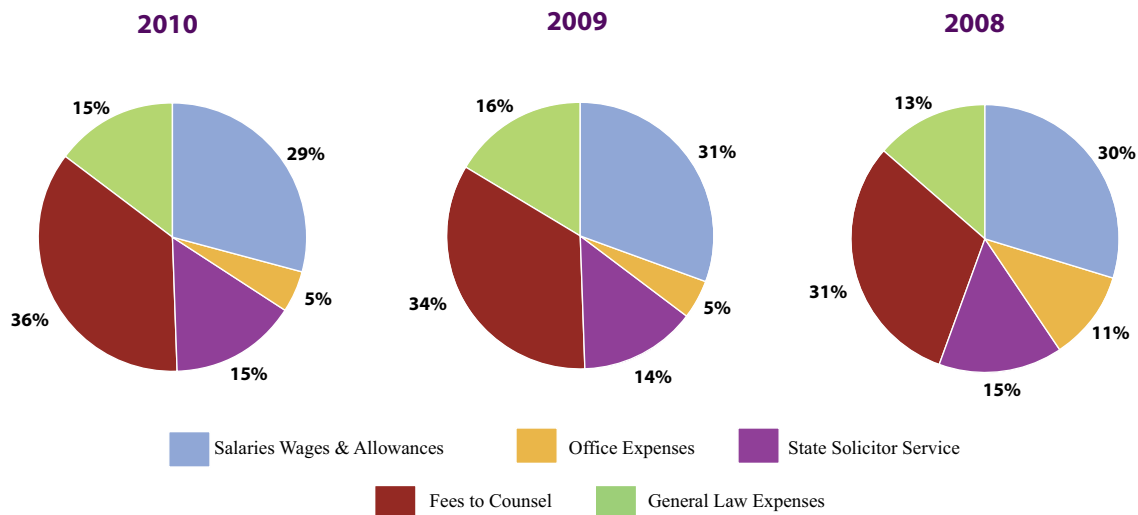
State Solicitor Service: This refers to payment of salaries and expenses to the 32 State Solicitors in private practice who are contracted to this Office to represent the Director in courts outside Dublin.

Fees to Counsel: These are fees paid to the barristers who prosecute cases on behalf of the Director in the various criminal courts. Fees are set within the parameters set by the Minister for 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 2.3.1: OFFICE EXPENDITURE

	2010	%	2009	%	2008	%
	€		€		€	
Salaries Wages & Allowances	12,082,779	29%	13,685,992	31%	13,165,327	30%
Office Expenses	2,085,318	5%	2,158,818	5%	4,884,785	11%
State Solicitor Service	6,321,857	15%	6,368,245	14%	6,540,967	15%
Fees to Counsel	14,734,046	36%	15,283,338	34%	13,746,326	31%
General Law Expenses	6,078,790	15%	7,289,469	16%	5,908,384	13%
TOTAL	41,302,790		44,785,862		44,245,789	



Charts 2.3.2 & 2.3.3 show a breakdown of expenditure on fees to counsel in the various criminal courts and by region in respect of the Circuit Criminal Court.

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

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

CHART 2.3.2: FEES TO COUNSEL PAID BY COURT

	2010 €	%	2009 €	%	2008 €	%
Circuit Court	7,596,660	52%	9,109,899	60%	7,612,381	55%
Central Criminal Court	4,338,447	29%	3,843,990	25%	3,338,387	24%
High Court	1,542,024	10%	1,303,317	9%	1,441,755	11%
Supreme Court	362,573	2%	208,140	1%	630,350	5%
Court of Criminal Appeal	518,596	4%	532,581	3%	539,944	4%
Special Criminal Court	341,533	2%	276,530	2%	132,820	1%
District Court	34,213	0%	8,881	0%	30,689	0%
TOTAL	14,734,046		15,283,338		13,726,326	

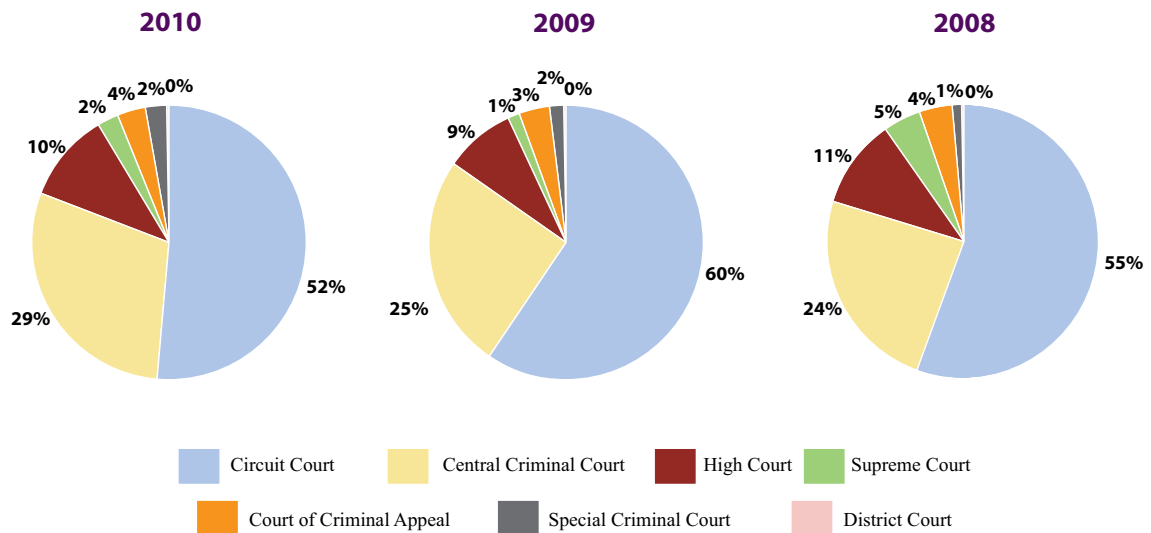
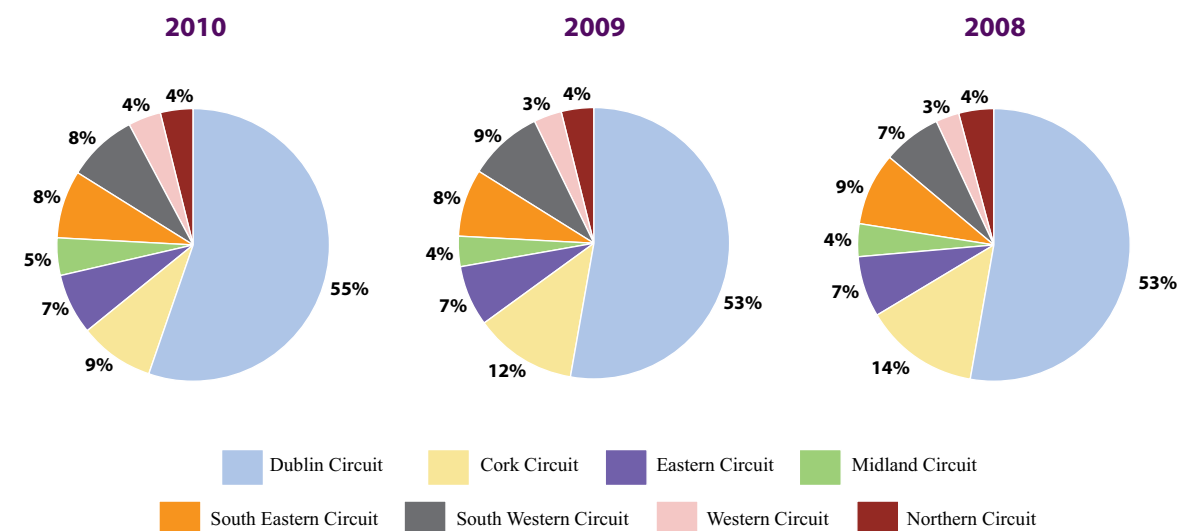


CHART 2.3.3: FEES TO COUNSEL PAID BY CIRCUIT

	2010	%	2009	%	2008	%
	€		€		€	
Dublin Circuit	4,202,177	55%	4,824,375	53%	4,026,504	53%
Cork Circuit	692,302	9%	1,113,821	12%	1,029,230	14%
Eastern Circuit	539,473	7%	661,256	7%	549,840	7%
Midland Circuit	346,800	5%	328,395	4%	296,429	4%
South Eastern Circuit	603,052	8%	738,698	8%	673,856	9%
South Western Circuit	630,816	8%	795,015	9%	509,819	7%
Western Circuit	305,835	4%	305,913	3%	217,764	3%
Northern Circuit	276,205	4%	342,426	4%	308,939	4%
TOTAL	7,596,660		9,109,899		7,612,381	



2.4 EXTRACT FROM APPROPRIATION ACCOUNT 2009

Account of the sum expended in the year ended 31 December 2009, 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		2009	2009	2008
		Estimate Provision	Outturn	Outturn
		€'000	€'000	€'000
ADMINISTRATION				
A.1.	Salaries, Wages and Allowances	14,139	13,686	13,165
A.2.	Travel and Subsistence	140	90	148
A.3.	Incidental Expenses	1,095	1,041	1,506
A.4.	Postal and Telecommunications Services	263	343	304
A.5.	Office Machinery & Other Office Equipment & Related Expenses	980	1,012	1,927
A.6.	Office Premises Expenses	630	574	1,117
A.7.	Value for Money & Policy Reviews	5	-	-
A.8.	Local State Solicitor Service	6,351	6,368	6,541
OTHER SERVICES				
B.	Fees to Counsel			
	<i>Original</i>	12,293		
	<i>Supplementary</i>	3,000		
		15,293	15,283	13,746
C.	General Law Expenses			
	<i>Original</i>	6,000		
	<i>Supplementary</i>	1,000		
		7,000	7,290	5,908
	Gross Expenditure			
	<i>Original</i>	41,896		
	<i>Supplementary</i>	4,000		
		45,896	45,687	44,362
	<i>Deduct -</i>			
D.	Appropriations-in-Aid			
		775	901	117
	Net Expenditure			
	<i>Original</i>	41,121		
	<i>Supplementary</i>	4,000		
		45,121	44,786	44,245
Surplus to be Surrendered			€335,138	€276,211

2.5 PROMPT PAYMENT OF ACCOUNTS ACT, 1997

Late Payments in Commercial Transactions Regulations 2002

OPERATION OF THE ACT IN THE PERIOD 1 JANUARY 2010 TO 31 DECEMBER 2010

2.5.1 The Office of the Director of Public Prosecutions makes payments to suppliers after the goods or services in question have been provided satisfactorily and within 30 days of the supplier submitting an invoice. In the case of fees to counsel, while invoices are not generated, the practice of the Office is to pay counsels' fees within 30 days of receipt of a case report form in each case.

2.5.2 In the period in question, the Office made one late payment in excess of €317.50. The value of this payment was €2,760. The total value of late payments in the year amounted to €2,760 out of total payments of €2.459 million and interest thereon came to €28.02.

STATEMENT OF THE ACCOUNTING OFFICER

2.5.3 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.

2.5.4 All invoices from suppliers are date stamped on receipt. Invoices are approved and submitted for payment in a timely manner to ensure that payment is made within the relevant period. When the invoices are being paid the date of receipt and the date of payment are compared, and if the relevant

time limit has been exceeded, an interest payment is automatically generated. In cases where an interest payment is required, the matter is brought to the attention of management so that any necessary remedial action can be taken.

2.5.5 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
June 2011

2.6 ANNUAL OUTPUT STATEMENTS 2009-2010

NOTE: The purpose of the Output Statement is to match key outputs and strategic impacts to financial and staffing inputs for a calendar year. The outputs in the statement are based on the years 2009 and 2010 and they reflect all work done during these two years on prosecution files and legal proceedings whether the files were received in 2009 or 2010, or in previous years. For this reason, statistics quoted in the statement are not directly comparable to statistics quoted in Part 4 of this report which are compiled on the basis of the year the file was received in the Office.

1. SUMMARY STATEMENT - HIGH LEVEL GOAL

The fundamental function of the Office of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters. The majority of cases dealt with by the Office are received from 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, An Post, the Competition Authority, the Director of Corporate Enforcement, the Garda Síochána Ombudsman Commission, the Environmental Protection Agency and local authorities.

HIGH LEVEL GOAL

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

IMPACT INDICATOR

The extent to which an independent, effective and fair prosecution service is maintained.

PROGRAMME OBJECTIVES

The consideration of criminal investigation files submitted to the Office and the timely taking of decisions regarding whether or not a prosecution should be initiated or whether a prosecution already initiated by the Garda Síochána should be maintained.

To ensure that decisions to prosecute are acted upon in a timely manner and in accordance with the published Guidelines for Prosecutors.

2. TOTAL BUDGET BY SOURCE OF FUNDING BY YEAR

The Office is funded by a Vote of the Oireachtas. This Vote provides for the salaries and expenses of the Director and his staff, the salaries and expenses of the State Solicitor Service, fees payable to counsel engaged by the Director to prosecute cases in the various courts and the payment of costs awarded against the State arising out of Judicial Review and other legal proceedings. Expenditure on the last two items is demand led and depends on the volume of criminal work processed through the courts in any given year. The figure for Appropriations in Aid relates principally to the recovery of costs awarded to the State in criminal proceedings and to pension related deductions made from staff.

	BUDGET 2009 € Million	Outturn 2009 € Million	BUDGET 2010 € Million	Provisional Outturn 2010 € million	% Change on Outturn
Net Voted Expenditure	45.11	44.80	43.25	41.36	-8%
Appropriations in Aid	0.78	0.89	0.61	1.03	+16%
Gross Voted Expenditure	45.89	45.69	43.86	42.39	-7%
Non-Voted (State source)	-	-	-	-	-
Total Gross Expenditure	45.89	45.69	43.86	42.39	-7%
Of which Exchequer Pay	14.14	13.69	13.26	12.93	-6%
No. of Public Service Employees	197	195	200	191	-2%

3. PROGRAMME DETAILS

The Office of the Director of Public Prosecutions pursues a single programme, the provision on behalf of the People of Ireland of a prosecution service that is independent, fair and effective.

INPUTS

Prosecution Service	2009 € Million	Outturn 2009 € Million	2010 € million	Provisional Outturn 2010 € Million	% Change on Outturn
PROGRAMME EXPENDITURE					
- Current	33.56	33.79	32.13	31.47	-5%
- Capital	-	-	-	-	-
ADMINISTRATION & OTHER SUPPORT					
- Pay	2.87	2.47	2.47	2.28	-8%
- Non-Pay	9.46	9.43	9.26	8.64	-8%
TOTAL GROSS PROGRAMME EXPENDITURE	45.89	45.69	43.86	43.39	-7%
NO. OF STAFF EMPLOYED (WHOLE TIME EQUIVALENT) AS AT YEAR END					
- Civil Servants	197	195	200	191	-2%
- Public Servants	-	-	-	-	-

OUTPUTS

2009 Output Target	2009 Outturn	2010 Output Target	2010 Outturn
Directions issued in relation to approximately 11,000 suspects on files submitted by investigation agencies.	Directions issued in relation to 12,456 suspects on files submitted by investigation agencies.	Directions issued in relation to approximately 12,000 suspects on files submitted by investigation agencies.	A total of 13,342 directions issued in relation to suspects on files submitted by investigation agencies.
Prosecutorial decisions taken within target timescales: 40% of cases within 2 weeks 50% of cases within 4 weeks 75% of cases within 3 months	42% of cases within 2 weeks 62% of cases within 4 weeks 84% of cases within 3 months	Prosecutorial decisions taken within target timescales: 40% of cases within 2 weeks 50% of cases within 4 weeks 75% of cases within 3 months	44% of cases within 2 weeks 61% of cases within 4 weeks 84% of cases within 3 months
Acting through the State Solicitor Service, deal with court proceedings arising out of directions to prosecute in 2009 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.	Deal with new court proceedings against 1,998 suspects together with ongoing prosecutions directed in previous years	Acting through the State Solicitor Service, deal with court proceedings on indictment arising out of directions to prosecute in 2010 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.	Deal with 2,099 new court proceedings against suspects together with ongoing prosecutions directed in previous years
Deal with court proceedings on indictment arising out of directions to prosecute in 2009 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.	Deal with new court proceedings against 1,907 suspects together with ongoing prosecutions directed in previous years	Deal with court proceedings on indictment in Dublin arising out of directions to prosecute in 2010 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.	Deal with 1,722 new court proceedings against suspects together with ongoing prosecutions directed in previous years
Directly deal with approximately 2,300 Dublin District Courts prosecution files.	2,026 files received and dealt with	Directly deal with approximately 2,000 Dublin District Courts prosecution files.	2,092 files received and dealt with
Handle approximately 2,500 District Court appeals, including appeals in cases prosecuted by the Garda Síochána under delegated authority.	2,568 files received and dealt with	Handle approximately 2,500 District Court appeals, including appeals in cases prosecuted by the Garda Síochána under delegated authority.	2,178 files received and dealt with
Deal with approximately 2,200 High Court Bail Applications and approximately 350 Judicial Review cases.	2,044 Bail applications and 336 Judicial Review cases received and dealt with	Deal with approximately 2,000 High Court Bail Applications and approximately 350 Judicial Review cases.	2,315 Bail applications and 307 Judicial Review cases received and dealt with

2.7 FREEDOM OF INFORMATION

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

2.7.2 The Office continues to make FOI information available as readily as possible. Our section 15 and 16 Reference Book is available on our website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept.

2.7.3 The FOI unit can be contacted by telephone at 01-858 8500 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.

2.6.4 During 2010 a total of 14 requests were submitted to the Office. 4 of the requests were refused under the Act and 6 requests were withdrawn/dealt with outside of FOI. 4 requests were granted/part granted. The reason for the refusals was that the records sought did not relate to the general administration of the Office.

2.6.5 4 of the requests were submitted by journalists, while the other 10 requests were made by the general public. 9 of the 14 requests received related (in total or in part) to criminal files.

2.6.6 In the 4 cases where requests were refused, only one of the requesters sought an internal review of the original decision. This request was subsequently withdrawn. No requester appealed a decision to the Information Commissioner.

Requests Received 2010	
Refused under section 46(1)(b)	4
Withdrawn / dealt with outside of FOI	6
Requests Granted / Part Granted	4
TOTAL REQUESTS	14

Requesters 2010	
Journalists	4
General Public	10

Reviews 2010	
Requests for Internal Review	1
Requests to the Information Commissioner for Review	0

2.8 ANNUAL ENERGY EFFICIENCY REPORT 2010

OVERVIEW OF ENERGY USAGE IN 2010

2.8.1 In 2010, the Office of The Director of Public Prosecutions consumed 1,927.30 MWh of energy. The energy consumption is in respect of space heating, air conditioning, hot water, lighting, computer systems and other office equipment at both our office buildings, in Merrion Street and North King Street.

This figure is compiled as follows:

- 1,036.10 MWh of Electricity
- 891.20 MWh of Natural Gas

ACTIONS UNDERTAKEN IN 2010

2.8.2 Throughout 2010 the Office worked closely with staff of the Office of Public Works (OPW), various maintenance contractors and external consultants appointed by OPW in order to improve the efficiency of our buildings. Actions taken in 2010 included:

- Regular maintenance of the HVAC system was carried out in order to ensure the system runs at maximum efficiency and faults/problems rectified without delay.
- An air tightness test was carried out at our North King Street building. A fault with the air extract system was corrected resulting in reduced energy consumption and running costs. Other energy conservation measures are under consideration by OPW.
- Through ongoing contact with OPW and their appointed M & E Consultant our facilities management staff have increased their experience and know-how in

operating the office Building Management System (BMS), a computer system designed to manage and control energy usage.

- The Office instigated an information campaign using signage to alert staff to be more energy aware, e.g. to increase usage of the stairs instead of the elevator, switching off lights, power sockets and air con units when not in use. Staff have also been encouraged to fully power off their PCs at the end of the day.

ACTIONS PLANNED FOR 2011

2.8.3 Actions planned for 2011 include the following:

- Ongoing awareness campaign using signage.
- Switching to energy efficient light bulbs wherever possible.
- Development of BMS to provide increased levels of automation of space and water heating systems.
- Upgrading of boiler installation and provision of a new BMS system for the Merrion Street building.
- Examination of night time electricity usage in consultation with the Office IT Unit.

PART 3:

LEGAL DEVELOPMENTS

3.1 LEGAL DEVELOPMENTS 2010

3.1.1 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 2010. 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. The five areas of law where sample cases have been chosen are: judicial review cases, Court of Criminal Appeal cases, drink driving cases, *habeas corpus* applications and High Court bail applications.

JUDICIAL REVIEW CASES

MISSING VIDEO FOOTAGE

3.1.2 In *Paul Byrne v. Director of Public Prosecutions* [2010] IESC 54, the applicant had been charged in the District Court with assault and public order offences alleged to have occurred in a supermarket. The incident had been recorded on CCTV. It transpired that the original CCTV footage was no longer available for inspection by the applicant, but he had been furnished by the Gardaí with eight color pictures of the incident which had been printed from still photographs from the film. The applicant brought a judicial review seeking to prohibit his trial, claiming that the failure of the Gardaí to secure the footage meant that he would not receive a fair trial. The Supreme Court refused his application ruling that the substance of the case had not been advanced beyond the 'no video - no prosecution' argument. The Supreme Court did not regard the missing footage evidence as central to the case being made by the Prosecution. It noted that in addition to the footage, there was also direct

evidence from witnesses in the supermarket who saw the incident. In addition to these witnesses the applicant was actually arrested at the supermarket by the Gardaí who had also witnessed part of the incident. The trial court could exclude the still photographs if it came to the conclusion that producing them in the absence of the original video evidence would be unfair to the applicant.

VEHICLE NOT AVAILABLE FOR INSPECTION

3.1.3 In *Patrick Irwin v. Director of Public Prosecutions* [2010] IEHC 25, the applicant was the subject of a surveillance operation by the Gardaí in relation to an alleged drugs transaction. One of the cars used in the transaction, and driven by the person making the alleged delivery, was returned to him by the Gardaí after the Gardaí had written to the applicant's solicitors asking them if they wanted the car independently examined. The applicant's solicitor responded by stating that he reserved his position but requested that both cars be preserved for forensic examination. Nothing further happened in relation to examination of the car in question until the trial in 2007, over a year later. The applicant then sought a judicial review in January 2009 on the basis that the car was no longer available for inspection. The High Court dismissed the application ruling that any supposed 'failure' on the part of the authorities to retain the car did not, and could not have, yielded or produced any information which, on the facts of the particular case, could have been of the slightest use or value to the applicant.

DELAY IN CHARGING ACCUSED NOT FATAL

- 3.1.4** In the case of *F.B. v. Director of Public Prosecutions* [2010] IEHC 229, the applicant had been charged with a large number of sexual offences. He applied to the High Court to prohibit his trial claiming that he was unable adequately to defend the charges because the alleged offences occurred over 30 years ago. He submitted to the High Court that he was prejudiced by reason of the death of certain witnesses and a difficulty in locating other witnesses. The Director argued that this was not an exceptional case and there was no risk that the applicant would not receive a fair trial. The Director also submitted that since the decision of the Supreme Court in *H. v. Director of Public Prosecutions* [2007] 1 ILRM 401, 'complainant delay' was no longer a ground on which to succeed in an application for judicial review. The High Court dismissed the application and held that the applicant was not likely to be prejudiced in any real way in his defence of the charges. Any prejudice he alleged to have suffered was clearly of the type which could be dealt with by the trial judge through appropriate directions and warnings, and was not of the type likely to give rise to a real risk of an unfair trial.

CIRCUIT COURT APPEAL APPROPRIATE ALTERNATIVE REMEDY

- 3.1.5** In *Phelim Doyle v. Director of Public Prosecutions* [2010] IEHC 287, the applicant had been convicted of a drink driving offence. He claimed that the District Judge should not have convicted him as there was insufficient evidence before the Court to do so. He applied to the High Court to overturn his conviction. The High Court rejected his application. The Court ruled that the appropriate remedy that the applicant should have sought was an appeal to the Circuit Court, as the case was one which revolved entirely around the question of the adequacy of the evidence adduced in the District Court. The High Court said that a judicial review remedy should be granted

only in cases where the proceedings were fundamentally flawed by reason of some inherent unfairness or impropriety in the hearing.

REQUEST FOR BILINGUAL JURY REFUSED

- 3.1.6** In *Peadar Ó Maicín v. Director of Public Prosecutions* [2010] IEHC 179, the applicant was charged in the Circuit Court with an offence of assault. He wanted to conduct his case in Irish. He applied to the trial judge for a bi-lingual jury who could hear evidence in Irish without the assistance of an interpreter. He argued that the standard of interpretation which had been supplied to him so far had been poor. The Circuit Court refused his request so he applied to the High Court for a judicial review of that decision. The High Court refused his application ruling that the selection of a jury according to linguistic ability would create a bias within a jury which was not in accordance with section 5 of the Juries Act 1976. A jury is selected from the electoral register of that jury district. The selection is made by random sampling. The selection cannot be restricted in any way, for example, by political affiliation, religious belief, cultural identity or linguistic ability.

OFFENCE OF DRIVING WITH NO INSURANCE

- 3.1.7** In *Paul Freeman v. Director of Public Prosecutions* [2010] IEHC 379, the applicant had been stopped by a Garda while driving his vehicle and was asked to produce his certificate of insurance at a Garda station of his choice within 10 days. When the Garda made the demand for the insurance certificate he did not tell the applicant that the demand was being made pursuant to a statutory power under the Road Traffic Acts, nor did he tell him of the consequences of failing to comply with the requirement. The insurance certificate was never produced at the station so the Garda proceeded to summons the applicant for an offence of no insurance. The District Court referred the case to the High Court for its opinion by way of consultative case stated. The question

posed was whether the prosecution was obliged to prove by way of evidence that the demand for the certificate of insurance was made pursuant to a lawful origin, namely section 69 of the Road Traffic Act 1961, and also that the applicant was informed of the consequences of failing to comply with the statutory requirement. The High Court held that it was a matter for the trial judge in all the circumstances of the case to decide on whether the applicant was aware of the statutory power to demand the production of the certificate of insurance and the consequences of failing to comply with same. The prosecution did not have to prove in evidence that the applicant was informed that if he failed to comply with the demand, then he would be committing a criminal offence.

OFFENCE OF VIOLENT DISORDER

- 3.1.8** In *Keith Ring and Shannon Keohane v. Director of Public Prosecutions* [2010] IEHC 186, the offence of 'violent disorder' was examined. The two applicants had been charged in the District Court with an offence of violent disorder. There had also been a violent disorder charge against a third person but that charge was later withdrawn as the summons served on him had been defective. The applicants applied to have the charges dismissed submitting that the legislation required that at least three people ought to have been charged with the offence of violent disorder. The District Judge stated a case to the High Court on the following question: "where the offence of violent disorder requires three or more persons to be present in order to be guilty of the said offence in circumstances where only two persons were prosecuted, is the Court entitled to convict?" The High Court answered the case stated as follows: If the District Judge was satisfied on the evidence that the two applicants together with the third person were involved in violent disorder then she could convict either or both of the two, notwithstanding the withdrawal of the charge against the third person.

OFFENCE OF BREACH OF THE PEACE

- 3.1.9** In *Rory Brady v. Director of Public Prosecutions* [2010] IEHC 231, the applicant was charged with an offence of breach of the peace, contrary to common law. He sought a declaration from the High Court that the charge of breach of the peace was not an offence known to law. The State argued that the High Court was bound by the doctrine of precedent (*stare decisis*) to follow the previous High Court decision delivered in the case of *Thorpe v. Director of Public Prosecutions* [2007] 1 IR 502. The applicant argued that the *Thorpe* case had been wrongly decided. The High Court refused the application ruling that there were explicit statements from previous court judgements to the effect that there was an offence in this jurisdiction of breach of the peace at common law. In the case of *Thorpe*, such a finding was the express subject matter of the case stated.

PLEA OF DOUBLE JEOPARDY (AUTREFOIS ACQUIT)

- 3.1.10** In *Janine Cleary v. Director of Public Prosecutions* [2010] IEHC 100, the applicant sought an injunction from the High Court restraining the Director from prosecuting her for an offence of assault contrary to section 3 of the Non Fatal Offences Against the Person Act 1997. The applicant had previously been summonsed to appear before the District Court in relation to that same offence but the case was dismissed due to the non appearance of the prosecuting Garda. The case had been listed for hearing but no evidence had been heard by the Court when it dismissed the case. The applicant was then recharged with the offence. She submitted that the recharging was an abuse of process and that the order of the District Court dismissing the case acted as a bar to the bringing of any further prosecution arising out of that charge. It was submitted on behalf of the Director that the applicant was never in peril of conviction in the District Court as there was no actual hearing on the merits of the case and consequently no plea of double jeopardy (*autrefois acquit*) could arise. The High Court declined to prohibit the trial, ruling

that Order 23 rule 3 of the Rules of the District Court 1997 was clear and unambiguous, and provided for the power of a District Court Judge to dismiss a case on the basis of the prosecutor's failure to appear on a 'without prejudice' basis only. It could therefore be inferred that the District Court Judge intended to dismiss the case in the manner contemplated by Order. 23,rule 3 of the District Court Rules.

COURT OF CRIMINAL APPEAL

DIRECTOR'S UNDULY LENIENT SENTENCE REVIEW (ROBBERY)

- 3.1.11** In *Director of Public Prosecutions v. James Halligan*, Court of Criminal Appeal, 15 February 2010, ex tempore, the respondent had pleaded guilty in the Circuit Court to offences of robbery, false imprisonment and possession of a knife. During the robbery the victim was slashed in the face by the respondent. The trial judge sentenced the respondent to a total of four years imprisonment with the last two years suspended. The Director of Public Prosecutions sought a review of the sentence on the ground that it was unduly lenient. The Court of Criminal Appeal ruled that there was an error of principle in sentencing. The Court ruled that the trial judge had erred in placing the offence within the range where the sentence imposed fell. Despite a guilty plea, the trial court had to take into account the seriousness and violent nature of the crimes. The Court of Criminal Appeal also noted that the Probation Service report showed that the respondent represented a high risk of re-offending. The sentence was increased to six years imprisonment.

UNDULY LENIENT SENTENCE REVIEW (ROBBERY AND CONTROLLED DRUGS)

- 3.1.12** In *Director of Public Prosecutions v. Gerard Delaney*, Court of Criminal Appeal, 21 June 2010, ex tempore, the respondent had pleaded guilty in the Circuit Court to the robbery of two supermarkets and to the

unlawful possession of a controlled drug. The trial judge sentenced the respondent to a total of two years imprisonment. The Director of Public Prosecutions sought a review of the sentence on the ground that it was unduly lenient having regard to the nature, circumstances and gravity of the said offences. A knife had been used in the course of the two robbery offences and the staff of two supermarkets had been terrified and threatened. It was also argued that the trial judge had failed to have sufficient regard to the value of the drugs discovered and the fact that the respondent had previous convictions including drugs offences. The Court of Criminal Appeal ruled that there was an error of principle in sentencing. The Court noted that the respondent was caught red handed with the drugs and thus his plea of guilty had lesser weight. In relation to the robbery offences, the staff members of the supermarkets were traumatised and the respondent had carried a nine inch blade. The Court ruled that the trial judge erred in law in not considering each offence and determining where each lay on the spectrum and then applying mitigating factors. The sentence was increased to five years imprisonment.

SEVERITY OF SENTENCE APPEAL REFUSED (CONTROLLED DRUGS)

- 3.1.13** In *Director of Public Prosecutions v. Patrick Freeman*, Court of Criminal Appeal, 21 June 2010, ex tempore, the applicant was convicted in the Circuit Court of the unlawful possession of controlled drugs for sale contrary to section 15A of the Misuse of Drugs Act 1977, as amended. He had been caught in possession of approximately €33,000 worth of cannabis. He alleged that the sentencing judge had failed to have sufficient regard for certain matters, among them the nature of the drugs in question, the value of those drugs and the level of intelligence of the applicant. The Court of Criminal Appeal rejected his appeal, ruling that it did not accept the submission that the applicant was entitled to invoke a distinction between the drug involved in this case and any other drug, for the purposes of

suggesting that the sentencing judge erred in principle. Having considered all matters, there was no error in principle in the manner in which the sentencing judge structured the sentence.

APPLICATION TO OVERTURN CONVICTION REFUSED (CONTROLLED DRUGS)

- 3.1.14** In *Director of Public Prosecutions v. Daniel Goulding*, unreported, Court of Criminal Appeal, 29 July 2010, the applicant was convicted in the Circuit Court of the unlawful possession of drugs pursuant to sections 15 and 15A of the Misuse of Drugs Act 1977, as amended. He sought leave to appeal that conviction on the ground that the trial judge erred in not withdrawing the case from the jury when it was submitted that the prosecution had not proved that he had possession of the drugs. The essential evidence against the applicant was provided by an independent witness who gave evidence of seeing a package being thrown from the passenger door of a car in which the applicant was a passenger. That package was almost immediately retrieved by the Gardaí and was found to contain €70,000 worth of cocaine. The applicant denied any knowledge of the package. The Garda and the independent witness disagreed regarding the shape of the package. It was submitted on behalf of the applicant at the close of the prosecution case that there was not sufficient evidence of possession or control by the applicant. The Court of Criminal Appeal refused his appeal ruling that it was not a case where there was no evidence that the crime alleged had been committed by the applicant. The prosecution evidence was such that its strength or weakness depended on the credibility of witnesses, and other matters within the province of the jury. On a rational view of the facts there was evidence upon which a jury could properly come to the conclusion that the applicant was guilty. Consequently, the learned trial judge was entitled to allow the matter to be tried by the jury.

APPLICATION TO ADDUCE NEW EVIDENCE REFUSED

- 3.1.15** In *Director of Public Prosecutions v. John Paul Buck*, Court of Criminal Appeal, 12 July 2010, the applicant sought leave to adduce additional evidence in order to overturn his conviction for murder and arson. He claimed that there were a number of issues relating to the caution of the accused when first arrested and the making of a statement of admission which rendered the conviction unsafe. In addition, questions were raised regarding the trial judge's involvement some years previously as counsel in a case in which the applicant was an important witness who failed to give evidence in accordance with the statement of evidence delivered, and was thus treated as hostile. It was contended that this gave rise to a case of objective bias. An argument was also raised regarding newspaper and radio coverage during the trial of an escape from custody of a person who turned out to be the brother of the accused. The Court of Criminal Appeal refused his application. The test to be applied in applications like these was as follows: firstly, the new evidence itself must be credible; secondly, that it was not available at the time of the trial; and thirdly, that it probably would have had an important influence on the result. It was only in exceptional circumstances that a Court of Appeal would allow fresh evidence to be given. The Court did not view the new evidence as material evidence.

ROAD TRAFFIC CASES

APPLICATION FOR DISCLOSURE

- 3.1.16** In *John Morgan v. Director of Public Prosecutions* [2010] IEHC 65, the applicant had been charged with the offence of drunk driving and applied to the District Court for disclosure of the maintenance records of the Lion Intoxilyser 6000 IRL. The Director argued that the application for the disclosure of those records was not necessary on the basis that the applicant had not demonstrated that the records in question were necessary for his defence, and refused to grant the disclosure

of those records. The applicant then made a further application for the records in front of a second District Judge on a later date. The second District Judge agreed with the Director and refused the application for disclosure but confirmed that an application could be made again at the hearing of the case before another Judge. The High Court was asked for its opinion on the issue. The High Court, in refusing the application, confirmed that the issue of the disclosure of the records was one which had already been properly dealt with by the time the second District Judge made her decision. The High Court agreed that it was clear from the decision of the second District Judge that if the applicant could show that the records were necessary for his defence, he could make that application again at the hearing of the case.

APPLICATION TO INSPECT INTOXILYSER MACHINE

- 3.1.17** The applicant in *Michael Oates v. Director of Public Prosecutions* [2010] IEHC 381, asked the High Court to overturn his conviction for drink driving on the basis that the Judge who heard his case should have allowed for an inspection of the Intoxilyser 6000 IRL by a forensic scientist that he had appointed. He had initially applied for the inspection and disclosure of maintenance records in the District Court but the application was refused by the District Judge. The High Court refused to quash the conviction and ruled that the right to inspection of the machinery and disclosure of documentation was by no means an absolute right and that the District Judge had correctly followed fair procedures.

THIRD PARTY DISCLOSURE

- 3.1.18** The applicants in *Adam Thompkins and Martin Aronu (Applicants) v. Director of Public Prosecutions* [2010] IEHC 58, had been charged with offences under section 49(1) and 6(a) of the Road Traffic Act 1961. Mr. Thompkins had provided a urine sample, and Mr. Aronu had provided a blood sample. Both samples had been sent to the Medical Bureau of Road Safety (MBRS) for analysis, and when analysed, both samples were found to contain

various drugs. They also contained a level of alcohol which was below the legal limit. The applicants argued that they required the High Court to make the MBRS provide information about how the tests were carried out by the MBRS. It was argued that this information would allow the applicants to challenge the statutory presumption that the analysis tests carried out by the MBRS had been done as soon as reasonably practicable. The High Court refused this application on the basis that in a criminal case, it is not possible to compel persons or entities who are not named in the proceedings to provide information to parties in the proceedings. As the MBRS was not a party to the proceedings, no order could be made against it. In addition, neither the Director, nor An Garda Síochána, had any powers in these circumstances to compel that information to be provided to the applicants. The High Court did state though that should the applicants wish to call officials from the MBRS as witnesses in their defence, they may do so, and they may cross-examine those officials to challenge the presumption that the analysis tests were indeed carried out as soon as practicable.

FORMS FILLED OUT INCORRECTLY

- 3.1.19** In *Director of Public Prosecutions v. Bernard Egan* [2010] IEHC 233 (unreported), the respondent was charged with drunken driving. At the hearing, the District Judge heard that the doctor filling out the form after taking a blood sample from the accused left the seal and label blank on the container. Following tests on the sample by the MBRS, the certificate of analysis confirmed that there was no name on the container, and that the sample analysed was found to be over the legal limit. The District Judge asked the High Court for its opinion on whether he was correct in dismissing the case. He found as a fact that the provisions of section 18 of the Road Traffic Act 1994 had not been complied with properly. The High Court confirmed that the requirements set down in section 18 of the Road Traffic Act 1994 were clear and must be strictly complied with. As the doctor had given evidence that he had not done so properly, the District Judge was correct to find that section 18 of the Road

Traffic Act 1994 was not correctly applied and confirmed that the District Judge was right to dismiss the charge in the circumstances of the case.

HABEAS CORPUS CASES

COMMITTING ORAL DIRECTIONS TO WRITING AS SOON AS PRACTICABLE

- 3.1.20** In *Christopher Doody Senior v. The Member in Charge Store Street Garda Station and Anthony Doody v. The Member in Charge Whitehall Garda Station* [2010] IEHC 469 (unreported) the High Court took the opportunity to consider whether directions given by a Chief Superintendent to detain an individual at a Garda Station under section 50(3)(c) of the Criminal Justice Act 2007 had been recorded in writing as soon as practicable. Both applicants had been detained in Garda Stations and the Gardaí had extended their detention to the maximum period allowed by their authority under the Criminal Justice Act 2007. The Gardaí applied to the District Court for a further extension of the period of detention to continue their investigations, and during the evidence given by the Chief Superintendent in the District Court and later in the High Court, he confirmed that although he had extended the time of their detention orally he had not recorded that authorisation in writing until 29 and a half hours later. The Criminal Justice Act 2007 required him to have done this as soon as practicable. The High Court considered the size, complexity and scope of the investigation and was satisfied that given the circumstances of the case, the detention of the applicants was lawful.

APPLICATIONS FOR BAIL

EVALUATION OF EVIDENCE BY THE COURT

- 3.1.21** In the case of *Director of Public Prosecutions v. Damien Johnston*, unreported, Supreme Court, 26 July 2010, the accused had been refused bail by the High Court primarily on the ground that he might commit further

serious offences if granted bail. The principal evidence was that of a Chief Superintendent who said that he had received confidential information which led him to believe that the refusal of bail was necessary to prevent the commission by the accused of serious crimes. Section 2(a) of the Bail Act 1997 provides that the evidence of a Chief Superintendent can be admissible as evidence in bail hearings, but it does not necessarily require a court to accept the evidence. The accused appealed to the Supreme Court against the refusal of the High Court to grant him bail. He submitted that the High Court had failed to adequately assess the evidence. The Supreme Court held that the High Court Judge had adequately assessed all the evidence and noted in particular that he had stated that he had heard and observed the Chief Superintendent giving his evidence and believed what the Chief Superintendent said was reasonable and reliable as evidence.

3.2 RAPE CASES

3.2.1 The Office of the DPP is aware that prosecutorial decisions in respect of rape offences can be particularly sensitive. The offences are obviously very serious. Rape offences include vaginal, anal and oral rape. In all such cases it is necessary to prove that the complainant did not consent and that the suspect knew that he or she did not consent or the suspect was reckless as to whether there was consent. All elements of the offence must be proved beyond a reasonable doubt.

3.2.2 The Prosecution Policy Unit recently undertook an internal research project which examined trends in rape cases for the years 2005 to 2007. The purpose of the project was to build a comprehensive picture of the prosecution of rape cases in this jurisdiction in recent years. The key findings are presented in this chapter, together with an analysis of a decision not to prosecute.

3.2.3 The findings also make reference to two previous independent research projects, the Hanly study "Rape and Justice in Ireland" and the O'Mahony study on "Different Systems, Similar Outcomes?", with which the Office cooperated.

3.2.4 First, it must be said that very particular issues arise in relation to the nature and investigation of these sensitive cases:

NATURE OF RAPE OFFENCES:

- In a majority of cases concerning a complainant with a capacity to consent the issue is the presence or absence of consent (some sexual offences involving children can be prosecuted irrespective of the consent of the complainant).

- The overwhelming majority of cases occur in private locations with no witnesses. Most allegations relate to a suspect known to the injured party.

INVESTIGATION/DETECTION OF RAPE OFFENCES:

- A significant proportion of complaints are subsequently withdrawn by the complainant. The overwhelming majority of such withdrawals occur before a file is received by this Office;
- A large number of files relate to events which are alleged to have happened many years ago.

3.2.5 In conducting our research we examined over 800 files covering a 3 year period. The following relates to the results of the detailed analysis of the files received in the year 2005. The files chosen were those which were initially categorised in the Office as a 'Rape Offence'. We did not attempt to re-categorise any of the files. Included in the files examined therefore will be some cases which on analysis amount to an allegation of unlawful carnal knowledge rather than an allegation of rape. This should be noted when looking at the outcomes in relation to the cases. In 2005 there were 296 files which were categorised in this way as a rape offence. This represented 28% of the total files received in 2005 relating to a sexual offence. One of the reasons for choosing 2005 was to ensure that the majority of the cases would be concluded in the courts (including any appeals). This should therefore provide a more comprehensive picture of the cases, including the outcome of any trial. In

addition, the Hanly study examined the years 2000-2004 and it is helpful to follow on from that analysis.

RESEARCH FINDINGS:

- 3.2.6** An examination of the profile of complainants in the 296 rape investigation files examined reveal that 93% of cases relate to complaints in respect of women and girls, while 7% relate to men and boys. 24% of all complainants were under 18 years of age at the time of the alleged offence.
- 3.2.7** In 58% of the cases either the complainant or the suspect were under the influence of an intoxicant. This figure is considerably lower than that quoted in the Hanly and O'Mahony studies. However, those studies featured only adult complainants and this should explain the considerably high levels of intoxication found in those studies.
- 3.2.8** In 17% of cases complainants withdrew their complaint. In the majority of those cases (81.7%) the withdrawal occurred before the file reached this Office. Again this rate of withdrawal is significantly lower than that quoted in the Hanly study, once again the likely reason for this difference is this study included cases concerning both adults and children. Child cases have a significantly lower withdrawal rate than adult cases. In 1% of cases the complainant admitted the complaint had been false and in one case the suspect had died. Of the remaining 242 cases, 66 files resulted in the decision to prosecute.

REASONS FOR NOT PROSECUTING:

- 3.2.9** In our Guidelines for Prosecutors the reasons for not prosecuting an alleged criminal offence fall into two broad categories. First, that there is insufficient evidence to prosecute. Secondly, that although there is enough evidence to prosecute, a prosecution is not in the public interest. In the vast majority of cases of a sexual nature the decision not to prosecute is based on an insufficiency of evidence. The question of public interest arises only where a suspect is very elderly or ill or the suspect is a child. In relation to children, where a

prosecution is not in the public interest, a decision could be made to place the child on the juvenile diversion programme or a decision could be made not to prosecute. In the majority of cases (58%) the insufficiency of evidence was based on a combination of factors such as intoxication; issues concerning whether the complainant's account was credible and reliable; and delay. In 42% of cases there was a single reason for the decision not to prosecute.

- 3.2.10** In terms of individual reasons, general insufficiency of evidence was the largest single category, with issues concerning the complainant's credibility and reliability the next largest. In many instances the assessment that the complainants' account might not be reliable or credible was based on discrepancies between their account and that of other witnesses, inconsistencies in different accounts given by the complainant or, the absence of sufficient detail in the complainant's account.
- 3.2.11** In a significant proportion of cases it was stated that the reliability of the complainants' account was undermined by high levels of intoxication. The fact that the complainant was extremely intoxicated and could not recall the alleged offence was a major factor in the decision not to prosecute.
- 3.2.12** Delay in making a complaint was a primary reason for not prosecuting in 9.44% of cases. In the other cases, where delay was a secondary factor, it resulted in most instances in a decision not to prosecute because of a lack of forensic or medical evidence due to elapse of time.

PART 4:

STATISTICS

STATISTICS

EXPLANATORY NOTE IN RELATION TO STATISTICS

- 4.1** The statistics outlined in this report have been compiled from the Office's electronic Case, Document Management and File Tracking system which went live in the Office at the end of October 2008.
- 4.2** The system operates on an integrated basis where all elements of a case, from the initial direction process to an appeal in the Court of Criminal Appeal, have the same case reference, providing a snapshot picture of all the different elements of a case at one glance.
- 4.3** As part of the implementation process data from the previous IT systems was migrated onto the new system. The previous systems consisted of numerous non-compatible databases, and the data migration processes involved a significant level of data matching and data cleansing. Because of this, there may be some slight discrepancies between statistics produced from the new system and data outlined in previous reports.
- 4.4** Part 4 is broken down into three distinct sections:
- Charts 1 to 5 (Part 4.1) relate to the receipt of files in the Office and include details on the types of directions made;
 - Charts 6 to 10 (Part 4.2) provide details of the results of cases prosecuted on indictment by the Director in respect of files received in the Office between 2007 and 2009
 - Charts 11 to 13 (Part 4.3) relate to applications to the Courts for review of sentence on grounds of undue leniency; confiscation and forfeiture of criminal assets; and European Arrest Warrants.
- 4.5** All the yearly demarcations in the statistical tables refer to the year the file was received in the Office. The reason for going back so far in charts 6 to 10 is to take account of the time difference between a decision to prosecute being made and a trial verdict being recorded. If statistics were to be provided in respect of 2010 case outcomes, a large proportion of the cases would still be classified as 'for hearing' and the statistics would have little value. Cases heard within a short period of being brought are not necessarily representative.
- 4.6** In this report we have attempted in most instances to include updated versions of the data set out in previous Annual Reports in order to give a fuller account of the progress made since that data was previously published. Because of the continuous change in the status of cases - for example, a case which was pending at the time of a previous report may now have concluded - information given in this report will differ from that for the same cohort of cases in previous reports. In addition, data from two different years may not be strictly comparable because as time goes on more cases are completed so that information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated in June 2011.
- 4.7** Caution should be exercised when comparing these statistics with statistics published by other organisations such as the Courts Service or An Garda Síochána. The statistics published here are based on our own classification and categorisation systems and may in some cases not be in line with the classification systems of other organisations.

4.1 PROSECUTION FILES RECEIVED

Chart 1 shows the total number of files received by the Office of the Director of Public Prosecutions from 1976 to 2010.

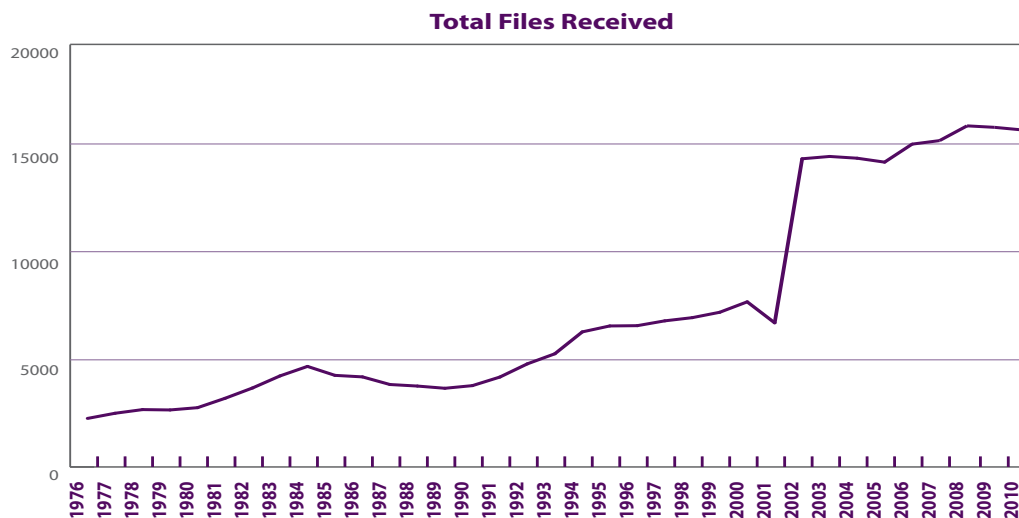
The vast majority of files received in the Office relate to the prosecution of criminal cases. The remainder deal with general queries, applications for judicial review or requests for legal advice from the Garda Síochána or local state solicitors. The number of files received, and the complexity of the issues that have to be addressed, has increased generally since the establishment of the Office.

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.

* **NOTE:** The figures for 2006 onwards do not include the number of other legal files received in the Office. These are files which relate to legal issues such as requests for legal advice from the Garda Síochána and local state solicitors. Because they do not relate to individual criminal prosecution files, it was considered more appropriate not to include them for statistical purposes.

CHART 1: TOTAL FILES RECEIVED

Year	Files	Year	Files	Year	Files
1976	2,298	1988	3,829	2000	7,815
1977	2,542	1989	3,724	2001	6,821
1978	2,715	1990	3,849	2002	14,586
1979	2,698	1991	4,255	2003	14,696
1980	2,806	1992	4,880	2004	14,613
1981	3,249	1993	5,356	2005	14,427
1982	3,738	1994	6,393	2006	* 15,279
1983	4,309	1995	6,674	2007	* 15,446
1984	4,759	1996	6,687	2008	* 16,144
1985	4,335	1997	6,915	2009	* 16,074
1986	4,263	1998	7,066	2010	* 15,952
1987	3,902	1999	7,321		



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 within the Solicitors Division and includes District Court prosecution files, appeals from the District Court to the Circuit Court and High Court bail applications. The figure for District Court Appeals represents the number of files held, not the number of individual charges appealed. One defendant may have a multiplicity of charges under appeal.

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

CHART 2: FILES DEALT WITH BY SOLICITORS DIVISION

	2010	%	2009	%	2008	%
District Court Prosecution Files	1986	29%	1968	29%	2104	27%
Appeals from District Court to Circuit Court	2178	32%	2572	37%	2649	34%
High Court Bail Applications	2317	34%	2037	29%	2592	34%
Judicial Review Applications	308	5%	328	5%	351	5%
TOTAL	6789		6905		7696	

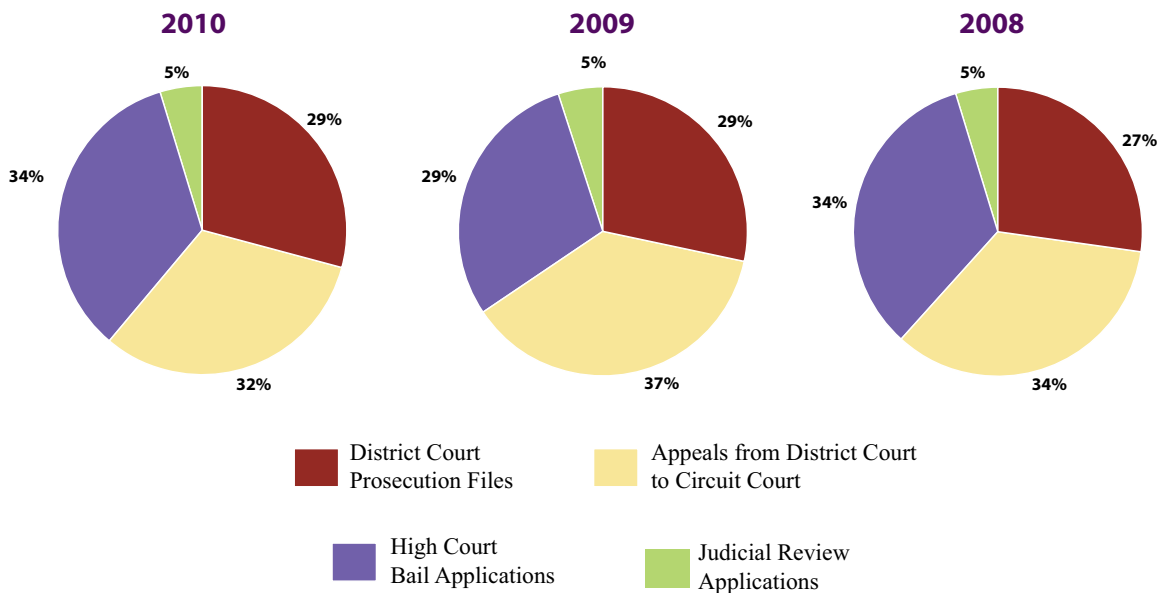
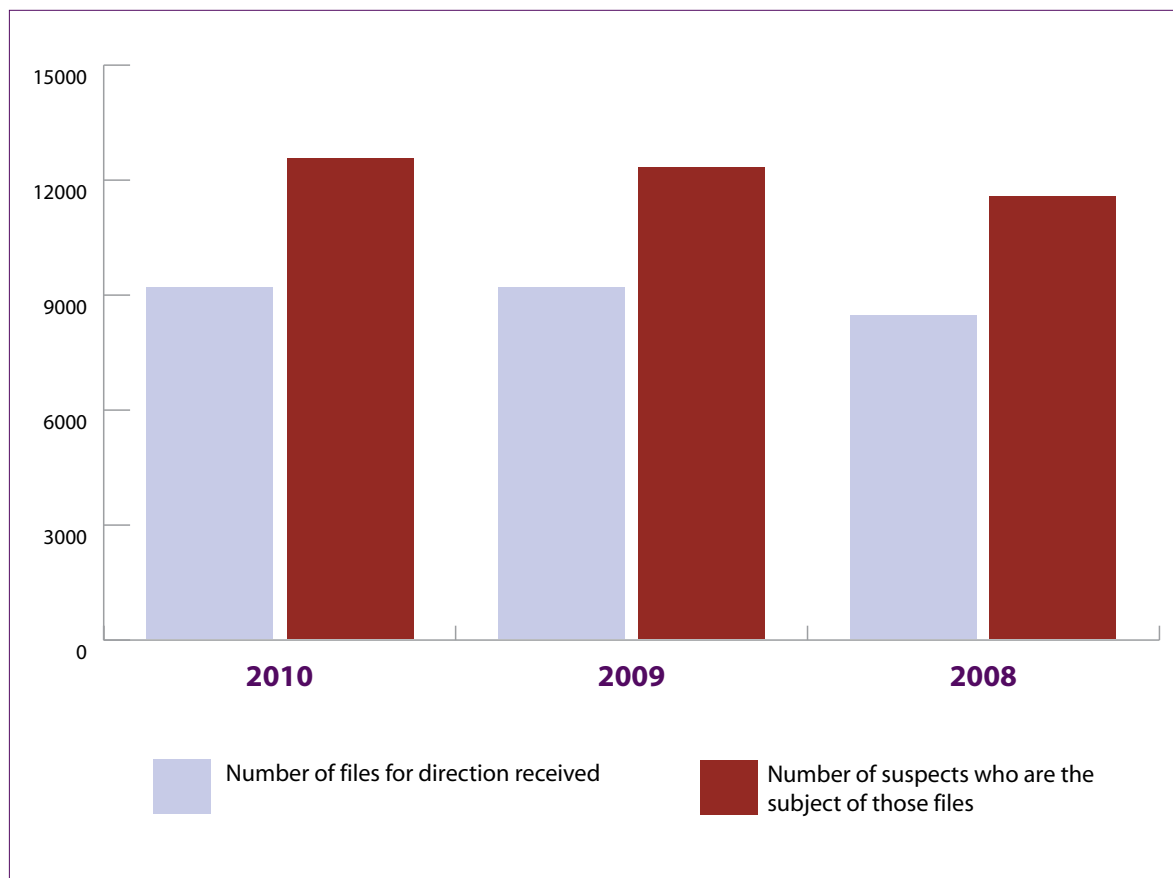


Chart 3 represents the number of files received in which a decision to prosecute or not to prosecute must be taken. The chart compares the number of files received with the number of suspects who are the subject of those files. Many files relate to more than one suspect and to treat such a file as a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

In 2008 the Office introduced, on a pilot basis, an initiative whereby responsibility for deciding whether a prosecution should be taken is, in certain circumstances, delegated from legal staff in the Directing Division to legal staff in the Solicitors Division. The purpose of the initiative is to ensure more efficient use of resources.

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

	2010	2009	2008
Number of files dealt with in Directing Division	9056	9103	8373
Number of files dealt with in Solicitors Division	107	66	75
TOTAL files received for decision whether to prosecute	9163	9169	8448
TOTAL number of suspects who are the subject of those files	12531	12308	11547



The following chart shows a breakdown of the disposal of files received in the Directing Division in 2008, 2009 and 2010 (as of June 2011). 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.

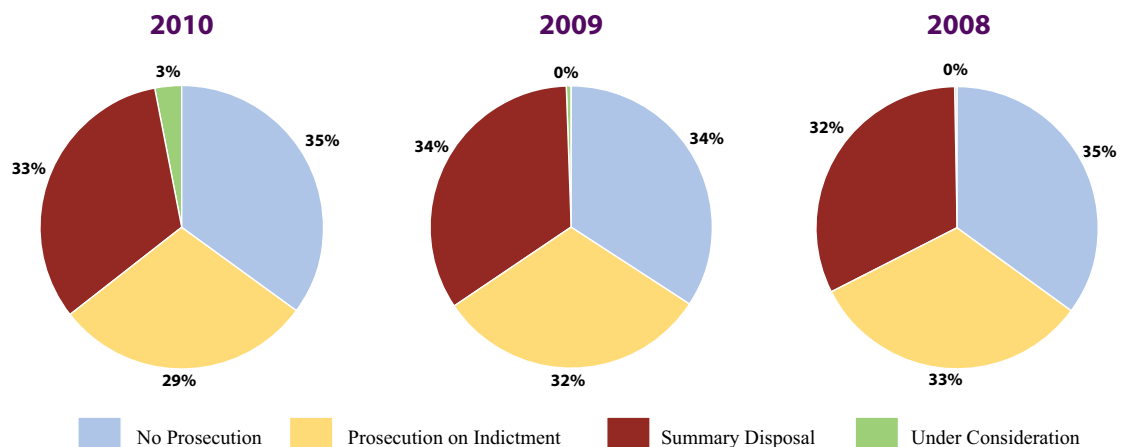
Summary Disposal: The offence is to be prosecuted in the District Court.

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 2008 and 2009 have been updated since the publication of previous Annual Reports. The reduction in the files 'Under Consideration' figures compared with those given in previous years reflect developments on those files since then. 'Prosecutions on Indictment' include those cases in which defendants elected for trial by jury and cases where the judge of the District Court refused jurisdiction, even though the Director initially elected for summary disposal.

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

Direction Made	2010	%	2009	%	2008	%
No Prosecution Directed	4412	35%	4217	34%	4060	35%
Prosecution on Indictment Directed	3670	29%	3882	32%	3765	33%
Summary Disposal Directed	4094	33%	4150	34%	3690	32%
TOTAL OF FILES DISPOSED	12176	97%	12249	100%	11515	100%
Under Consideration	355	3%	59	0%	32	0%
TOTAL	12531	100%	12308	100%	11547	100%

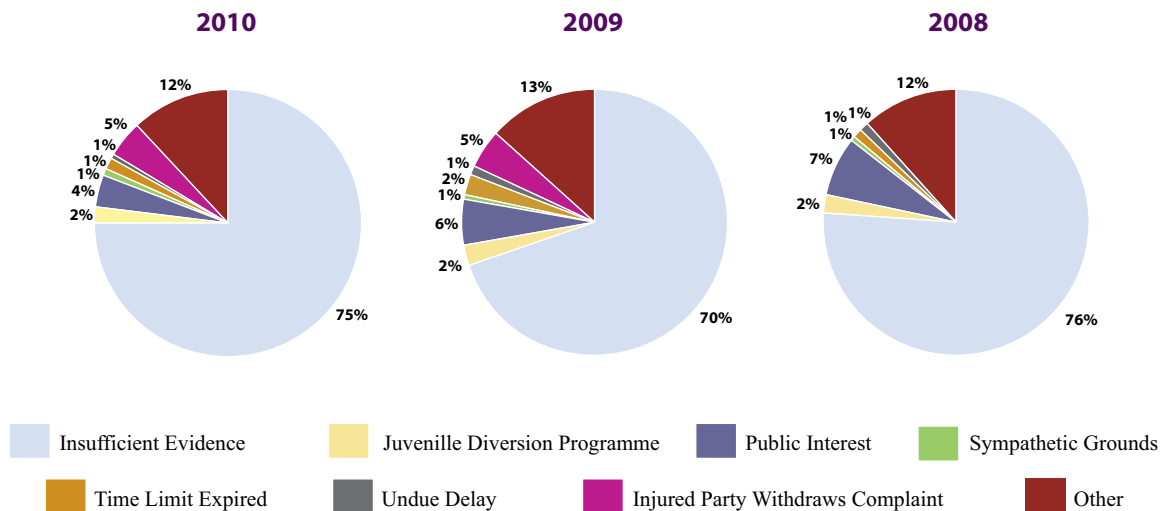


A decision may be made not to prosecute in relation to a particular file for a variety of reasons other than the main reasons set out in this chart (referred to as 'other' below). The death or disappearance of the suspect, the death or disappearance of the complainant or the refusal of a complainant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

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

Main Reasons for No Prosecution	2010	%	2009	%	2008	%
Insufficient Evidence	3312	75%	2950	70%	3096	76%
Juvenile Diversion Programme	91	2%	100	2%	92	2%
Public Interest	171	4%	234	6%	288	7%
Sympathetic Grounds	34	1%	30	1%	25	1%
Time Limit Expired	61	1%	96	2%	49	1%
Undue Delay	27	1%	55	1%	47	1%
Injured Party Withdraws Complaint *	199	5%	198	5%	N/A	N/A
Other	517	12%	554	13%	463	12%
TOTAL	4412		4217		4060	

* Statistics in this category were extracted from the new Case, Document Management and File Tracking System and are therefore available for the years 2009 & 2010 only. In previous years this category was included in the 'Other' category.



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

The following charts outline the number of requests received since the introduction of the policy, and the outcomes of those requests.

CHART 4B: BREAKDOWN OF REQUESTS FOR REASONS RECEIVED FROM OCTOBER 2008 TO JUNE 2011

Murder	Manslaughter	Infanticide	Fatalities in the Workplace	Fatal Road Traffic	TOTAL
1	3	-	1	14	19

CHART 4C: OUTCOME OF REQUESTS RECEIVED

Detailed Reasons Given	Request for Reasons Declined	Pending
10	4	5

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

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

	Population				Number of Prosecutions on Indictment Directed per County				Cases per 1,000 Persons				3 Year Rolling Average			
	2010*	2009*	2008*	2007*	2010	2009	2008	2007	2010	2009	2008	2007	2006	2008-2010	2007-2009	2006-2008
Carlow	54,868	54,245	53,295	51,820	49	39	37	15	33	0.89	0.72	0.69	0.29	0.66	0.57	0.55
Cavan	68,420	68,598	67,300	65,769	42	42	44	29	39	0.61	0.61	0.65	0.44	0.61	0.63	0.57
Clare	115,121	114,937	114,291	112,109	107	108	77	72	74	0.93	0.94	0.67	0.64	0.67	0.85	0.75
Cork	502,193	502,116	499,481	489,950	376	439	381	372	333	0.75	0.87	0.76	0.76	0.69	0.80	0.80
Donegal	157,427	157,836	154,849	151,328	83	71	87	116	59	0.53	0.45	0.56	0.77	0.40	0.51	0.59
Dublin	1,207,300	1,211,501	1,217,800	1,210,300	1576	1701	1740	1603	1790	1.31	1.40	1.43	1.32	1.51	1.38	1.39
Galway	240,630	241,245	238,282	234,535	89	106	89	76	104	0.37	0.44	0.37	0.32	0.45	0.39	0.38
Kerry	145,907	145,884	145,119	142,350	87	111	64	69	62	0.60	0.76	0.44	0.48	0.44	0.60	0.56
Kildare	209,360	205,989	201,677	194,622	127	132	90	81	93	0.61	0.64	0.45	0.42	0.50	0.56	0.50
Kilkenny	95,417	94,334	92,681	90,116	63	60	45	44	67	0.66	0.64	0.49	0.49	0.77	0.59	0.54
Laois	72,824	72,105	71,092	69,334	30	35	30	33	22	0.41	0.49	0.42	0.48	0.33	0.44	0.46
Leitrim	30,948	31,028	30,441	29,749	8	27	17	13	11	0.26	0.87	0.56	0.44	0.38	0.56	0.62
Limerick	190,974	190,668	189,598	185,978	204	165	159	155	142	1.07	0.87	0.84	0.83	0.77	0.92	0.85
Longford	37,348	36,979	36,459	35,557	66	28	30	24	20	1.77	0.76	0.82	0.67	0.58	1.12	0.75
Louth	118,946	119,255	116,998	114,337	96	74	100	97	69	0.81	0.62	0.85	0.85	0.62	0.76	0.77
Mayo	128,629	128,958	127,373	125,370	82	92	68	60	53	0.64	0.71	0.53	0.48	0.43	0.63	0.58
Meath	182,952	180,006	176,238	170,072	80	63	69	68	76	0.44	0.35	0.39	0.40	0.47	0.39	0.38
Monaghan	59,862	60,017	58,881	57,542	35	32	38	37	29	0.58	0.53	0.65	0.64	0.52	0.59	0.61
Offaly	76,961	76,200	75,130	73,272	28	34	28	21	21	0.36	0.45	0.37	0.29	0.30	0.39	0.37
Roscommon	61,041	61,197	60,445	59,495	19	19	26	26	15	0.31	0.31	0.43	0.44	0.26	0.35	0.39
Sligo	65,097	65,266	64,031	62,574	49	23	29	21	50	0.75	0.35	0.45	0.34	0.82	0.52	0.38
Tipperary	159,195	158,056	156,101	152,365	79	125	100	90	64	0.50	0.79	0.64	0.59	0.43	0.64	0.67
Waterford	117,651	116,316	114,227	111,115	84	117	154	101	79	0.71	1.01	1.35	0.91	0.73	1.02	1.09
Westmeath	86,168	85,316	84,118	82,037	69	71	141	56	60	0.80	0.83	1.68	0.68	0.76	1.10	1.06
Wexford	143,574	141,944	139,457	135,598	66	88	48	53	59	0.46	0.62	0.34	0.39	0.45	0.47	0.45
Wicklow	141,788	139,505	136,585	131,806	76	80	73	75	80	0.54	0.57	0.53	0.57	0.63	0.55	0.56
TOTAL	4,470,601	4,459,501	4,421,999	4,339,100	3670	3882	3764	3407	3504							

* Population figures for 2006 are taken from the census figures for that year. The 2007, 2008, 2009 & 2010 figures are based on a proration of the estimated regional population figures as published in the Central Statistics Office's Population and Migration Estimates issued in 2007, 2008, 2009 & 2010

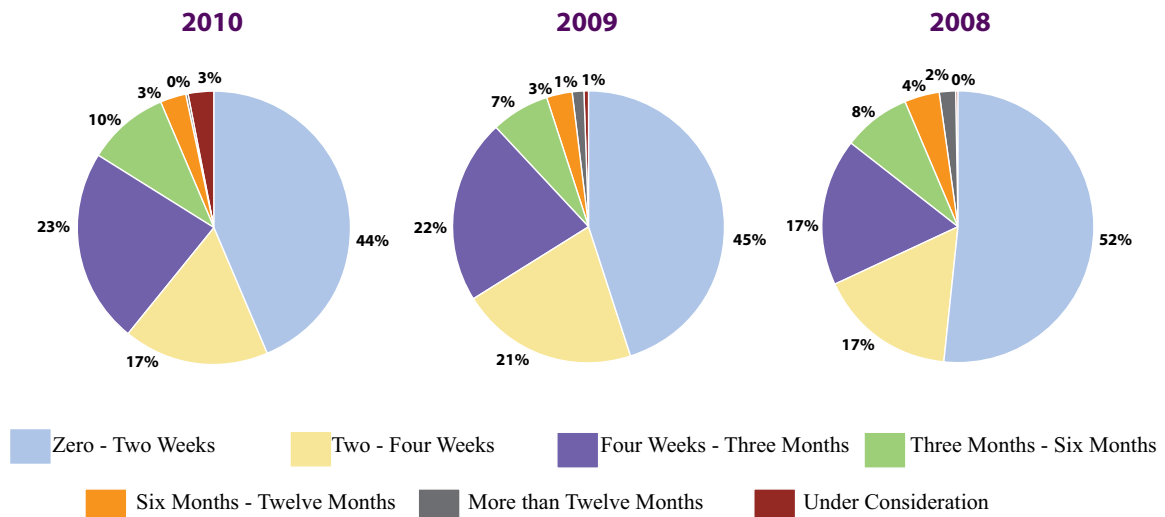
Chart 5 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution of a suspect should be taken or not. It has been decided to show this information by suspect rather than by file since in the case of files containing multiple 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	2010	%	2009	%	2008	%
Zero - Two Weeks	5494	44%	5556	45%	5978	52%
Two - Four Weeks	2161	17%	2602	21%	1905	17%
Four Weeks - Three Months	2891	23%	2688	22%	2005	17%
Three Months - Six Months	1208	10%	854	7%	950	8%
Six Months - Twelve Months	382	3%	391	3%	472	4%
More than Twelve Months	38	0%	155	1%	206	2%
TOTAL FILES DISPOSED	12174	97%	12246	99%	11516	100%
Under Consideration	357	3%	62	1%	31	0%
TOTAL	12531	100%	12308	100%	11547	100%



4.2 RESULTS OF CASES PROSECUTED ON INDICTMENT

- 4.2.1** Charts 6 to 10 provide information for prosecutions on indictment taken by the Director in respect of files received in the Office between 2007 and 2009. As referred to in the initial explanatory note, care should be taken before a comparison is made with figures provided by any other organisation, as they may be compiled on a different basis.
- 4.2.2** The figures in these charts relate to individual suspects against whom a direction has been made to prosecute on indictment. Statistics are provided on a suspect-by-suspect basis rather than on the basis of files received. This is because directions are made in respect of each suspect included within a file rather than against the complete file as an entity in itself. Depending on the evidence provided, different directions are often made in respect of the individual suspects received as part of the same file. References in these charts to 'cases' refer to such prosecutions taken against individual suspects. Although individual suspects on a file may be tried together where a direction is made to prosecute them in courts of equal jurisdiction, each suspect's verdict will be collated separately for the purpose of these statistics.
- 4.2.3** Statistics are provided on the basis of one outcome per suspect; this is irrespective of the number of charges and offences listed on the indictment. Convictions are broken down into: conviction by jury, conviction on plea, and conviction on a lesser charge. A conviction on a lesser charge indicates that the suspect was not convicted for the primary or most serious offence on the indictment. The offence categorisation used in the main charts is by the primary or most serious offence on the indictment. Therefore, if a defendant is convicted of a lesser offence,
- the offence or offences they are convicted for may be different from that under which they are categorised in the charts. For example, a suspect may be charged with murder but ultimately convicted for the lesser offence of manslaughter or charged with aggravated burglary but convicted of the lesser offence of burglary. A breakdown of convictions on a lesser charge is given in respect of cases heard in the Special and Central Criminal Courts in charts 8a and 9a. Where a suspect is categorised as 'acquitted', this means that the suspect has been acquitted of all charges.
- 4.2.4** It should also be noted that statistics set out in these charts relate to what happened in the trial court only and not in a subsequent appeal court. In other words where a person is convicted and the conviction is subsequently overturned on appeal, the outcome of the trial is still shown in these statistics as a conviction.
- 4.2.5** Care should be taken in relation to interpreting the rates of conviction and acquittal in respect of recent years, as a higher number of cases will not have reached a conclusion. The picture furnished by these statistics will be less complete and therefore less representative than those in respect of earlier years. Cases heard relatively early may not necessarily be a representative sample of the whole.

Chart 6 shows the results of prosecutions on indictment taken in relation to defendants in respect of whom prosecutions were commenced in the years 2008 to 2010 (as of June 2011). The figures relate to:

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

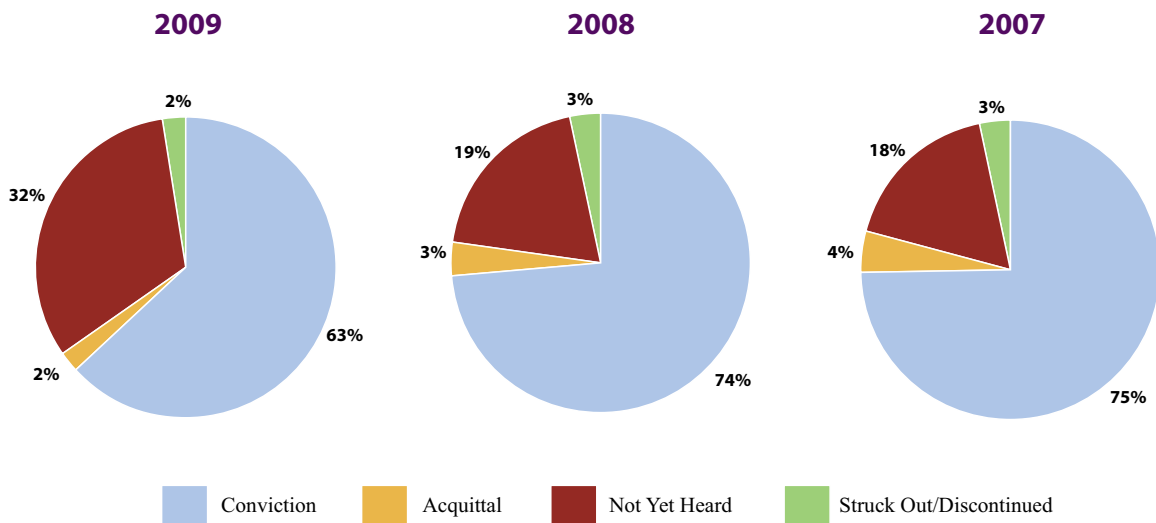
Acquittal: The defendant was acquitted on all charges.

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 2010 as the great majority of these cases have yet to be dealt with by the courts and the outcomes for the few cases where results are available may not be representative of the final picture covering all the cases.

CHART 6: CASE RESULTS - PROSECUTIONS ON INDICTMENT

Outcome	2009	%	2008	%	2007	%
Conviction	2452	63%	2780	74%	2551	75%
Acquittal	83	2%	131	3%	147	4%
Not Yet Heard	1258	32%	734	19%	599	18%
Struck Out/Discontinued	89	2%	120	3%	110	3%
TOTAL	3882		3765		3407	



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

	2009	%	2008	%	2007	%
Conviction by Jury	65	3%	107	4%	143	5%
Conviction Following Plea of Guilty	2387	94%	2673	92%	2408	89%
TOTAL CONVICTIONS	2452	97%	2780	96%	2551	94%
Acquittal by Jury	48	2%	73	3%	111	4%
Acquittal on Direction of Judge	35	1%	58	2%	36	1%
TOTAL ACQUITTALS	83	3%	131	5%	147	5%
TOTAL	2535		2911		2698	

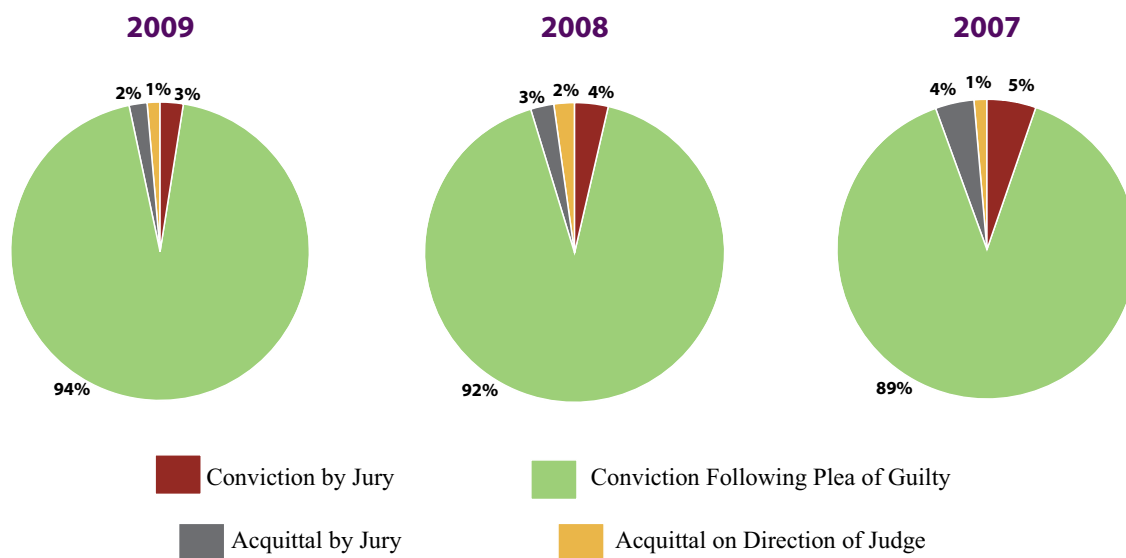


Chart 7 breaks down the prosecutions directed on indictment to be heard in the Circuit Court. The cases categorised as 'For Hearing' are those for which a verdict has not yet been recorded. In some of these cases, a trial may have begun but proceedings have been halted by a Judicial Review application.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

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

	TOTAL		Conviction by Jury		Conviction on Plea		Conviction on Lesser Charge		Acquittal by Jury		Acquittal by Direction of Judge		For Hearing		Other Disposals									
	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2007							
Fatal Accident at Work	13	13	8	0	1	0	5	4	5	0	0	0	0	0	8	8	3	0	0	0				
Manslaughter	16	7	7	0	0	1	5	4	2	4	0	0	0	0	5	3	2	1	0	0				
Other Fatal Offences	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0				
TOTAL - FATAL OFFENCES	29	20	16	0	1	1	10	8	8	4	0	0	2	13	11	5	1	0	0	0				
Burglary	418	456	308	1	10	1	286	349	243	12	10	3	4	0	5	4	111	74	42	8	5	11		
Fraud	47	45	41	0	1	0	33	31	19	1	0	0	1	0	0	1	13	12	20	0	0	0		
Robbery	452	516	479	0	5	5	326	415	396	10	2	3	0	1	2	3	6	1	108	77	61	5	10	11
Theft	165	126	129	1	4	3	92	86	82	3	1	0	5	2	5	1	60	28	35	7	2	3		
Other Offences Against Property	275	205	172	0	3	6	155	143	117	14	4	0	1	1	4	2	4	0	92	42	38	11	8	7
TOTAL - OFFENCES AGAINST PROPERTY	1357	1348	1129	2	23	15	892	1024	857	40	17	6	1	6	16	7	20	7	385	233	196	31	25	32
Buggery	2	3	3	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	2	1	2	0	0	1
Child Pornography	9	12	19	0	0	1	7	9	15	0	1	0	0	0	0	0	0	0	2	2	3	0	0	0
Sexual Assault	59	97	84	2	6	6	19	43	45	2	1	1	1	4	9	0	3	2	33	32	16	2	8	5
Sex with an Underage Person	28	11	17	0	0	0	17	5	9	1	0	1	1	1	1	1	0	0	9	4	5	0	1	1
Other Sexual Offences	33	20	25	1	0	1	10	10	12	1	0	1	0	1	0	1	0	1	18	8	10	2	1	0
TOTAL - SEXUAL OFFENCES	131	143	148	3	7	8	53	68	81	4	2	3	5	11	0	4	2	64	47	36	4	10	7	
Dangerous Driving Causing Death	33	43	49	1	1	5	12	24	28	6	3	2	2	7	3	0	4	1	10	4	10	2	0	0
Unauthorised Taking of Motor Vehicles	65	103	75	0	1	3	47	81	61	2	2	1	0	1	1	0	0	0	14	16	7	2	2	2
Other Road Traffic Offences	56	38	30	1	1	2	32	28	22	5	2	1	1	1	0	1	0	1	17	6	3	0	0	1
TOTAL - ROAD TRAFFIC OFFENCES	154	184	154	2	3	10	91	133	111	13	7	4	3	9	4	0	4	2	41	26	20	4	2	3
Drug Offences	823	768	687	1	12	13	447	575	545	155	39	6	1	2	3	3	10	2	204	120	113	12	10	5
Firearms and Explosives Offences	168	148	155	1	2	4	90	112	109	17	4	3	1	4	4	0	0	1	58	20	31	1	6	3
Non Fatal Offences Against the Person	787	760	824	14	21	29	375	449	539	40	11	9	31	34	40	18	14	14	283	177	143	26	54	50
Public Order Offences	169	190	79	1	2	0	71	140	52	15	2	7	1	0	5	1	2	0	76	42	13	4	2	2
Revenue Offences	22	16	21	0	0	0	2	2	5	0	0	1	0	0	0	0	0	0	20	14	15	0	0	0
Other Offences	106	73	40	2	0	0	40	33	18	4	1	1	1	1	1	1	1	1	53	32	17	3	2	0
GRAND TOTAL	3746	3650	3253	26	71	80	2071	2544	2325	292	83	40	43	61	84	32	58	33	1196	722	589	86	111	102

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

	2009	2008	2007
<i>Nolle Prosequi</i> Entered	75	96	97
Struck Out	5	3	2
Taken Into Consideration	0	1	0
Guilty but Insane	0	1	0
Not Guilty by Reason of Insanity	6	10	3
TOTAL	86	111	102

CHART 7B: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS

	TOTAL			Percentage of Convictions		
	2009	2008	2007	2009	2008	2007
Fatal Accident at Work	5	5	5	100%	100%	100%
Manslaughter	10	4	5	90%	100%	60%
Other Fatal Offences	0	0	1	N/A	N/A	100%
TOTAL - FATAL OFFENCES	15	9	11	93%	100%	82%
Burglary	299	377	255	100%	98%	97%
Fraud	34	33	21	100%	97%	90%
Robbery	339	429	407	99%	98%	99%
Theft	98	96	91	98%	95%	93%
Other Offences Against Property	172	155	127	98%	97%	97%
TOTAL - OFFENCES AGAINST PROPERTY	942	1090	901	99%	98%	97%
Buggery	0	2	0	N/A	100%	N/A
Child Pornography	7	10	16	100%	100%	100%
Sexual Assault	24	57	63	96%	88%	83%
Sex with an Underage Person	19	6	11	95%	83%	91%
Other Sexual Offences	13	11	15	92%	91%	93%
TOTAL - SEXUAL OFFENCES	63	86	105	95%	90%	88%
Dangerous Driving Causing Death	21	39	39	90%	72%	90%
Unauthorised Taking of Motor Vehicles	49	85	66	100%	99%	98%
Other Road Traffic Offences	39	32	26	97%	97%	96%
TOTAL - ROAD TRAFFIC OFFENCES	109	156	131	97%	92%	95%
Drug Offences	607	638	569	99%	98%	99%
Firearms and Explosives Offences	109	122	121	99%	97%	96%
Non Fatal Offences Against the Person	478	529	631	90%	91%	91%
Public Order Offences	89	146	64	98%	99%	92%
Revenue Offences	2	2	6	100%	100%	100%
Other Offences	50	39	23	92%	87%	83%
GRAND TOTAL	2464	2817	2562	97%	96%	95%

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

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

	TOTAL		Conviction by Judges		Conviction on Plea		Conviction on Lesser Charge		Acquittal by Judges		Other Disposals		For Hearing	
	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008
Firearms and Explosives Offences	6	11	2	2	0	4	0	0	0	0	0	0	0	0
Murder	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Membership of Unlawful Organisation & Related Offences	4	5	2	2	0	0	2	2	2	0	1	0	1	0
TOTAL	10	16	4	4	1	4	11	2	2	0	1	0	1	0

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

Primary Charge	Lesser Charge Convicted of		TOTAL		Conviction by Judges		Conviction on Plea	
	2009	2008	2009	2008	2009	2008	2009	2008
Membership of Unlawful Organisation & Related Offences	0	0	0	0	0	0	0	2
TOTAL	0	0	0	0	0	0	0	2

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

	2009	2008	2007
Nolle-Prosequi Entered	0	1	0
TOTAL	0	1	0

CHART 8C: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS

	TOTAL			Percentage of Convictions		
	2009	2008	2007	2009	2008	2007
Firearms and Explosives Offences	6	11	1	100%	100%	100%
Membership of Unlawful Organisation & Related Offences	4	4	4	50%	100%	75%
TOTAL	10	15	5	80%	100%	100%

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

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

	TOTAL		Conviction by Jury		Conviction on Plea		Conviction on Lesser Charge		Acquittal by Jury		Acquittal by Direction of Judge		Other Disposals		For Hearing		
	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	
Murder	45	42	12	12	4	8	11	14	8	0	0	4	0	0	2	4	2
Attempted Murder	3	4	1	1	1	2	0	0	0	0	0	1	0	0	0	1	0
Conspiracy to Murder	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	57	52	8	10	10	18	25	5	2	4	11	13	2	0	3	4	4
Attempted Rape	2	0	0	0	2	0	1	0	0	0	0	0	0	0	0	0	1
Aggravated Sexual Assault	0	1	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0
Assisting an Offender	6	1	0	0	2	1	2	0	0	0	0	0	0	0	0	0	0
Competition Law	0	0	0	0	0	0	0	0	0	0	0	8	0	0	0	0	3
TOTAL	113	100	21	23	19	29	40	16	16	4	12	26	2	0	3	2	8

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

Primary Charge	Lesser Charge Convicted of		TOTAL		Conviction by Jury		Conviction on Plea	
	2009	2008	2009	2008	2009	2008	2009	2008
Murder	8	12	8	12	5	4	6	3
Manslaughter	3	0	0	0	1	0	0	2
Assisting an Offender	0	2	0	2	0	0	0	0
Violent Disorder	0	1	0	1	0	0	0	2
Aggravated Sexual Assault	0	1	0	1	0	1	0	0
Sexual Assault	3	1	2	1	1	0	2	1
Sex with an Underage Person	0	0	2	0	0	0	1	0
Indecent Assault	0	0	1	0	0	0	0	1
Burglary	1	0	0	0	0	0	0	1
Assault Causing Harm	1	0	0	0	1	0	0	0
TOTAL	16	16	13	13	8	5	9	8

CHART 9B: BREAKDOWN OF 'OTHER DISPOSALS'

	2009	2008	2007
<i>Nolle Prosequi</i> Entered	0	3	3
Suspect Deceased	0	1	3
Suspect Absconded & Not Expected to Return	0	2	0
Guilty but Insane	1	1	1
Not Guilty by Reason of Insanity	1	1	1
TOTAL	2	8	8

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

	TOTAL			Percentage of Convictions		
	2009	2008	2007	2009	2008	2007
Murder	27	34	49	100%	100%	92%
Attempted Murder	2	3	1	100%	100%	0%
Conspiracy to Murder	0	0	2	N/A	N/A	100%
Rape	29	41	59	79%	73%	73%
Attempted Rape	2	0	1	100%	N/A	100%
Aggravated Sexual Assault	0	1	1	N/A	0%	100%
Assisting an Offender	2	1	4	100%	100%	100%
Competition Law	0	0	8	N/A	N/A	0%
TOTAL	62	80	125	90%	85%	77%

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

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

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge		
	2009	2008	2007	2009	2008	2007	2009	2008	2007	2009	2008	2007	2009	2008	2007	2009	2008	2007
Carlow	20	33	8	0	0	0	19	31	8	1	1	0	0	1	0	0	0	0
Cavan	22	32	24	0	0	0	16	32	21	6	0	0	0	0	0	0	0	2
Clare	82	60	48	1	1	5	64	51	39	11	0	1	2	5	1	4	3	2
Cork	319	323	308	4	14	11	273	285	281	30	4	2	3	5	8	9	15	6
Donegal	34	56	81	3	2	5	29	49	68	1	0	1	0	2	6	1	3	1
Dublin	1162	1305	1230	6	20	21	975	1208	1168	167	55	13	8	8	22	6	14	6
Galway	56	63	60	3	4	2	48	50	47	3	4	4	2	2	6	0	3	1
Kerry	68	55	51	1	1	2	59	47	45	5	1	0	3	6	3	0	0	1
Kildare	84	65	69	1	1	6	71	58	58	5	1	0	2	3	5	5	2	0
Kilkenny	29	35	34	0	0	1	27	31	31	1	1	0	1	2	2	0	1	0
Laois	26	22	28	0	3	2	23	19	25	3	0	1	0	0	0	0	0	0
Leitrim	16	10	13	0	0	0	15	10	12	1	0	0	0	0	1	0	0	0
Limerick	86	105	107	2	2	4	72	95	95	9	2	2	2	4	6	1	2	0
Longford	22	23	17	2	0	1	20	21	14	0	1	0	0	1	2	0	0	0
Louth	30	58	57	0	1	1	25	52	53	2	2	0	3	1	2	0	2	1
Mayo	68	58	39	2	5	1	51	47	35	9	1	0	5	3	2	1	2	1
Meath	43	49	51	0	3	1	38	41	46	3	1	0	1	3	2	1	1	2
Monaghan	11	27	27	0	0	2	7	26	18	4	1	4	0	0	0	0	0	3
Offaly	21	20	11	0	1	0	19	17	11	0	0	0	2	2	0	0	0	0
Roscommon	15	23	21	0	1	0	11	21	19	3	1	1	1	0	1	0	0	0
Sligo	15	20	19	0	1	1	14	19	14	1	0	1	0	0	1	0	0	2
Tipperary	58	65	56	0	2	4	45	55	39	13	3	8	0	4	1	0	1	4
Waterford	64	111	65	0	2	3	53	96	58	3	2	1	4	5	3	4	6	0
Westmeath	37	120	44	0	2	2	33	115	38	4	1	1	0	1	3	0	1	0
Wexford	36	29	33	1	1	0	31	27	32	2	0	0	2	1	1	0	0	0
Wicklow	40	50	61	0	4	5	33	41	50	5	1	0	2	2	5	0	2	1
TOTAL	2464	2817	2562	26	71	80	2071	2544	2325	292	83	40	43	61	84	32	58	33

CHART 10A: TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS

	TOTAL			Percentage of Convictions		
	2009	2008	2007	2009	2008	2007
Carlow	20	33	8	100%	97%	100%
Cavan	22	32	24	100%	100%	88%
Clare	82	60	48	93%	87%	94%
Cork	319	323	308	96%	94%	95%
Donegal	34	56	81	97%	91%	91%
Dublin	1162	1305	1230	99%	98%	98%
Galway	56	63	60	96%	92%	88%
Kerry	68	55	51	96%	89%	92%
Kildare	84	65	69	92%	92%	93%
Kilkenny	29	35	34	97%	91%	94%
Laois	26	22	28	100%	100%	100%
Leitrim	16	10	13	100%	100%	92%
Limerick	86	105	107	97%	94%	94%
Longford	22	23	17	100%	96%	88%
Louth	30	58	57	90%	95%	95%
Mayo	68	58	39	91%	91%	92%
Meath	43	49	51	95%	92%	92%
Monaghan	11	27	27	100%	100%	89%
Offaly	21	20	11	90%	90%	100%
Roscommon	15	23	21	93%	100%	95%
Sligo	15	20	19	100%	100%	84%
Tipperary	58	65	56	100%	92%	91%
Waterford	64	111	65	88%	90%	95%
Westmeath	37	120	44	100%	98%	93%
Wexford	36	29	33	94%	97%	97%
Wicklow	40	50	61	95%	92%	90%
TOTAL	2464	2817	2562	97%	96%	95%

4.3 APPLICATIONS TO THE COURTS

OUTCOMES OF APPLICATIONS MADE TO THE COURTS

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

APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

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

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

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

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

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

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

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

Number of Applications Lodged

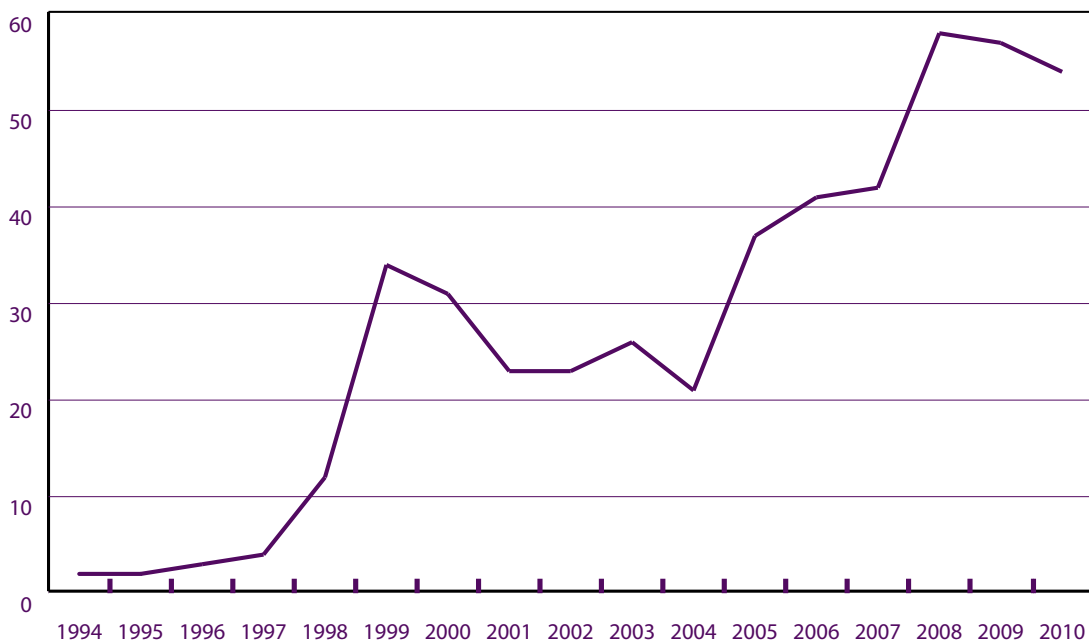


CHART 11A: RESULTS OF APPLICATIONS BY YEAR LODGED

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 11B: RESULTS OF APPLICATIONS BY YEAR HEARD

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

CONFISCATION AND FORFEITURE OF CRIMINAL ASSETS

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

The total number of asset seizing files under the 1994 Criminal Justice Act opened in the Office for 2010 was 99, ranging from forfeiture order cases, to confiscation order cases, to freezing order applications. The total number of confiscation and forfeiture cases opened in the Office of the DPP in 2010 is set out in chart 12.

CHART 12: ASSET SEIZING FILES OPENED IN 2010

Asset Seizing Files Opened 2010	
Section 39 Applications	21
Section 39 (Revenue Solicitor) Applications	21
Sections 4 and 9 Applications	26
Section 61 Applications	29
Section 24 Applications	2
TOTAL	99

Section 39 Forfeiture Orders: Under section 39 of the Act a Judge of the Circuit Court may order the forfeiture of any cash which has been seized under section 38* of the Act if satisfied that the cash directly or indirectly represents the proceeds of crime or is intended to be used by any person for use in drug trafficking.

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

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

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

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

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

Details of Confiscation and Forfeiture Orders granted by the courts in 2010, to a total value of €3,051,088 are outlined in chart 12A below.

CHART 12A: CONFISCATION OF CRIMINAL ASSETS

Orders	Number	Amount
Forfeiture Orders	25	€87,653
Confiscation Orders	19	€324,749
Section 39 Forfeiture Orders	15	€408,685
Section 39 Forfeiture Orders (Revenue Solicitor Applications)	25	€2,230,000
TOTAL	84	€3,051,088

This total figure does not include a settlement whereby a section 39 application was withdrawn on the basis of an agreement that €199,000 of seized funds was paid directly to the Revenue Commissioners for transmission to the Central Exchequer. If this cash is added to the sums confiscated by means of court order, then the sums transmitted to the central fund as a result of asset seizing applications brought on behalf of the DPP for 2010 comes to €3,250,088.

EUROPEAN ARREST WARRANTS

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

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

The chart below outlines the number of European Arrest Warrants dealt with in the years 2008, 2009 and 2010. It should be noted that the issue of the EAW and the surrender of the person will not necessarily correspond to the year the file is received. The total files received include 35 files where an application is pending or where either no application for an EAW was made, or the issued EAW was withdrawn because the DPP had so directed, the requested person was arrested in Ireland, or the requested person or complainant had died.

CHART 13: EUROPEAN ARREST WARRANTS

Year	EAW Files Received from Gardaí	EAWs Issued	Persons Surrendered
2008	50	41	26
2009	40	31	28
2010	61	46	26
TOTAL	151	118	80

