

Members of the Judiciary, fellow prosecutors, ladies and gentlemen, it gives me great pleasure to welcome you to our 16th Annual National Prosecutors Conference.

In my remarks this morning I want to note two very important recent changes which in different ways have had a major impact on the criminal justice system. I also want to talk briefly about the Victims Directive which will be discussed in detail at our conference today.

I spoke at last year's conference about the Court of Appeal on the eve of its establishment. I pledged my full support to the operation of the Court and indicated it would involve a lot more work both for prosecuting barristers and DPP staff. I expressed the view, shared by others, that a dedicated Court of Appeal with a fixed panel of judges would provide greater consistency both within the area of sentencing but also more generally in the development of the criminal law across a broad range of areas.

As you know the Court first sat in November 2014 and by the end of the year 118 criminal appeal cases had been processed by the Court. This very welcome start by the Court of Appeal continued into this year with the result that up until the end of the legal year in July 280 criminal appeal cases had been heard. The Court has accordingly made considerable inroads on the backlog in criminal appeals and I welcome this progress.

I want to thank my own staff in the Court of Appeal section and all prosecuting barristers for rising to the challenge of a very intensive period of cases being listed and heard. There can be no doubt that the cooperation of all parties was essential to ensure that very challenging timelines were met and such an enormous number of cases was disposed of in the Court's first eight months.

As to increased consistency in sentencing and other areas of criminal law it is probably too early to make definitive comment. However there have been some very important judgments dealing with aspects of sentencing in specific offence categories such as Section 15A Misuse of Drugs Acts which I think will already have proved instructive for trial judges.

Supreme Court Judgment in *DPP v JC*

The other major development that occurred during the year that I want to mention is the Supreme Court ruling in April in the case of *DPP v JC*.

In that case the Supreme Court by a majority of 4 to 3 overruled its decision in the *People v Kenny* [1990]. *Kenny* had prescribed a near absolute exclusionary rule for unconstitutionally obtained evidence. In *JC* the Supreme Court formulated a new test to be applied to the inclusion or exclusion of illegally obtained evidence, including evidence obtained in violation of constitutional rights.

Prior to that judgement it is fair to say that we had the strictest exclusionary rule on the admissibility of evidence in the common law world. Change had previously been recommended by the majority of the Rebalancing Criminal Law Review Group in 2007, which felt that it was "too strictly calibrated". As the review group put it, *Kenny* qualified the *actions* of the Garda rather than his *state of mind* in relation to the lawfulness of his actions.

What is crucial in the very detailed test formulated by the Supreme Court in *JC* is that evidence which is taken in deliberate and conscious violation of constitutional rights should be excluded save in those exceptional circumstances considered in the existing jurisprudence. However the court has held that in this context *deliberate* and *conscious* refers to the *knowledge* of the unconstitutionality of the taking of the relevant evidence rather than applying it to the *acts* concerned. The test goes further in stating that this assessment requires an analysis of the conduct and state of mind not only of the individual who gathered the evidence but also any other senior official or officials who may have been involved either in the particular decision or such decisions generally, or in setting relevant policies.

It is therefore important to note McMenamin J.'s observation that: "The bar to be set by the majority of judgements herein is significantly higher than that to be found elsewhere in the common law world. It is in no way inconsistent with the ECHR... It redresses the balance so as to encompass community interests while ensuring that egregious breaches of a suspect's rights and police misconduct are checked." (Paragraph 78)

It is worth remembering that pursuant to *Kenny* there are many cases which were submitted to the DPP's Office which were the subject of a decision not to prosecute because of the almost inevitable inadmissibility of crucial evidence due to that very strict exclusionary rule. Many cases fell at the first hurdle.

O'Donnell J says in *JC*: "A criminal or civil trial is the administration of justice. A central function of the administration of justice is fact finding, and truth finding. Anything that detracts from the courts' capacity to find out what occurred in fact, detracts from the truth finding function of the administration of justice." (Paragraph 97)

Ultimately one of the important principles involved, although not absolute, is as identified by Clarke J and he places a high constitutional value on it. This is the principle, and I am paraphrasing here, that society and victims of crime are entitled to have an assessment carried out at a criminal trial of all relevant evidence (paragraph 4.8). It is apposite I think to highlight that, given that the other major development which I want to discuss today concerns victims of crime.

It remains to be seen whether rates of prosecution appreciably increase as a result of *JC*. What then happens, when the issues are argued in individual cases in court and the new test is applied to a range of evidence by the trial judge, also remains to be seen. However the importance of this development cannot be underestimated and it will be for prosecutors, whether taking prosecutorial decisions or presenting cases in a trial court, to have regard to the law as laid down in *DPP v JC*.

Victims' Directive

I want to turn now to the very important and imminent change arising from the implementation of the EU Directive on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime. This directive has an implementation deadline of 16th November 2015. It is due to be underpinned by legislation, the Heads of Bill for which were published in July, giving rights to victims engaging with the criminal justice system. It is not clear when that legislation will be enacted.

Meanwhile the EU Directive will, in accordance with EU law, have direct effect on November 16th next. It is an important step, establishing rights to assist victims who have suffered physically, emotionally and financially as a result of a crime. Regardless of whether the Criminal Justice (Victims of Crime) Bill 2015 comes into effect by that date I wish to make clear that my Office will, upon request by the victim, give a summary of the reasons for decisions not to prosecute, in all our decisions made on or after 16th November 2015, subject to some limited exceptions.. Up until now we have in fact provided reasons for decisions not to prosecute in fatal cases where the death occurred on or after 22nd October 2008.

If following receipt of the reasons for the decision not to prosecute a victim remains dissatisfied with the decision the victim can request that the decision is reviewed. It is important to highlight that a victim of crime or a family member of a deceased victim has had a long standing right to seek a review of the decision not to prosecute. This is in contrast to some other EU jurisdictions. So while the EU Directive establishes a right of review for victims across the EU, this right of review has been available to victims in Ireland for many years. As applies in the current practice this review will be conducted by a separate lawyer to the original decision maker.

I am delighted that in the first session this morning Sunniva McDonagh SC will speak to us in detail on the implications of the EU Directive for prosecutors in particular.

I have established a new unit, the Communications and Victims Liaison Unit, to prepare for and address our obligations under the EU Directive and the forthcoming Bill.

This unit will write directly to victims who request reasons or seek a review of a decision made on or after 16th November not to prosecute. It is staffed by two lawyers at present and supported by the existing Office Communications Unit which has been allocated additional staff for this purpose. This unit builds on the work of the Office Communications Unit over many years of providing telephone assistance to, and publishing information for, victims, including extensively on our website.

The Directive and published Bill also provide for greater information and procedural rights during a criminal trial. I do not propose to go into these now. However I would just say now that lawyers within my Office and State Solicitors will continue to offer pre-trial meetings to explain the trial process and to introduce themselves to victims and deceased victims' families. Hopefully this alleviates a little of the stress caused by attending court or giving evidence. The existing restrictions on what can be discussed in such pre-trial meetings will continue. Prosecutors and solicitors can inform victims of what to expect during the process but cannot discuss the evidence in the case.

I want to note the very valuable work that is currently done by barristers, State Solicitors and my staff in these meetings. From a historic situation where it was taboo to speak to any witness before a trial for various reasons, including a fear of being accused of witness coaching, individual lawyers have become exceptionally skilled at sensitively handling encounters with victims and families, and explaining many legal concepts to them.

Legal constraints do not of course relieve prosecutors of their obligation to treat all victims with respect or to clearly communicate to victims about what to expect during the trial. I want to emphasise the need for prosecutors to communicate clearly and sensitively with victims and their families. All frontline staff including State Solicitors who meet with victims, receive training on their obligations. Training is one of the matters dealt with in the Victims' Directive and there is an obligation on all parties within the criminal justice system to undergo training in this area. By devoting half of this morning's conference to aspects of the Victims' Directive I hope we will all be better informed of our obligations.

The giving of reasons for decisions not to prosecute obviously constitutes a major new departure for the Office and we will be publishing information advising people on how they can seek reasons in advance of the 16th November deadline. The victims' page on our website will be a repository of extensive information which I believe will be of assistance to victims and their families.

I am also delighted that Assistant Commissioner John Twomey is here to speak on behalf of An Garda Síochána as to the implications of the Victims' Directive for their functions. The Directive and indeed the draft Bill does not change the very important role played by

prosecuting Gardaí and Family Liaison Officers in keeping victims informed. Rather the new scheme seeks to build on their experience by creating a roadmap for prosecuting Gardaí, Family Liaison Officers and the newly created Victims' Services Offices.

It remains our obligation to ensure that the Garda Síochána are advised in a timely manner of any information that needs to be communicated to victims and their families. My Office will continue to use the Garda information networks to ensure that victims are told of significant developments, court dates and outcomes.

The Victims' Directive seeks to give formal rights and information to victims who through unfortunate and often tragic events have to interface with the criminal justice system where a prosecution is considered or brought on behalf of the People of Ireland.

I believe that it has the potential to encourage a compassionate and coherent approach to a wide range of issues, vindicating the rights of victims and their families in a criminal justice system that is fair and effective for all. Most importantly it will I hope go a long way to alleviate the difficulties that many victims encounter as they, through no fault of their own, navigate their way through our criminal justice system.

One person who did a lot to highlight the position of victims and their families during his tenure on the bench was of course the late Judge Paul Carney whose funeral took place last week. As President of the Central Criminal Court Judge Carney regularly attended this conference as an observer. He retired last April.

Judge Carney's support of various victim organisations including those assisting families of deceased victims gave these groups great profile and validation. He was patron of the Victims Support at Court organisation following his retirement. Judge Carney's many other achievements as a lawyer and a judge have been highlighted and documented again since his untimely death. I don't propose to repeat them here. I do however want to pay tribute to his contribution in the area of victim support and to formally extend on behalf of my Office our sincerest sympathies to his family. May he rest in peace.

I also want to announce the departure of Peter Mullan from the role of Chief Prosecution Solicitor. Peter steps down this weekend after more than three years in the post. I want to thank Peter on my own behalf and on behalf of the Office for his work over the last three years. He proved to be a very valuable addition to the Office with great energy and ideas, and above all was a very good colleague. I wish him every success in his new role in the Department of Justice and Equality. I am very grateful to Liam Mulholland who as of next Monday will be Acting Chief Prosecution Solicitor pending completion of a competition for Peter's successor.

As to the remainder of the programme I am delighted to have speakers Brendan Grehan SC who will speak about the law on provocation, and Dr. Tom Hannigan from Forensic Science Ireland who will talk about non DNA science.

We all appreciate the four speakers generously giving of their time and expertise to address the conference today.

I want to thank everyone who has contributed to the prosecution service be they the staff of the DPP's Office, the State Solicitors or counsel, during what was another very busy year.

Finally I thank Orlagh Flood, Lisa Williamson, Jason Coyle, Derek Mangan and Lesley Cobb of my Office for their work in organising this conference.

Thank you for your attention.