

Claire Loftus, Director of Public Prosecutions
Opening Remarks at 13th Annual National Prosecutors' Conference
19 May 2012

Members of the Judiciary, fellow prosecutors, ladies and gentlemen

It gives me great pleasure to welcome you to our 13th Annual National Prosecutors' Conference. It is a particular privilege for me to do so for the first time as Director of Public Prosecutions.

As you know I took up office six months ago in November 2011 and I think it is appropriate therefore that before I come to the subject matter of today's conference I make some short general remarks.

I took over from James Hamilton who had held the position as Director for the previous 12 years. I am delighted that he can join us today. James Hamilton presided over a very significant period of change and modernisation of the prosecution service which included the taking over of responsibility for the solicitor service from the Chief State Solicitor, and the State Solicitors from the Attorney General. The service we have now owes much to his overall vision. I was fortunate to work alongside him for most of his tenure and to be involved in the implementation of those changes. The publication of detailed Guidelines for Prosecutors was one of just several innovations which James Hamilton introduced and which we now take for granted. I am only too conscious of the legacies of my immediate predecessor and that of the first DPP Eamonn Barnes and I am strongly committed to continuing to foster high prosecutorial standards and thereby maintain public confidence in the prosecution service.

As a lawyer who has spent 18 or her 20 years since qualifying working as a prosecutor I am all too well aware of the great responsibility attaching to this role and of its essential core values including a respect for the rule of law and the vindication of human rights. I have mentioned the Guidelines but I think it is worth quoting here what I consider to be the essence of a prosecutor's duty:

“The aim of the prosecutor is to ensure that a just verdict is reached at the end of the trial process and not to strive for a conviction at all costs. The purpose of a criminal prosecution is not to obtain a conviction: it is to lay before a judge and jury what the prosecution considers to be credible evidence relevant to what is alleged to be a crime.”

I note Patrick Treacy SC quotes this very extract in his own paper. Of course there are many more obligations and duties which arise from this fundamental aim and indeed one of our sessions this morning will involve presentations on the matter of disclosure which is crucial to ensuring that justice is done in every case and that a defendant receives a fair trial.

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We are fortunate to reside in a democracy based on the rule of law which has provided by statute for the independence of the prosecutor. This independence first enacted by statute in 1974 is, by dint of the efforts of the first DPP Eamonn Barnes in particular, well established and understood by now. This means that I and my staff can take decisions on whether to prosecute or not completely free from political or public pressure or the perception of that pressure. It is also I think a reassurance and protection for the public whom we serve.

I am of course also independent of investigators whether An Garda Síochána or other specialised agencies. I have no investigative function and no role in directing the scope of investigations. While I and my staff can offer legal advice and suggestions on the approach to investigations it is ultimately for the investigator to decide how to proceed. This independence of investigations has the benefit of bringing objectivity to the assessment of the fruits of those investigations when they are submitted as evidence in files to this Office.

It is worth restating here the fundamental requirement before we will decide to prosecute any individual: That is to be satisfied that there is sufficient evidence upon which a jury, properly instructed in the law, could find the defendant guilty. There has to be a reasonable prospect of conviction. Once we are satisfied of this we consider whether it is in the public interest to prosecute. This gives me an important discretion as a prosecutor which many jurisdictions do not have but one which must be exercised carefully.

As I embark on my tenure as Director of Public Prosecutions I am fortunate to have inherited a prosecution service which as I say has undergone major modernisation and reform. However I am not in the least complacent about the further changes which face the prosecution service particularly in a time of severe financial constraints.

One major objective of the Office unfortunately still remains outstanding. This is that the expanded Office including the solicitors' service would be brought together in a single headquarters. Nearly twelve years after I was appointed as the first dedicated solicitor to the DPP this has not yet been achieved. However progress is being made insofar as it is hoped that next month the Directing Division of my Office and part of the Solicitors' Division will move into the former Department of Defence building at Infirmary Road near the Phoenix Park. The intention is that ultimately all of my staff would be located there.

There is still a lot of uncertainty as to when the entire complex will be delivered to this Office. The Minister of State at the Department of Public Expenditure and Reform with special responsibility for the Office of Public Works, Mr. Brian Hayes, TD, has expressed support for this ultimate objective which makes a lot of practical sense given that this premises is adjacent to the Criminal Courts of Justice. In the meantime the Solicitors' Division headed by the Chief

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Prosecution Solicitor will have to be split over two locations which is far from ideal. However there are benefits which can be immediately achieved by locating certain of the solicitors' staff adjacent to the directing staff and which justify this hopefully short term inconvenience. In the current climate I consider it my duty as Director to seek to maximise these efficiencies in whatever way I can. In the context of the Croke Park Agreement and the current economic constraints the Office has for some time been implementing reforms aimed at delegating certain decision making to the Solicitors' Division so that duplication of effort by lawyers can be avoided where appropriate. It is intended that following the move to Infirmity Road further progress will be made on this initiative.

We are moving into this next phase with new additions to the senior management team of the Office. I am delighted to announce that following open competitions Elizabeth Howlin Solicitor has been appointed as my successor as Head of Directing Division, and Peter Mullan currently a Managing Partner with Sheehan and Partners Solicitors has been selected as the next Chief Prosecution Solicitor. I want to warmly congratulate both of them and to wish them every success in their respective roles. They will be key to the implementation of my vision as Director in the years ahead. It is expected that they will take up their new roles in the first half of June but this will be confirmed shortly. The vacancy for Chief Prosecution Solicitor arose following Eileen Creedon's appointment as Chief State Solicitor in January. I want to thank Eileen for her service as Chief Prosecution Solicitor and her many years service to the prosecution in various roles. I also want to thank Liz Howlin for so ably and willingly stepping in as acting CPS.

As ever there have been changes on the legislative landscape since the last annual conference, including the Criminal Justice Act 2011 which, in an Act with wide-ranging implications for the prosecution of crime, included provisions compelling, for the first time, persons with information or evidence to offer in relation to the commission of a crime to cooperate with an investigation. This is a significant development and has already proved fruitful in garnering such cooperation.

Meanwhile at European level a European Union Directive is under negotiation which is intended to establish minimum standards on the rights, support and protection of victims of crime. While it is not finalised at this stage it is important to point out that among the rights proposed to be granted to victims is the right to receive reasons for the decision of the prosecution not to prosecute in most cases, subject to certain fairly limited exceptions. All of this as I say has to be finalised but it is important to be aware of the context in which we may be expected to operate some time in the future.

At present my Office gives reasons for decisions in certain fatal cases and the number of cases where reasons have been requested since the introduction of

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this policy over three-and-a-half years ago is very low at approximately 30 requests. As you will also be aware my Office has been considering the question of expanding into the area of giving reasons for decisions not to prosecute in relation to sexual offences. My predecessor had highlighted that the process of giving reasons has already proved to be very resource intensive and this will be a significant factor in any expansion of this work. Meanwhile I remain committed to ensuring that we liaise with victims in individual cases which we prosecute in accordance with the commitments we have made. I also support the ongoing cross-agency cooperation in this area within the criminal justice system. I commend all those volunteers and groups several of whom I have spoken to personally over the years for the work they do on a daily basis in the courts and elsewhere.

There is just one practical matter that I would like to highlight. If I was to have one wish granted for the operation of the criminal justice system it would be that we would have effective pre-trial procedures for the disposal of issues that need not be left to the trial. A mundane wish perhaps but the absence of such procedures severely affects the administration of justice in a timely way. Despite the fact that the vast majority of defendants ultimately plead guilty, generally over 90%, we have lead in periods to trial dates currently in Dublin of at least a year in the Central Criminal Court and nearly a year in the Circuit Court. These lead in times can vary periodically and the situation varies around the country but backlogs are a significant feature there also. This is despite significant judicial resources being allocated over the last number of years to criminal business within the constraints imposed on the courts to deal with all kinds of legal business.

This issue of Pre-Trial Procedures was considered by the "Working Group on the Jurisdiction of the Courts" in 2003 and a recommendation made for a pre-trial hearing in advance of the trial at which a number of issues could be clarified or ruled upon. While at the time welcoming the recommendation for a formal mechanism of pre-trial procedures the then Director and I who represented him on the group felt that that recommendation did not go far enough insofar as it depended on the cooperation of the parties. I am of the view that a system which requires both sides (not just the prosecution) to focus on the real issues in a case at an earlier stage can be put in place and would speed up the processing of cases at all stages through to sentencing, saving valuable court time, jurors' time and indeed legal costs in the process. There are, I am glad to say, two committees one established by the Minister for Justice, Equality and Defence and the other established by the Minister for Justice, Equality and Defence and the Chief Justice looking at various aspects of this issue and I look forward to their final recommendations. For a solution to really work legislation in my view is required insofar as issues of law including those relating to admissibility of evidence are concerned. That also appears to be the view of the Supreme Court.

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In an era of severe financial constraints it behoves us all to be innovative in our approach to this issue.

I want to turn now to the topics on our programme. I am very grateful to all of the speakers who have given of their time to prepare interesting papers and to speak to us this morning. More by accident than design all of the topics on this morning's programme address very practical problems and issues for the prosecution. Whether it is dealing with daily challenges for prosecutors at trial, to be addressed by Patrick Treacy, SC, or trying to wrestle with the many dimensions of our disclosure obligations, which will be addressed by the HSE legal advisor Eunice O'Raw and our Head of Policy Kate Mulkerrins. We also have a very useful two handed presentation from the perspective of the Forensic Science Laboratory and the Garda Síochána in relation to drugs prosecutions particularly those for section 15A of the Misuse of Drugs Acts and the problems that disputed valuations can cause. Finally I am pleased to say that we have the undisputed leading expert in the area of sentencing, Tom O'Malley who will address us on the most recent developments in this ever-changing and difficult area. We also have at least one topic which we would hope to address in the closed session. I hope that you will be able to take away something useful from this discussion and indeed contribute to it during the course of the morning.

Finally particularly in my first year as Director I want to pay tribute to the various groups many of whom are here today who contribute to the operation of an effective prosecution service. I am in the happy position given my previous roles of knowing the vast majority of you all and the professionalism and excellence of service which you provide on my behalf. I want to thank the very dedicated staff in my Office, the State Solicitors around the country and the many members of the Bar who contribute towards the provision of a prosecution service on behalf of the People of Ireland. I appreciate that a high level of service has been maintained notwithstanding the various cuts to salaries and fees which have been imposed, most recently on members of the Bar last October. I thank you all most sincerely for your efforts.

In this context I also want to acknowledge the work of the many investigative agencies, the Garda Síochána, and all the other agencies with whom we liaise on a daily basis. I very much appreciate the good working relationships which have been developed over the years and I am glad that so many representatives of those agencies are here today.

I have mentioned some new appointments within the Office and I want to conclude by welcoming those who are at this conference for the first time in new roles whether as prosecuting counsel or as State Solicitors. During the year two new State Solicitors were appointed: John Hughes in Co. Offaly and Gerard O'Brien in North Tipperary. During the year also James Houlihan retired as State Solicitor for Co. Offaly and I wish him well in his retirement.