

Claire Loftus, Director of Public Prosecutions
Opening Remarks at Annual National Prosecutors' Conference
19th October 2013

Attorney General, Members of the Judiciary, Garda Commissioner, fellow prosecutors, ladies and gentlemen it gives me great pleasure to welcome you to our 14th Annual National Prosecutors Conference.

This conference is being held much later in the year than usual due to the fact that Ireland's Presidency of the European Union was underway in the first six months of the year and this venue was fully booked with related events. However you might please note that rather than reverting to a May date we have decided to plan annual conferences in future for October.

In the 17 months or so since we last gathered there have been several developments affecting the Office and the criminal justice system generally. I mentioned some of these in the Annual Report of the Office for 2012 published last month. I just want to highlight a few in these remarks.

On a very practical level last year the Office acquired premises at the former Department of Defence building in Infirmary Road beside the Criminal Courts of Justice. I am pleased to say that we have acquired further accommodation on that site very recently which we hope will be available for occupation in a few months. While part of the complex continues to be occupied by Defence Force personnel I am now very optimistic that the plan to locate all of my staff in a single headquarters will come to fruition in the short term.

In the meantime the Solicitors Division headed by the Chief Prosecution Solicitor continues to be split over two locations which is not ideal. However I must emphasise the very tangible benefits which have already accrued to the Office as a result of being so close to the Criminal Courts of Justice. It has also resulted in greater convenience for everyone such as for example urgent meetings with counsel or investigators.

As I have said before there are other efficiencies and savings which can be realised when this project is complete. I would just highlight that in the last year we have further expanded the delegation of certain decision making to lawyers in the Solicitors Division and we will continue to keep this project under review so that further efficiencies can be achieved where appropriate.

Turning now to a matter which was discussed at the last conference. Many of you will recall Eunice O'Raw (Director of Legal Services of the HSE) and Kate Mulkerrins (Head of Policy in my Office) gave a joint presentation on the development of a protocol for disclosure between my Office and the Health Services Executive.

I am very pleased that in April of this year that process culminated in the signing of a Memorandum of Understanding (MOU) between the two organisations on disclosure.

This MOU provides for the disclosure of information in a consistent manner (with the informed consent of the complainant) in all such requests for information made by the Office to the HSE in relation to criminal prosecutions.

In addition to the HSE, efforts continue with a number of other agencies, both statutory and non-governmental organisations, with the aim of developing similar agreements designed to alleviate or even eliminate some of the most common difficulties which have arisen in the past in relation to disclosure of what is often very sensitive material held by third parties. These efforts have successfully resulted to date in MOUs with:

- Dublin Rape Crisis Centre (which was the first to sign up)
- One in Four
- Cork Sexual Violence Centre
- Towards Healing

I am happy to report that the operation of these MOUs has had an immediate effect and has reduced the delays and consequent trauma caused by last minute adjournments because the case is not ready to proceed.

Unfortunately, some organisations which provide services to victims have yet to enter into MOUs with the Office or engage in the process of negotiating such MOUs. This has caused difficulty in practice. Some of the organisations take the view that even where the victim consents to furnishing documentation as part of disclosure those who have provided counselling can decide that the material should not be handed over. While the material in all such cases has eventually been provided this has often been at the very last minute while the trial has been about to commence. This of course is very unsatisfactory for all concerned, especially the victim.

I therefore encourage those organisations who have taken this position notwithstanding the wishes of their own clients, to engage in a dialogue with my Office.

Another matter which I mentioned at the last conference was the question of pre-trial procedures and throughput of criminal cases generally. I am delighted that following consideration in committee it was recommended that practice directions be put in place for trials in the Circuit Court. These are currently operating on a pilot basis in Dublin and in two other Circuits namely the Midland and South Eastern Circuits.

The practice direction in Dublin is aimed at reducing the number of mention dates prior to an accused being arraigned or taking a trial date and I am pleased to report that the number of mention dates have been significantly reduced. Furthermore, pre-trial hearings ensure that certain pre-trial issues are addressed

well in advance of the trial. I can already see the benefits of these procedures in terms of pleas being entered at an earlier stage and not on the morning of trial. Furthermore trials that are not in a position to proceed (often for good reason) are being adjourned and getting a new trial date at an earlier stage (which obviously has consequences for a reduction in the costs of the case). However it will be during the current legal year that the full effects will be apparent. In this regard I am pleased that prosecution counsel have played their part in ensuring effective pre-trial hearings take place.

I acknowledge the extra sittings during the legal vacation on various circuits to deal with criminal business and also in the Court of Criminal Appeal. There are backlogs of course in the Court of Criminal Appeal and to an even more significant extent at Supreme Court level. I note the clear result of the recent referendum on a Court of Appeal and what I understand to be the intention to establish a permanent division of that court to deal with criminal appeals although the precise details of how the court will work are not yet published. This will undoubtedly relieve the situation insofar as appeals against conviction or sentence and prosecution applications for reviews of sentence are concerned. It has been reported that it would be hoped to have this Court of Appeal established by the beginning of the next legal year in October 2014. I would be anxious that in the interim a further backlog would not accumulate.

Of course one of the consequences of having the most welcome additional sittings this year is that the expenditure of my Office will also increase as more cases are processed. This coupled with a number of large trials will inevitably have an effect on our expenditure on professional fees, notwithstanding the series of cuts over the last number of years. When a permanent Court of Appeal for criminal business is established it will presumably have the same effect.

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 speak to us this morning. I am sure you will find all of them of great interest. We will first have Hans Nilsson from the Council of the European Union to talk about the extremely important matter of criminal law at EU level. It is easy to forget how influential EU Directives have become on the way we do our business as criminal practitioners. I think that there is a risk of focussing on the domestic situation and not taking sufficient notice of what is going on at European level.

I therefore thought it would be useful for Hans Nilsson to give us an overview. In his position he is intimately familiar with the discussions and background on all of these initiatives. As you will be aware pursuant to protocol 21 Ireland (along with the UK) has the right to elect to opt in to such measures in the criminal law sphere. One such draft Directive which is under consideration is that aimed at protecting the financial interests of the European Union (PIF). The Government has decided to opt in to the general approach agreed in June this year. Allied to that is a draft Regulation on the possibility of a European Public Prosecutor to

deal with "PIF" offences. Hans Nilsson will mention others. I should say that it will ultimately be a matter for the Minister for Justice and the Government whether Ireland opts in to each individual measure.

I would just flag one development in the European sphere since the last conference and that is the finalisation of the Victims Directive.

The Victims Directive (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime came into force on 15 November 2012. Ireland has 3 years from this date (November 2015) to transpose the Directive. I mentioned this expected development at last year's conference.

The most important of these 'rights' from the perspective of the future work of the Office is the requirement, on request, to provide victims with reasons for a decision not to prosecute. As most of you know, the Office has piloted such a scheme in relation to cases involving a fatality since October 2008. The most significant implication of this Directive for the work of my Office is that victims will be given the right to receive reasons for decisions not to prosecute in most cases, subject to certain limited exceptions. The right to receive reasons will apply in a range of offences from assault, robberies, burglaries, harassment, right through to very serious offences of rape, child sexual abuse and murder.

Article 6 deals with the right of victims to receive information about their case including where a decision is made not to prosecute. *Inter alia* it requires that this information shall include "reasons or a brief summary of reasons" for the decision. Article 11 provides for a right for "at least the victims of serious crimes" to a review of a decision not to prosecute. They must receive "sufficient information to decide whether to request a review of any decision not to prosecute upon request". Of course in this jurisdiction victims of crime already have a right to seek a review of a decision by the Office not to prosecute. We will carry out such a review where possible.

We have already commenced work on examining the resource and other implications for the Office and the prosecution of crime generally of the Victims Directive. In that regard it should be noted that a great many prosecution decisions are in fact made by the Garda Síochána without reference to the Office, under my delegated authority.

I would just briefly mention "Guidelines for Making a Victim Impact Statement" , a publication which was developed by a working group comprising of staff from the Victims of Crime Office of the Dept. Of Justice, the Garda Síochána and this Office and launched on 5th July this year. The leaflet is in Q & A format and answers, in plain language, the questions most often asked by victims who are asked to make a victim impact statement. The Guidelines have also been endorsed by the Judiciary and the Court Service. A copy is included in your pack.

As to the other speakers on the programme I am very pleased that Dr. Maureen Smyth of the Forensic Science Laboratory is with us.

The Criminal Justice (Forensic Evidence and DNA Database) Bill was published by the Minister for Justice on 11th September 2013.

The purpose of the Bill is to replace the existing statutory provisions (repealing the Criminal Justice (Forensic Evidence) Act 1990) and the common law power to take samples from a suspect in custody with a new statutory scheme. It also involves the establishment and operation of a DNA Database system.

It is therefore very timely that we have Dr. Maureen Smyth to address us.

After the coffee break I will be delighted to welcome the Director of Public Prosecutions for Northern Ireland, Barra McGrory, QC. And finally we will conclude with the State Pathologist Dr. Marie Cassidy.

Before I conclude I want to welcome those who are at this conference for the first time in new roles whether as prosecuting counsel or as State Solicitors. Since the last conference two new State Solicitors were appointed Sharon Murphy in North and West Kildare and very recently Jeremiah Healy was selected for Cork North East. This latter appointment will follow Frank Nyhan's appointment as the next State Solicitor for Cork City.

The vacancy in Cork City arises as a result of Barry Galvin stepping down later this year as State Solicitor after 30 years of service. I just want to take this opportunity in the presence of his colleagues to pay tribute to the enormous service he has given to three DPPs on behalf of the People of Ireland in the busiest centre for criminal business outside Dublin. My very sincere thanks go also to Edward Hanlon Solicitor who has been working closely with Barry on prosecution work for many years and indeed acted as State Solicitor while Barry was with the Criminal Assets Bureau. As many of you will know Barry was the first Bureau Legal Officer appointed to the Criminal Assets Bureau at its inception in 1996. I also want to express my thanks to the other staff in Barry's office who have worked tirelessly on behalf of the prosecution during his tenure.

There are many things that one could say about Barry but I would just briefly highlight the following: as a lawyer he has shown a great loyalty and commitment to public service in various guises; he brings energy to everything he does; and no matter how combative he is he never loses his good humour or his ability to part on good terms. I am quite sure that Barry has no intention of taking his foot off the accelerator just because he is retiring as State Solicitor. I wish him every success in the future.

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While Barry will undoubtedly be a very hard act to follow, I am delighted that as I have mentioned the very experienced State Solicitor for Cork North East Frank Nyhan will succeed him.

I would also like to take this opportunity to note the passing of a former Chief State Solicitor Louis Dockery earlier this year. Louis Dockery served as Chief State Solicitor from 1978 to 1993 and thus acted as the DPP's solicitor as well as being solicitor to the Attorney General. While Louis had just retired before I joined the Chief State Solicitors' Office there are many people in the room including the first DPP Eamonn Barnes who would have worked with him and remember him well. On behalf of the DPP's Office I want to express appreciation for his public service. May he rest in peace.

Finally I want as ever to pay tribute to the various groups who contribute to the operation of an effective prosecution service. 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 am constantly struck by the very high level of service that is delivered on a daily basis by you all.