

**REPORT OF THE PUBLIC**  
**PROSECUTION SYSTEM STUDY GROUP**

**CHAPTER 1**

**INTRODUCTION**

1.1 The Public Prosecution System Study Group (PPSSG) was appointed by the government in October 1998 under the auspices of the Office of the Attorney General and was addressed by the Attorney, Mr David Byrne SC, at its first meeting on 2 November 1998. The Attorney outlined the background to the government's decision to establish the group.

**Terms of reference**

1.2 The terms of reference of the Study Group are:

1. To review the legal and organisational arrangements for the public prosecution system and, in particular, to consider
  - o whether there is a continuing role for gardaí to prosecute as well as to investigate crime;
  - o whether all prosecutions should be conducted by lawyers;
  - o whether, and in what circumstances, prosecutions should be conducted by
    - a. barristers or solicitors employed by the Director of Public Prosecutions as prosecutors,
    - b. independent practitioners at the Bar,
    - c. independent solicitors who have a contractual relationship with the Director of Public Prosecutions, the Attorney General or his Office (including the Office of the Chief State Solicitor),
    - d. solicitors employed by the Attorney General or his Office,
    - e. members of the Garda Síochána;
  - o whether there should be any changes in the functions of the Criminal Trials Section of the Chief State Solicitor's Office and local State Solicitor's Office, local State Solicitors and the Director of Public Prosecutions and his Office.
1. To consider whether aspects of the public prosecution system in comparable jurisdictions could, with advantage, be adopted here.
2. To identify, and cost in full, the resources required for any changes proposed and to ascertain the views of all relevant parties and agencies involved.

1.3 The Study Group's terms of reference - 'to review the legal and organisational arrangements for the public prosecution system' - are very wide and, interpreted strictly, could cover the entire range of court and office organisational arrangements, structures, procedures and practices for prosecution. In view, however, of the considerable work done in recent years by other groups, including especially the Committee on Court Practice and Procedures, the Grant Thornton study of the organisation of the Office of the Director of Public Prosecutions, the Gleeson Group on the Law Offices of the State and the other reports listed in Appendix 2, the Group decided to concentrate on the aspects of the system we were specifically enjoined to consider and other issues flowing directly from them. Among the issues which, on that basis, we did not explore in any detail was the question of whether the probative (or adversarial) system used in Ireland and some other jurisdictions might with advantage be replaced by the inquisitorial system found in most European countries. We felt that this was an issue much wider than the prosecution system - embracing, for instance, the entire trial process and possibly raising constitutional questions - and that we could not do justice to an examination of it by considering it as part of this review.

1.4 Another issue which the Study Group did not explore is the question of whether the Director of Public Prosecutions might issue prosecutorial guidelines to assist his staff and ensure consistency in decision making and whether those guidelines should be made public. While the group recognised the importance and relevance of that question, it did not consider it appropriate for examination in the current exercise.

1.5 The Study Group considered whether, in the context of its terms of reference, any issues arose from the matter of the Director of Public Prosecutions v. Philip Sheedy which required to be addressed. We concluded that the issues in that case centred mainly on the management of the courts system and, as such, fell within the areas of competence of bodies other than the group. The Chief State Solicitor has introduced certain modifications to the practice in his Office as a result of the case.

1.6 The immediate context of the Study Group's work is provided by the report in June 1997 of the Review Group on the Law Offices of the State, under the chairmanship of the then Attorney General, Mr Dermot Gleeson SC. The Review Group gave some consideration to the question of whether there should be a unified prosecution service instead of the present arrangements. It concluded that the subject required more study than the Review Group could devote to it and, accordingly, recommended that a group should be established to study the issue and related matters.

### **Members of the Study Group**

1.7 The members of the Study Group were:  
Dermot Nally, former Secretary to the Government (Chairman)  
James Hamilton, Director General, Office of the Attorney General  
Michael Buckley, Chief State Solicitor  
Simon O'Leary, Deputy Director of Public Prosecutions  
Frances Cooke, Revenue Solicitor

Patrick Howard, Principal, Department of Finance  
James Martin, Principal, Department of Justice, Equality and Law Reform  
Noel Conroy, Deputy Commissioner, An Garda Síochána  
Peter Jones, State Solicitors' Association  
Peter Charleton SC  
Finbarr McAuley, University College, Dublin  
Judge Kevin Haugh SC, Judge of the Circuit Court  
Denis McCullough SC, Bar Council  
Judge Michael Reilly, Judge of the District Court  
Secretariat (provided by the Institute of Public Administration):  
Tony McNamara  
Desmond Kelly  
Margaret Huber.

### **Submissions**

1.8 In response to a public advertisement, the group received submissions from seventeen organisations and individuals (see Appendix 1).

1.9 We invited those organisations which had submitted substantial papers and which are closely linked with the operation of the prosecution system to make oral presentations. The following organisations appeared before the group for that purpose: IMPACT, the Association of Garda Sergeants and Inspectors, the Garda Representative Association, the Association of Garda Chief Superintendents, the Law Society and the Bar Council. Mr Eamon Barnes, Director of Public Prosecutions, made a wide-ranging presentation to the group in February 1999, elaborating in particular on the views he had expressed in the Strategy Statement of his Office.

### **Meetings**

1.10 In all, the Study Group met on nine occasions. The chairman, members and secretariat of the group visited the UK for consultations with the Home Office on the operation of the Crown Prosecution Service since its establishment in England and Wales more than ten years ago, with particular reference to the operation of the system in Wales, whose legal system and population are similar to ours. Similar visits were made to the Scottish Crown Office in Edinburgh and the Office of the Regional Procurator Fiscal in Glasgow, as well as to the Ministry of Justice in Denmark. Those visits yielded valuable insights. In addition, we had a useful meeting with members of the Criminal Justice Review Group established in Northern Ireland under the terms of the Good Friday Agreement. The Study Group also studied authoritative accounts, published by the Council of Europe and the European Institute for Crime Prevention and Control, of the systems in use in a variety of European countries. We also reviewed some of the literature relating to the systems in the United States and in Canada. In this aspect of our work we were greatly assisted by the Department of Justice, Equality and Law Reform who researched documentation for us. We were also ably assisted by the Department of Foreign Affairs, whose officers assembled information for us from other jurisdictions and

facilitated our meetings with the relevant experts in the countries we visited.

1.11 The Study Group also had the benefit of a number of reports from groups which had, in the previous few years, studied aspects of the public prosecution system in Ireland. A full list of the documents consulted by the group is given in Appendix 2.

1.12 The group was deeply indebted to all who helped us during our visits abroad so generously with their time and expertise and to all the organisations and individuals who made submissions. They contributed enormously to our work with the information and insights which they gave so freely and generously.

13. The special thanks of the Study Group are due to the secretariat provided by the Institute of Public Administration, who applied themselves to the organisation of our work with diligence, skill and considerable background knowledge of the criminal justice system. Tony McNamara is to be specially commended for his commitment, patience and capacity to keep our operations moving; Des Kelly showed remarkable drafting and conceptual abilities; and Margaret Huber helped us with her considerable contribution of hard work, good humour and overall grace and helpfulness. We were privileged to have their assistance.

## **CHAPTER 2**

### **PRESENT ARRANGEMENTS FOR PUBLIC PROSECUTIONS**

#### 2.1 Constitutional and legal position

2.1.1 Article 30.3 of the Constitution states:

*All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose.*

2.1.2 The Prosecution of Offences Act, 1974, created the Office of Director of Public Prosecutions. Section 3 of that Act provides that the Director should thenceforth ‘perform all the functions capable of being performed in relation to criminal matters . . . by the Attorney General . . .’ (In the Fisheries (Amendment) Act, 1978, the Oireachtas amended the Prosecution of Offences Act to the effect that the Attorney General could prosecute in international fishery cases. In the interest of clarity of presentation, however, that exception is ignored in the descriptions in this report of the formal and practical position relating to prosecutions.)

2.1.3 Article 38.5 of the Constitution provides that (except for minor offences and offences tried in special courts):

*. . . no person shall be tried on any criminal charge without a jury.*

2.1.4 The net practical effect of the constitutional and statutory provisions cited is that only the Director of Public Prosecutions prosecutes on indictment.

2.1.5 Article 38.2 of the Constitution provides that:

*Minor offences may be tried by courts of summary jurisdiction.*

The District Court is the only court of summary jurisdiction. Although appeals may be brought from decisions of the District Court to higher courts, summary prosecutions start and are concluded there. A minor offence is one carrying a penalty of imprisonment not exceeding twelve months and/or a fine not exceeding £1,500 to £2,000 (at present – the figure changes with inflation).

2.1.6 There are two types of offence: indictable offences and summary offences. In general terms, indictable offences are the more serious offences and are triable by a judge and jury in the Central and Circuit Criminal Courts. Summary offences are tried by a judge only in the District Court.

2.1.7 For the purposes of this report, summary offences are never tried on indictment and certain indictable offences such as murder cannot be tried summarily. In between is a whole range of indictable offences which may be tried summarily or by jury at the election of the prosecution, the accused or the judge, depending on the offence. The law governing the right to elect for summary trial or trial on indictment is complex and it is not necessary to set it out for the purposes of this report.

2.1.8 Any individual can commence any prosecution, indictable or summary, in his or her own name as a common informer. This is a common-law power or right which predates the Constitution but has been carried through by it. Whoever commences a prosecution, only the DPP can continue it on indictment under the laws set out above (*The State (Ennis) v. Farrell* [1966] IR107). The DPP has no power to stop a summary prosecution or the institution of proceedings by a common informer for an indictable prosecution in the District Court.

2.1.9 Whereas the gardaí share with everyone else the right to prosecute in their own name as common informers, they alone have the right to commence a prosecution in the name of the DPP without receiving his directions in the particular case (*DPP v. Roddy* [1977] IR 177). The DPP can discontinue any prosecution brought in his name (though not a prosecution brought as a common informer) by the gardaí at any stage.

2.1.10 Order 6, Rule 1(e) of the District Court Rules, 1997 states:

*The following persons shall be entitled to appear and address the court and conduct proceedings:*

*in proceedings at the suit of the Director of Public Prosecutions in respect of an offence, the said Director or any member of the Garda Síochána or other person appearing on behalf of or prosecuting in the name of the Director.*

Gardaí who prosecute cases in the name of the DPP do so under a general authorisation given in 1975. A copy of that authorisation is attached as Appendix 3.

2.1.11 The Criminal Justice (Administration) Act, 1924 provides, in Section 9(2): *Save where a criminal prosecution in a court of summary jurisdiction is prosecuted by a Minister, Department of State or person (official or unofficial) authorised in that behalf by the law for the time being in force, all prosecutions in any court of summary jurisdiction shall be prosecuted at the suit of the Attorney General of Saorstát Éireann.*

That sub-section confirms what is set out above. Ministers are frequently given power to prosecute summarily in legislation affecting their departments. The DPP is always available as a summary prosecutor of last resort in cases where he has specifically sanctioned the prosecution and in those categories of case where he has permitted the gardaí to commence a prosecution in his name.

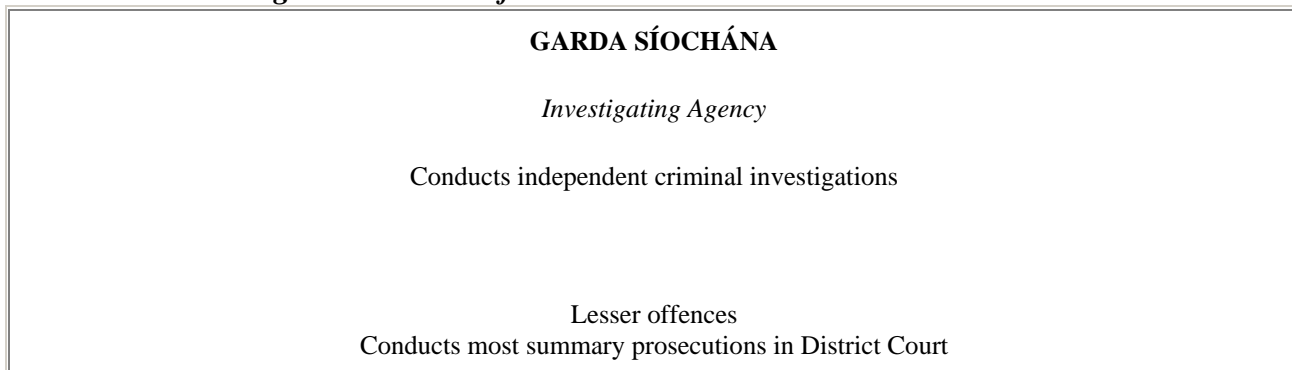
## 2.2 The system in practice

2.2.1 Figure 1, reproduced from Appendix 2 to the Annual Report (1998) of the Office of the Director of Public Prosecutions, illustrates in schematic form how the various institutions involved contribute to the operation of the prosecution process. It is clear from that illustration that many of the institutions of the criminal justice system are not involved substantially, or at all, in the prosecution process. The following paragraphs aim to describe in more detail how the prosecution process works and what part the main institutions of the criminal justice system play in it.

### **The Minister for Justice, Equality and Law Reform**

2.2.2 The Minister for Justice, Equality and Law Reform, with his department, has general responsibility for the criminal justice system, including policing. The minister exercises policy and financial controls over the Garda Síochána and is accountable to the Dáil for their performance. The minister is not involved in operational police matters (the Garda Síochána are independent in that regard) and has no role in the prosecution of criminal offences.

***Figure 1: Outline of the Criminal Prosecution Process***



More serious offences  
Prepares and submits files to CSSO/State Solicitor

**STATE SOLICITOR SERVICE**  
*1. Chief State Solicitor's Office (CSSO) - Dublin*  
*2. County State Solicitors - Outside Dublin*  
Conducts certain summary prosecutions in District Court

Submits Garda files to DPP for directions re prosecution

Prepares cases for court

**OFFICE OF THE DPP**  
*Examines files received from CSSO/State Solicitors*

Directs initiation or continuance of a prosecution

Nominates barristers to prosecute cases on indictment  
(before Circuit, Central and Special Criminal Courts)

Provides ongoing instruction and legal advice to CSSO/State Solicitors until case at hearing is included

Advises Garda Síochána and gives directions on preferral of charges

**STATE SOLICITOR SERVICE**  
*Implements directions from DPP*  
Attends preliminary hearings in District Court

<p>Prepares Book of Evidence in indictment cases</p> <p>Briefs and assists nominated barrister conducting prosecution</p> <p>Attends trial and reports outcome to DPP</p>
<p style="text-align: center;"><b>PROSECUTING COUNSEL</b></p> <p>Appear in court and conduct prosecutions on indictment on behalf of the DPP</p>
<p style="text-align: center;"><b>COURTS</b></p> <p>Case at hearing (arraignment, trial)</p> <p>Case outcome (conviction/acquittal)</p> <p>Sentencing</p>

### **The Attorney General**

2.2.3 The Attorney General is appointed by the President on the nomination of the Taoiseach and is, under the Constitution, ‘the adviser of the Government on matters of Law and Legal opinion’. As has been set out above, under the Prosecution of Offences Act, 1974, the functions of the Attorney General in relation to prosecutions have, in general, passed to the Director of Public Prosecutions. Section 2(6) of the Act provides that ‘the Attorney General and the Director [of Public Prosecutions] shall consult together from time to time in relation to matters pertaining to the functions of the Director’. In practice, while there is no fixed periodicity for such consultations and the statute is rarely formally invoked, they meet, as occasion requires, to discuss matters of mutual concern. In addition, there are numerous meetings between the senior officials of the two offices. The Attorney General’s functions in relation to the Chief State Solicitor and state solicitors are referred to in paragraphs 2.2.12 to 2.2.14. The Office of the Attorney General is headed by a director-general, who is a civil servant of the government, of secretary general rank, and has 73 other staff, of whom 37 are lawyers. The estimates provision for the Attorney General’s Office for 1999 is £5.75million, of which only a



negligible proportion relates to prosecution work. (Those figures do not include the Chief State Solicitor's Office, though this is part of the Attorney General's Office, because the figures for the CSSO are summarised separately at paragraph 2.2.13.)

## **The Garda Síochána**

2.2.4 The Garda Síochána are responsible for the investigation of offences other than revenue and certain other offences. Neither the DPP nor the judiciary has any role in investigation. In cases where the gardaí have arrested a suspect, a decision whether or not to prosecute is taken in the vast majority of cases by the gardaí, sometimes after consultation with the DPP.

2.2.5 The gardaí are obliged by law to refer certain types of case to the DPP, including prosecutions in the Special Criminal Court, explosives, official secrets, incest and marital rape cases. They are obliged by direction of the DPP (but not by law) also to refer all murders, fatal road traffic cases and sexual offences to the DPP before charges are brought. No case can go before a jury without a file going to the DPP. In principle, therefore, a file is sent to the DPP's Office by the gardaí on all indictable offences where a decision has to be taken whether to prosecute summarily or on indictment. However, to avoid excessive submission of files, the DPP has given the gardaí 'blanket' election or consent for summary trial in many cases, subject to the right of the presiding judge to refuse jurisdiction in those cases. However, the gardaí are directed to refer any such file to the DPP if they consider trial on indictment warranted for any reason and wish the Director to revoke his election or consent for summary trial in a particular case. The gardaí are free to refer any prosecution to the DPP for legal advice.

2.2.6 The gardaí prosecute the great majority of summary offences and indictable offences tried summarily without reference to the DPP's Office, but in the name of the DPP. In total, about 500,000 cases are dealt with each year in the District Courts. Table 1 in paragraph 4.5.1 gives particulars of cases prosecuted by garda superintendents and inspectors in courts outside the Dublin Metropolitan Area. The basis on which statistics are kept does not enable one to track the court outcomes of non-indictable offence proceedings commenced in the thirteen District Courts in the Dublin region, nor is it possible to assess separately the outcomes of cases presented by the Garda Síochána and those presented by lawyers. Appendix 4, however, gives some detail, based on a sample consisting of all non-indictable cases tried in the Dublin District Courts during one-week period in 1999.

2.2.7 It is important to recognise the supervisory role played by the more senior ranks in the force. Thus, in very minor cases, the garda prosecutes without seeking higher authority, although normally the sergeant in charge will have looked at the case and allotted a garda to prosecute it. Where civilian witnesses have been involved, in the provinces the superintendent (or in his absence the inspector acting for him) would take the decision to prosecute. In Dublin, that role is played by the inspector or a sergeant acting for him. In more serious cases, the decision of the DPP is sought.

2.2.8 While the vast majority of summary cases – consisting of such minor offences as simple traffic infringements – are presented both in Dublin and in the country by the detecting member of the Garda Síochána, an extensive range of summary cases outside the Dublin Metropolitan Area are presented almost exclusively by garda superintendents or inspectors. In the Dublin area, some 70 to 80 per cent of cases are prosecuted by the arresting officer, usually of garda or sergeant rank. The remainder of those cases are presented by solicitors from the Chief State Solicitor’s Office, either because the gardaí have specifically requested this or because the file has been referred to the DPP for directions.

2.2.9 The Steering Group on the Efficiency and Effectiveness of the Garda Síochána (June 1997) recommended that a system be introduced under which evidence of charge and caution could be presented in court by an officer of the Garda Síochána of rank not lower than sergeant, partly to reduce the time spent in court by gardaí. This procedure obviates the necessity for the arresting officer to appear in court in person to give that evidence and, where an accused pleads guilty to a minor charge, to give the facts of the case. It is being implemented on a phased basis under the ‘court presenter’ system introduced under Section 6 of the Criminal Justice (Miscellaneous Provisions) Act, 1997. The system has been introduced in seven District Courts in the Dublin Metropolitan Area and all District Courts outside that area. It has increased policing effectiveness and reduced the number and cost of gardaí in courts.

2.2.10 The Steering Group, in the same report, recommended that the government should clearly define the roles of the Garda Síochána and suggested an encapsulation of those roles, which included the following duties: ‘to detect and investigate crime’ and ‘to prosecute offenders’. That statement of the roles of the gardaí was accepted by the government as recently as 1997.

2.2.11 The Garda Síochána, headed by a commissioner, is accountable to the government through the Minister for Justice, Equality and Law Reform. There are more than 11,000 gardaí including 2 deputy commissioners, 10 assistant commissioners, 46 chief superintendents, 163 superintendents, 263 inspectors, 1,861 sergeants and 8,834 gardaí. The estimates provision in 1999 for the Garda Síochána is £596 million. It is difficult (for reasons indicated at paragraph 5.5.5) to calculate accurately the proportion of this figure which should be attributed to prosecution work. The Study Group is satisfied, however, that the amount is significantly less than £2 million.

### **The Office of the Director of Public Prosecutions**

2.2.12 The Office of Director of Public Prosecutions was established to insulate the prosecution system from extra-legal considerations. The Director is appointed by the government following a competitive interview by a statutory committee under the Prosecution of Offences Act, 1974. He is a civil servant of the state, of secretary general rank, and is statutorily independent in the performance of his duties. In cases brought before him – a small proportion of the total, but in principle the most significant or contentious cases – the Director decides whether a person should be prosecuted or not,

whether cases should be dealt with summarily or on indictment and whether decisions should be appealed or periodically reviewed, and he briefs and pays counsel. He is assisted by a deputy director and 33 other staff, of which a total of 15 (including the deputy) are lawyers. The Director or his professional officers do not appear in court themselves. They are represented in court by barristers retained and paid by the DPP, by state solicitors and by gardaí. The estimates provision for the Director's Office in 1999 is £8.519 million.

### **The Chief State Solicitor**

2.2.13 The Chief State Solicitor reports and acts as the solicitor to the Attorney General, providing a service in civil courts when a government department or other state authority is involved, handling state conveyancing and giving legal advice to departments. The Chief State Solicitor prosecutes cases initiated by ministers or government departments and acts as solicitor for the DPP and the gardaí in cases requiring a solicitor which they are prosecuting in the Dublin Metropolitan Area. The Chief State Solicitor's Office also acts on behalf of the DPP in many of the cases in the Dublin area in which directions have been given to the gardaí by the DPP, all cases involving a particular category of offence (such as drunken driving) and cases referred to it by the gardaí, as well as acting for the DPP in District Court appeals, the Special Criminal Court, Circuit Criminal Court trials, the Central Criminal Court, Court of Criminal Appeal and Supreme Court and Judicial Review in criminal cases. The Office prepares the book of evidence for prosecutions in Dublin.

2.2.14 Although the Chief State Solicitor handles prosecutions on behalf of the DPP, the latter has no function in relation to his appointment or the management of the Chief State Solicitor's Office. The Chief State Solicitor is a civil servant of the government, with the rank of secretary general, who is appointed by the Attorney General. His Office is part of the Attorney General's Office and consists of 218 staff, of whom 133 are lawyers or legal technicians. The estimates provision for the Chief State Solicitor's Office in 1999 is £20.998 million, of which £2.576 million is attributable to prosecution work.

### **The State Solicitors**

2.2.15 The state solicitors provide a solicitor service to the law officers of the state outside the Dublin area. There are thirty-two local state solicitors outside Dublin, with at least one solicitor for each county. State solicitors are appointed on contract (which covers staffing, accommodation and so forth) to the Attorney General. Since 1996, they have been appointed on ten-year contracts; appointments made before that date were until age 65. They are appointed by the Attorney from a list drawn up following a competitive interview of suitable applicants by a board consisting of the Secretary General of the Attorney General's Office, the Chief State Solicitor and the Deputy Director of Public Prosecutions. They handle civil litigation and other legal work on behalf of the Attorney General but the bulk of their work – some 80 per cent – is prosecution work for the DPP. The gardaí seek legal advice and assistance from these solicitors, particularly in the more difficult or complicated court cases. There is no direct line of command between the state

solicitors outside Dublin and the Office of the Director of Public Prosecutions, though they make submissions and report directly to the Office on individual cases. They are paid from the vote for the Chief State Solicitor's Office; the estimates provision for local state solicitors in 1999 is £1.903 million, of which £1.522 million is attributable to prosecution work.

### **The Office of the Revenue Solicitor**

2.2.16 The Office of the Revenue Solicitor provides legal services to the Revenue Commissioners. The Office also acts as solicitor to the DPP in revenue matters in the Dublin Metropolitan District. The Revenue Solicitor is a civil servant, with the rank of assistant secretary, who is appointed by the Minister for Finance following a recommendation from the Top Level Appointments Committee and is accountable to the Revenue Commissioners. The Office has 34 staff, including 26 lawyers or legal technicians.

2.2.17 As noted at 2.2.4 above, the Garda Síochána is not responsible for the investigation of revenue offences. Since 1996, to avoid duplication, revenue files are no longer referred to the gardaí but, once the offences have been detected and fully investigated by staff of the Revenue Commissioners, are referred directly to the DPP for a decision on prosecution.

2.2.18 About 25 per cent of the work of the Revenue Solicitor's Office is concerned with criminal prosecutions. All revenue prosecutions are taken in the name of the DPP. Revenue prosecutions in the Dublin Metropolitan District are presented by a solicitor from the Office of the Revenue Solicitor. Cases outside Dublin are referred by Revenue to the appropriate state solicitor for prosecution. The estimates provision for the Revenue Solicitor's Office for 1999 (including an apportionment of the overheads provided for in the total estimate for the Office of the Revenue Commissioners) is £1.78 million, of which some £445,000 is attributable to prosecution work.

### **The Courts**

2.2.19 The District and other Courts are, under the Constitution, independent in the discharge of their judicial functions. For the purposes of the administration of justice at District Court level, the country is divided into the Dublin metropolitan district and 22 provincial District Court districts, the latter being further divided into 246 District Court areas. In general, the District Court sits in each area outside Dublin from once every three months to about five times a week and in the Dublin metropolitan district every day. District Courts have limited and local jurisdiction and each is presided over by a District Court judge. There are 51 District Court judges at present. To be eligible for appointment, those aspiring to be District Court judges must be practising barristers or solicitors of not less than ten years' standing. They are appointed by the President on the advice of the government. The government, in turn, is advised by a Judicial Appointments Advisory Committee. There are 42 provincial District Court offices and a number of District Court offices in the Dublin metropolitan district, with a total of 322

staff. The estimates provision for the courts is not disaggregated to show amounts provided for the District Courts separately. In the interest of consistency in comparisons with other jurisdictions, the cost of the courts is not included in any estimate of the cost of the prosecution service in this report.

2.2.20 Two striking characteristics of the prosecution system to which we return in chapter 5 are the high volume of minor offences prosecuted through the District Courts and the relatively low cost of the prosecution service. Some 500,000 cases are tried every year in the District Courts, representing a much higher volume in relation to population than we found in other jurisdictions. Based on the estimates given in paragraphs 2.2.3, 2.2.11, 2.2.12, 2.2.14, 2.2.15 and 2.2.18 above, the cost of the prosecution service might be assessed at not more than £15 million, which is a small fraction of the cost of the systems about which we obtained detailed information.

## **CHAPTER 3 EXPERIENCE IN CERTAIN OTHER JURISDICTIONS**

### **3.1 Applicability of comparative information**

3.1.1 The Study Group was conscious of the need for care when considering whether, or to what extent, practice in other jurisdictions might suitably be applied to Irish conditions. It was clear to us – and the point was reinforced in those discussions which we had with experts from other jurisdictions – that national systems are the products of history, experience and evolution. Systems derive, over time, from local conditions and experience and are deeply rooted.

3.1.2 Further, while we had an opportunity to visit the Home Office in London, the Scottish Office, and the Ministry of Justice in Denmark, the bulk of our research necessarily (given the reasonable constraints of resources and time) consisted of a review of the literature on prosecution systems in a variety of countries. A review of documents can accurately convey the legal and organisational framework within which a prosecution service operates, but can often fail to reflect the nuances of how it works in practice. There can be a difference between what various actors in the state prosecution service do and what the literature says is done. We became aware in our work that systems adapt to cope with operational conditions. Often, it is the practical constraints which dominate the criminal justice system and determine the actual role played by each of the actors in that system.

3.1.3 More fundamentally, criminal justice systems have traditionally been categorised as either inquisitorial or probative (usually referred to as adversarial). Inquisitorial systems

demand that the state, often in the person of a judge, seek to establish the facts of the case, that is, to arrive at ‘the truth’. Adversarial systems, usually of English common law provenance, as in our system, are based on the concept of a requirement that the prosecution prove to the satisfaction of the judge or jury the guilt of the accused beyond reasonable doubt. The prosecution systems tend to reflect those differences.

3.1.4 The following paragraphs contain brief descriptions of the salient characteristics of a number of national jurisdictions insofar as they are germane to our study.

## 3.2 Prosecution systems in specific jurisdictions

### **England and Wales**

3.2.1 In England and Wales, the Crown Prosecution Service (CPS) was introduced in 1986. Before that date, the police had extensive power to initiate prosecutions. A number of factors led to the change to a Crown Prosecution Service. There was a good deal of concern about the uneven standards applied by the police in deciding to prosecute, a factor exacerbated by the existence of forty-two independent police forces. Some high-profile cases of serious misconduct of prosecutions by individual police forces were still a recent memory and there was a determination to subject police evidence to impartial scrutiny and to enable prosecutions to be discontinued on the basis of such scrutiny.

3.2.2 There was also unease at the scope which the system allowed for local influences to be brought to bear on prosecution decisions, especially as the majority of cases were tried by lay magistrates (albeit with the assistance of professional clerks), thus eliminating the safeguard for the accused which professional district judges acting in open court are intended to provide in the Irish system. In the circumstances, the thrust of the 1986 reform of the prosecution system in England and Wales was to centralise it.

3.2.3 The CPS is responsible for the conduct of all criminal proceedings once there has been a charge by the police or a summons, although a specified range of very minor offences continues to be prosecuted by the police. The police remain responsible for deciding on the charge and for preparing a case file for the CPS. The CPS reviews files passed to it after the police have charged a defendant; the CPS decides whether to continue, discontinue or charge a lesser offence (‘downgrading’).

3.2.4 During its brief existence the CPS has been the subject of many reviews and investigations. The most recent study, *The Review of the Crown Prosecution Service* (1998), under the chairmanship of the Rt Hon. Sir Iain Glidewell, concluded: ‘[I]n various respects there has not been the improvement in the effectiveness and the efficiency of the prosecution process which was expected to result from the setting up of the CPS in 1986’. Part of the problem appears to be the tension which developed between the police and the CPS. The report identified a critical interface as that between the administrative support unit (ASU) – the police unit responsible for preparing the file – and the CPS. It recommended the integration of the CPS branch activity and the work of the ASU into a new unit to be known as a criminal justice unit (CJU). The CJU would be

in the charge of a CPS lawyer and would have a senior police officer from a nearby or relevant police station as a member.

3.2.5 Despite the frequent reviews of the CPS and the fact that it is organised on a regional basis, the Glidewell study found that the service remains excessively bureaucratic. It states: ‘the most senior lawyers are now expected to devote the majority of their time to management. We estimate that the top 400 lawyers in the CPS spend less than a third of their time on casework and advocacy’.

## **Scotland**

3.2.6 In Scotland, minor and less serious criminal offences are tried in District Courts or in Sheriff Courts, and the more serious offences in the High Court. District Court hearings are presided over by lay justices of the peace (though in Glasgow there are professional stipendiary magistrates). Scotland is divided into six sheriffdoms, each under a full-time sheriff principal with a number of sheriffs, who act as judges in the Sheriff Courts. As well as hearing the more serious cases, the High Court deals with all appeals from either of the lower courts.

3.2.7 The investigation and prosecution of offences are the responsibility of the Lord Advocate, a government appointee, and his department, the Crown Office. The Lord Advocate is the successor to the King’s Advocate, who was responsible for the prosecution of offences as early as the sixteenth century. A key role in the Crown Office is played by the procurator fiscal. There is a regional procurator fiscal for each sheriffdom, assisted by a number of fiscals. All are qualified solicitors and career civil servants. The title of procurator fiscal has existed since at least the sixteenth century, originally denoting an assistant on many matters (including the collection of fines) to the sheriff, who was responsible for investigating crimes and presenting the offenders for trial. By the second half of the seventeenth century, this function had passed to the procurator fiscal, acting in the name of the King’s Advocate. It is important to note that the role of the procurator fiscal predates the establishment of the police forces.

3.2.8 Criminal investigation on the ground is undertaken by the police under the direction of the procurator fiscal. In the first instance most enquiries are made by the police, who report the results to the procurator fiscal, who in turn directs what further steps, if any, are to be taken. The fiscal has power to direct the investigation of all criminal offences committed in his/her district. In practice, the police bear the major burden in collecting and sifting evidence and in minor cases the fiscal will not hear of the offence until the police investigation has been completed. The fiscal has power, however, to direct the chief constable as to action which the police should take in a particular case and, in practice, suggests or directs that particular matters be attended to in the course of the investigation. The police do not, however, hold any brief for the decision whether to prosecute or not. They may charge a person but the charge may be dropped, modified or changed by the fiscal. The police, we were told, do not resent the role of the procurator fiscal, either in directing investigations or in prosecution decisions, because the fiscal’s role was part of the framework within which the police service was established.

Traditionally in Scotland the police had neither autonomy in investigation nor a role in prosecution. It was said that the police do not wish to have a role in prosecution. Under the system, there is no separation in principle between investigation and prosecution.

3.2.9 Statutory time limits are laid down for each stage of the process up to trial, in any case where the accused is in custody. Those limits cannot be extended unless the defence makes a case to the court that they need more time to prepare the defence.

3.2.10 If the circumstances of the case seem to the procurator fiscal to warrant it, he may decide not to prosecute but to use one of a number of alternative strategies. These include warnings to the offender (usually by letter), fixed fines (as used in road traffic offences both in Ireland and in Scotland), diversion from the criminal justice process (for example, a decision to seek a psychiatric report) and fiscal fines. Fiscal fines differ from fixed financial penalties in that they are not penalties in law, but an offer to refrain from prosecution if the offender agrees to pay a sum of money (£25, £50, £75 or £100). If the offender accepts that offer, the offence does not go into the offender's record. Those four alternatives keep some 21 per cent of the cases dealt with by the procurator fiscal from reaching the court system.

3.2.11 The fiscal conducts the prosecution case in the District Court and in the Sheriff Court. High Court prosecutions are presented by crown counsel (advocate deputies) appointed to the Crown Office for a three-year period by the Lord Advocate. They are members of the Faculty of Advocates (the Bar) and are not civil servants. There is, naturally, much interaction and consultation on important and sensitive cases between the procurators fiscal and the crown counsel.

3.2.12 The civil service head of the Crown Office is the Crown Agent, who is assisted by the Deputy Crown Agent, five assistant solicitors and a further twenty-one lawyers, together with support staff. One of the units, the policy unit, keeps the policies and practices of the procurator fiscal service under review and prepares and updates a Book of Regulations as guidance for the fiscals. In all, the service under the control of the Lord Advocate, including the work of the Crown Office staff and the procurators fiscal at regional and central levels, involves some 1,250 staff, of whom about 320 are lawyers (full-time or part-time) and costs nearly £50 million (sterling) per annum. They deal with a total of over 290,000 cases a year, of which about 61,000 are kept out of the court system by means of the devices described in paragraph 3.2.10.

## **Denmark**

3.2.13 In Denmark, all prosecution decisions are taken and prosecutions presented by lawyers; though a large number of those lawyers are police officers. Both the prosecution service and the police force are under the Ministry of Justice. The chiefs of police report to the police department of the ministry on policy matters, with the national commissioner of police exercising control over administrative and financial aspects of the police. The national commissioner also reports to the ministry.



3.2.14 The Director of Public Prosecutions is the head of the prosecution service and reports to the Minister of Justice. The minister not only appoints the DPP but also lays down prosecution guidelines and may interfere in individual cases. There are three tiers of prosecution. The great majority of cases are prosecuted in the lower courts by the chief constables, the heads of the fifty-four police districts. They must be lawyers, as must all police engaged in prosecution. In all, some 270 lawyers are to be found in the police force. Prosecutions in the High Court are dealt with by the six regional prosecutors and their staff. They also undertake inspections of the prosecution units in the police districts. The DPP and his staff of about seventeen lawyers and almost the same number of support staff deal with Supreme Court prosecutions. In all, some 350 lawyers work in the public prosecution system, including the police prosecutors.

3.2.15 The criminal justice system in Denmark differs in many respects from that in operation in Ireland. The volume of cases going to court is less than half that in Ireland. Of those, only about 100 to 120 cases a year are tried by jury – a form of trial which can only take place in the High Court. One reason for the relatively small number of prosecutions presented in court is the widespread use of alternative methods of dealing with offenders, notably the imposition of fines in exchange for a plea of guilty.

## **Finland**

3.2.16 The system in Finland is that crimes are usually investigated by the police. If a case is to be tried in court, the results of the police investigation are turned over to the prosecutor, who in the cities is a full-time prosecutor. There are 310 full-time and 160 part-time prosecutors in Finland, which has a population of over 5 million. In rural areas the prosecution is handled by the district police chief. Minor traffic offences are dealt with by a 'petty fine' set by the police. Police officers present the prosecution case in criminal cases where minor offences only are at issue.

## **France**

3.2.17 In France, the police judiciaire (a specially constituted police force with legal qualifications) are obliged to record breaches of the criminal law, to gather evidence and to find the perpetrators. When a preliminary inquiry (information) is opened, the police judiciaire act on the instructions of the investigating judge (juge d'instruction). The principal prosecuting authority is the public prosecutor (procureur de la République). However the prosecutorial system is quite hierarchical. At the level of the tribunaux de grande instance the function of prosecutor falls to the procureur de la République; at the tribunaux d'instance (police courts) the procureur de la République is represented by a substitut or by a police superintendent; at the level of the court of appeal the prosecuting function is held by the procureur general who is assisted by an avocat general; before the Cour de Cassation, prosecution is undertaken by the procureur general assisted by premiers avocats generaux and avocats generaux. Thus we see that even in a highly hierarchical, legally dominated system, police do sometimes prosecute.

## **Germany**

3.2.18 The public prosecutor in Germany has formal responsibility for investigation and prosecution. However, de facto the police lead investigations. In cases of special public interest the prosecutor plays the role of master of the investigation, the practical implication of which is that the prosecutor acts mainly as legal supervisor of the police. If there is sufficient evidence that a crime has been committed, the police transmit the file to the prosecutor who decides whether to prosecute. In summary proceedings there are two procedures, the accelerated trial or proceedings by penal order, both of which are used mostly for traffic offences. Police officers do prosecute in the case of minor offences under a special criminal code.

### **Italy**

3.2.19 In Italy, the investigating authorities are the public prosecutor and the judicial police. The judicial police are generally the first authority to deal with an offence. The public prosecutor is a magistrate without judicial power whose task it is to collect evidence for the prosecution and the defence. The public prosecutor may avail of the services of the judicial police who must conduct any investigation ordered and follow the prosecutor's guidelines. A request for committal to trial is put in train by the public prosecutor. The decision whether or not to commit a person for trial is taken by a judge. Summary trial can be held on the request of the accused provided the prosecutor consents, regardless of the seriousness of the crime, except for offences that carry a life sentence.

### **Netherlands**

3.2.20 In the Netherlands, the Public Prosecution Service has a threefold task: to direct the investigation of criminal offences; to prosecute perpetrators of criminal offences; and to execute decisions rendered by the courts.

3.2.21 According to the code of criminal procedure, the public prosecutor directs the investigation of criminal offences. In practice the prosecutors are rarely able to actually direct the police, they exercise day-to-day supervision over police work by means of log books documenting police activity. The public prosecution service is the only body empowered to bring a prosecution for a criminal offence. However, the police have considerable powers not to report certain minor offences such as petty theft and domestic disputes.

3.2.22 In some cases the law requires that other authorities be consulted about, or even agree with, the decision to prosecute or not; for example, offences concerning juveniles or tax offences. Dutch legislation is based on the 'principal of opportunity', in line with which the public prosecutor may decide not to prosecute 'for reasons of public interest'. These may be idealistic, that is a non-criminal solution may be preferable; or they may be pragmatic, for example, preventing the courts from becoming overburdened.

### **Spain**

3.2.23 In Spain there are three types of legal officer who fulfil roles which to some extent are analogous to that of the DPP in Ireland – Juezes de Instrucción who preside over the initial stages of an investigation and who decide if there is sufficient evidence for a case to proceed to trial; fiscales who are public prosecutors (in the sense of US district attorneys) and who have some investigative functions; and procuradores who act as prosecuting attorneys. There is an overlap between the investigating powers of magistrates and police.

## **Canada**

3.2.24 In the criminal justice system in Canada, crown prosecutors are lawyers authorised to represent the Crown before the courts. Responsibility for prosecution is divided between the attorney general of each province and the Attorney General of Canada. Charging policy is a provincial responsibility. In British Columbia, Quebec and New Brunswick, a crown prosecutor must give approval before a charge can be laid by the police. The police complete a report to crown counsel with details of the case and the results of the investigation, for review and approval of the recommendation to lay charges. In the remaining provinces and territories the police lay charges on their own. However, to varying degrees, it is common practice for police to approach a crown prosecutor for legal advice during the course of an investigation, on the drafting of information and on other pre-charge issues.

## 3.3 Summary of practices

3.3.1 It would be helpful to our deliberations to be able to report some clear patterns from our study of other jurisdictions or to be able to arrive at definitive conclusions. This is not possible. The powers of the police vary considerably from one system to another. In most systems the prosecutor or examining magistrate is regarded as exercising control over the police. Generally, the police prepare a case up to the moment when key decisions regarding the institution of proceedings must be taken. The discretion of the police as to charging varies from one jurisdiction to another. It would seem that a variety of factors – from attitudes to out-of-court settlements, to extra-legal factors such as police manpower levels and police/population ratios in rural areas, to the demands for efficient processing of minor offences – result in systems whereby the police play the major role in the processing of minor offences, from investigation to charging, to prosecution. Minor offences invariably are dealt with in a summary fashion, though it is often difficult to find a precise definition of what is considered to be minor.

3.3.2 What is clear is that, while a principled cleavage between investigation and prosecution is espoused in some systems, the practice is less black-and-white. Under both inquisitorial and adversarial systems, the investigation process is typically carried out by public officials, although inquisitorial systems are more likely to have that function carried out (whether by police or otherwise) under the direction of a prosecutor or prosecuting magistrate. It is a characteristic of inquisitorial systems that they tend to have a public official responsible for initiating and conducting criminal prosecutions but some common law systems, for example, England and Wales, Canada and the US, also have

public prosecutors working in adversarial systems.

3.3.3 In most systems, summary offences are in the main processed by the police, with marginal involvement of the state prosecutor. Equally, in the more complex and serious crimes, there is a universal practice of transferring the case to the state prosecutor (either before the decision is taken whether to prosecute or immediately after it with the prosecutor having an option to discontinue the prosecution). In such cases, common law systems frequently rely on contracted lawyers working for the state prosecutors; code-based systems are more likely to see public officials deal with the various elements of the prosecution (though the dichotomy is not clear-cut).

3.3.4 There is little or nothing in the way of objective criteria by which to measure the comparative effectiveness or cost-effectiveness of different systems. The differences in legal systems and structures and the varying roles of the police, prosecutors and other parties make it very difficult to compare the resources allocated to the prosecution of criminal offences in different countries. Similarly, there are difficulties in trying to compare statistics on the numbers of offences and prosecutions and rates of conviction. The definition and method of recording offences varies considerably. A number of countries have the concept of 'administrative offence', which would normally cover minor offences not involving the possibility of imprisonment, whereas in Ireland, all offences are considered 'criminal'. Numbers of prosecutions brought and rates of conviction will obviously also be affected by whether there is an obligation to prosecute once there are sufficient grounds (as in Italy, for example) or the prosecutor has discretion to prosecute or not (as in Ireland).

3.3.5 We considered the extent to which the various systems separated investigation from prosecution, in the interest of fairness and the protection of citizens from over-robust prosecutorial policy. We did not find support in the variety of practices for the 'principle' that investigation and prosecution should not be vested in the same agency. We found, in fact (as indicated), that it is not easy to identify, in any jurisdiction, a total break between investigation and prosecution. The two are invariably intertwined in cases dealt with summarily. It is in the more complex and graver cases that the separation comes seriously into play.

## **CHAPTER 4**

### **CRITIQUE OF PRESENT ARRANGEMENTS**

4.1 A number of factors have combined to prompt an examination of the suitability in principle and effectiveness in practice of the present arrangements for public prosecutions. On a general level, when the community has been shocked by certain high-profile crimes, there are pressures for a fresh look at the institutions of the criminal justice system, including aspects of the prosecution system. Thus, in the wake of the murders of Detective Garda Jerry McCabe and journalist Veronica Guerin, there was a widespread public feeling that significant new measures were needed to apprehend the

perpetrators of such crimes and bring them to justice more quickly.

4.2 Such a reaction led to the agreement in Dáil Éireann of a Private Member's Motion in July 1996 urging many changes in the criminal justice system, including 'the introduction of a unified prosecution system'. (This Motion closely reflected the terms of a Private Member's Bill introduced in February 1996 but defeated by 73 votes to 58.) The debate on the Motion (and that on the Bill) focused largely on such measures as amendment of the bail laws, curtailment of the absolute right to silence and the prison system. Insofar as the prosecution system is concerned, much of the emphasis in the debates was on better information for the public on the operations of the DPP's Office, greater accountability on the part of the DPP to the Oireachtas and the possible need for a unified prosecution system. In general, the thrust of the debates was towards a more effective and responsive criminal justice system.

#### 4.3 Unified public prosecution system

4.3.1 The DPP has argued over a period of years in favour of a unified prosecution system. Indeed, the Dáil debates on the 1996 Motion and Bill, to the extent that they addressed this question, largely cited the arguments put forward by the Director in the September 1995 issue of the garda management magazine, *Communique*. The Strategy Statement 1997–2000 of the Office of the DPP also makes the case for a unified system.

4.3.2 The meaning of the term 'unified prosecution service' has been well defined in the Report of the Review Group on the Law Offices of the State (June 1997), chaired by the then Attorney General, Dermot Gleeson SC, as follows:

*3.14 In its full form the decision as to charge would be taken in the vast majority of situations by a lawyer in the service of the Office of the DPP, whether following study of an investigation file or after conversation with the relevant Gardaí. The Gardaí, having investigated a matter, would only be entitled to prefer a charge without prior reference to a lawyer where the matter was below a predetermined level of gravity, the evidence was clear and the matter appeared to require a speedy charge.*

*3.15 Prosecutions, whether directed by lawyers or Gardaí, would be presented in District Courts throughout the country by lawyers. The circumstances of a charge directed by the Gardaí would be required to be referred to the relevant lawyer at a very early stage thereafter so that any necessary further action in the matter could be taken before the case went for trial.*

4.3.3 The Review Group went on to set out the arguments for and against a unified prosecution system in the following terms:

Arguments for establishing a unified prosecution service

*3.16 . . . the proper prosecutorial decision making and presentation of the prosecution case are both essential to the administration of criminal justice. These are the two principal functions imposed by law on the DPP. In practice, he has in some cases little or*

*no control over either of them.*

*3.17 Most summary prosecutions . . . are not in practice controlled by the DPP. While all indictable offences are prosecuted by the DPP, the fact is that the vast majority of prosecutions are initiated by the Garda investigator and most of those are processed by the investigator through the courts without any prior reference to the DPP. As a result it can be argued that the DPP has no knowledge about decisions taken by the Garda Síochána not to prosecute in individual cases and very little about the great majority of decisions to prosecute.*

*3.18 . . . even where cases are referred to the DPP, whether before or after the preferring of a charge, control by the DPP over the preparation and presentation of prosecutions is at best tenuous and indirect. The vast majority of staff and other resources used in this function – the implementation function – are outside his control. They include the State Solicitor Service, which is under the control of the Attorney General, and the Garda Síochána, which is under the control of the Garda Commissioner and for which Ministerial responsibility is undertaken by the Minister for Justice.*

*3.19 . . . The Garda Síochána would have an onerous burden lifted if they no longer had to prosecute the vast majority of cases coming before the courts. This would give a significant saving in time, which could then be used to undertake normal Garda duties.*

*3.20 In addition, there are strong arguments, in principle, for separating the investigative and prosecutorial functions. Clearly the investigative function lies with the Gardaí but the decision to charge a person with committing a criminal offence is a separate function which carries far-reaching consequences for all those affected directly or indirectly by it. Arguments against establishing a unified prosecution service*

*3.22 The present system for prosecuting offences has in general worked well. While there have, of course, been a few high profile cases which have called into question its efficiency and effectiveness by and large the system works effectively. Even since 1974 the somewhat unusual reporting relationships between the Gardaí, Chief State Solicitor's Office, Provincial State Solicitors and the DPP have worked reasonably well in practice.*

*3.23 The concept of prosecutors taking over the traditional role in prosecuting cases is not a decision which should be taken lightly, given the generally high levels of co-operation, and the levels of trust which exist between the Gardaí and the general public. It would seem to the Review Group that there is a generally high level of public satisfaction in a tried and tested system, despite some apparent anomalies.*

*3.24 The proposal to have non-Garda prosecutions would require the recruitment of a significant number of lawyers to be paid out of the public purse. No definitive assessment of precise costs has been made. However, it may be useful to note that in Wales (with a population of approximately 3 million) 330 people in total are employed in the Crown Prosecution Service.*

*3.25 The Review Group points out that in addition to the cost of employing lawyers and other support staff, there would clearly be non-pay costs involved in employing additional staff for this purpose.*

*3.27 There would be other problems to be overcome before such a unified prosecution system could be introduced in Ireland. For example, it would be important to ensure a career path for prosecutors which would attract the very best people, but experience elsewhere would suggest that this may not always be easy to achieve.*

## **Weaknesses**

### 4.4 Weaknesses of present system

4.4.1 It has been argued that a weakness of the present system is that it lacks unity of command. The DPP has no direct authority over the Garda Síochána, who present the vast bulk of prosecutions (admittedly of a more minor nature), nor over the solicitors who work on his behalf in prosecutions. The Chief State Solicitor and his staff and the state solicitors are under the control of the Attorney General; while the Revenue Solicitor, who works on behalf of the DPP in revenue prosecutions, is under the authority of the Revenue Commissioners. The DPP thus has statutory responsibilities without commensurate control over the means and resources used in carrying out the related actions. He has no means at his disposal to determine how the vast bulk of prosecutions are prepared and presented; he can only pass judgement on the relatively small number of files, dealing with the more important or complex cases, submitted to his Office. He has no knowledge of the circumstances in which it might be decided by the gardaí not to prosecute in a particular case.

4.4.2 A further effect of the lack of unity of command is the inability of the DPP to decide how the resources of the state solicitor service will be used in prosecuting a case. He has no function in relation to the management of the Chief State Solicitor's Office (CSSO) or the state solicitor service in general, even though their efficient use is crucial to an effective prosecution system. By the same token, the law officer who has formal responsibility for the state solicitor service, the Attorney General, is in a weaker position than the DPP in assessing how well the system is performing. Some 80 per cent of the work of state solicitors is concerned with prosecutions in the name of the DPP. The Attorney General's Office does not see this work and cannot therefore be reasonably expected to accept responsibility for its efficiency and effectiveness, even though the Director General of the Attorney General's Office is responsible and accountable under the Public Service Management Act, 1997, for the management of the Office (including the CSSO). The Chief State Solicitor is an officer of the Attorney General's Office and, as the statutorily designated accounting officer for the vote from which the state solicitors are paid, is answerable for the effectiveness and efficiency of the state solicitor service. Yet he cannot evaluate the work on prosecutions by the state solicitors, because the files from the local state solicitors to the DPP do not come through his Office.

4.4.3 There is some concern that this fragmented structure of the prosecution system leads to waste and duplication. The strategy statement of the Office of the DPP previously referred to states:

Apart from the risks inherent in accountability without direct control, the present use of outside agencies for the discharge of the DPP's functions creates widespread duplication, unwieldy communications and the continuing need for referral to the central office of specific issues, as he cannot delegate decision-making authority to those agencies.

Similar views were expressed in the initial assessment report of the consultants (Grant Thornton Consulting) on the structures, procedures and resources of the Office of the DPP (February 1996). In reaching their recommendation that there should be a unified national prosecution service under the control of the DPP, with regional prosecutors, the consultants stated:

*We found that there is significant fragmentation, duplication and overlap in processes between the DPP's Office and the State Solicitors' Service. This is exacerbated by the large volume of enquiries and replies between the DPP's Office and the Garda Síochána which has to be channelled through the State Solicitors' Service and which unnecessarily increases workloads, court appearance and attendant expense.*

4. The Study Group believes, however, that it would be easy to exaggerate the adverse effect of the present structure on efficiency. While the passing of files from the gardaí to the CSSO to the DPP and back appears slow and excessively bureaucratic on paper, in practice something similar would have to occur under any system. The procedure would not be significantly simplified by having the important or complex files submitted by the gardaí through a regional officer of the DPP to that Office rather than through the CSSO or state solicitor, though pressure of work on the DPP's Office may ultimately force the establishment of such regional offices. Unless the benefits of a centralised system of decision making were to be forfeited, with the uniformity in prosecution policy which this brings, decisions on whether to prosecute would, in present circumstances, continue to be taken by the DPP's Office in Dublin. In chapter 5, we suggest ways of reducing or eliminating shortcomings of the present system without sacrificing its advantages.

4.4.5 While there is widespread agreement among practitioners that the gardaí in general do an excellent job in presenting cases in court, some concern was expressed at the fact that so many prosecutions are conducted by people who, however experienced and knowledgeable about the case, are not qualified lawyers. It can be argued that, in an ideal world, all cases would be presented by lawyers experienced in the art of prosecution. Conversely, however, the point has also been made that the presentation of prosecutions by lawyers can on occasion suffer from the lawyer's lack of familiarity with the detail of the case. This arises from the fact that lawyers, unlike the gardaí, will not have had the benefit of the detailed background knowledge gained by the investigators. It therefore seems that, whether because the gardaí are not professional lawyers or because prosecuting lawyers may lack detailed instructions on particular cases, there will always be a possibility, under any system, that the detail of some cases will be less well presented than is desirable.



4.4.6 It might be supposed that gardaí, because of their closeness to the investigation and their general role in fighting crime, would be more inclined than non-police lawyers to bring a prosecution. By the same token, their position in the local community might lead them to be reluctant to apportion blame in cases involving two or more members of the public, and thus to prosecute both or all those involved and leave it to the court to decide culpability. In practice, this very rarely happens. The Study Group understands that specific instructions and disciplinary procedures in the Garda Síochána constitute an effective safeguard against such an approach.

4.4.7 In the nature of things, it is difficult to get specific and reliable information on the quality of presentation of prosecutions in court. It is simply not possible to say whether cases which were lost could have been won if presented by professional lawyers instead of gardaí, or by presenters with the kind of detailed knowledge which an investigator has, instead of by lawyers instructed for the occasion. The high rate of convictions secured by both garda- and lawyer-presented prosecutions suggests that the quality of prosecution work is of a high standard.

4.4.8 A criticism in principle of the present system is its failure to separate the investigative function from the prosecutorial. As indicated, international comparisons do not provide a compelling argument to the effect that this separation should be regarded as a basic principle. The practical aim of such a separation of functions is to avoid a situation in which the prosecution, instead of objectively assisting the court to arrive at the truth by presenting the facts which constitute the case against the accused, would be committed in advance, as a result of its involvement in the investigation, to securing a conviction. Therefore the practical strength of the objection on that score to having the gardaí involved in prosecutions as well as investigation depends on the safeguards in the system to prevent an over-enthusiastic dedication by the gardaí to prosecution. Overall, it seems to us that garda discipline and procedures, trial in open court, the existence of basic constitutional rights for the accused and a vigorous legal system should, if rigorously operated, provide sufficient safeguards in the criminal prosecution system.

4.4.9 On a practical level, the Study Group found convincing indications that the prosecution system is under-resourced, leading at times to delays and on occasion to increased cost and the risk of mistakes which could have serious consequences. The CSSO has been strengthened by the addition of new posts, but the increase has by no means kept pace with the growth in the volume of litigation or with the increase in the number of judges and court sittings. Significant delays occur, notably in the preparation of books of evidence. In occasional high-profile cases, when resources are not available within the Office to deal with the work with the required promptitude, it has proved necessary to have the work done on a contract basis – at much higher cost, because of the circumstances in which the contracts had to be entered into. We make recommendations on this question in chapter 5.

4.4.10 The DPP's Office is helped in its task of giving guidance and direction to the prosecutorial efforts of the Garda Síochána by the fact that it does not itself undertake prosecution work and is therefore free to concentrate on the issues, principles, criteria

used and quality of the service. Nevertheless, its own staffing does not allow time for the research which is needed to underpin guidelines and to inform prosecution decision making or for the continuous redevelopment of criteria. We also respond to that difficulty in chapter 5.

4.4.11 The reduction of delays can be achieved by means other than increased staffing. For example, the Study Group was impressed by the arguments, in the interests of efficiency, for discontinuing the practice of preparing the book of evidence in its present form; especially in a climate in which full disclosure of prosecution documents to the accused is becoming the norm. We were also impressed by the beneficial effect on court workloads of the present practice of substituting on-the-spot fines for court hearings in the case of minor offences and saw merit in extending that practice, to the extent that it is compatible with due process. The practice in some other jurisdictions under which alternatives to prosecution and trial were used to reduce the burden of work, especially in the courts, also seemed to the group to merit consideration. We make recommendations on these issues in chapter 5.

4.4.12 The Study Group was also concerned at the fact that the present system would allow a garda to bring a summary prosecution as a common informer, which could not be stopped by the DPP even if the prosecution were seen to be entirely without merit. That possibility derives directly from the right of the gardaí (in common with everyone else) to bring such prosecutions – a right which cannot be abrogated by the DPP without legislation. While there might be no public concern at the possibility of a private citizen bringing such a prosecution or a garda bringing a prosecution in a purely private matter, there was seen to be a qualitative difference where a member of the Garda Síochána might prosecute in his own name in a case in which he or she would be involved in an official capacity. The dangers inherent in this situation are, however, no longer significant, since the practice of gardaí prosecuting in their own name has been discontinued, although legally they retain the right to do so.

***Table 1: conviction Rates: garda superintendent and inspector prosecutions***

<i>Type of offence</i>	<i>No. of offences prosecuted</i>	<i>Conviction rate as %</i>
Against persons	5,365	87
Against property	5,291	90
Larceny type	9,147	93
Drink driving	4,176	92
Road traffic	10,652	85

Other	17,410	90
TOTAL	52,041	89

## Strengths

### 4.5 Strengths of the present system

4.5.1 The principal argument, most frequently advanced by those who made submissions to the Study Group in support of the present prosecution system, is that it works. Public or community attitudes provide no evidence of dissatisfaction with the role of the gardaí in prosecution. The professionalism of those presenting prosecutions, mainly the gardaí, has been much commended. The very high conviction rates achieved appear to indicate that prosecutions are not brought inappropriately – that is, where the evidence would not support a conviction – and that the cases are properly presented. An example is the outcome of the total of more than 52,000 cases prosecuted by garda superintendents and inspectors outside Dublin in 1997 set out in Table 1. While directly comparable figures for prosecutions presented by the Garda Síochána are not available for the Dublin Metropolitan Area, the sample survey conducted this year in the thirteen District Courts in the Dublin region, reported in Appendix 4, indicates a conviction rate of 87 per cent for non-indictable offences prosecuted in that region. The majority of those prosecutions would have been presented by gardaí.

4.5.2 Of course, the proportion of convictions cannot be taken in isolation as a measure of effectiveness, not least because it says nothing about the merit of decisions not to prosecute. As a matter of practical reality, it would be difficult under any system to monitor decisions on the ground not to prosecute.

4.5.3 The cost-effectiveness of the prosecution system is difficult to measure, as both comprehensive figures of costs and measures of effectiveness are hard to ascertain. In terms of cost, the present system of summary prosecution appears to be economical and avoids duplication. This is mainly because the gardaí who prosecute the vast bulk of cases would have to appear in court as witnesses in any event. That situation obviates the need for excessive file-passing, with lawyers having to familiarise themselves in detail with the material which the gardaí have assimilated in the course of the investigation and to appear in court along with the gardaí, who would be present as witnesses. In the majority of cases prosecuted by gardaí, in Dublin, or by garda superintendents or inspectors, in the rest of the country, it is not necessary for the investigating garda to prepare a full file or brief a lawyer. An oral briefing and/or summary document is all that is required. The introduction of the court presenter system has resulted in further reducing the cost of the present arrangements by cutting down on the time which gardaí have to spend in court. It has, for example, been estimated that the use of court presenters in Dublin District Court No. 45 alone led to a saving of over 2,000 man-hours of garda time in a single month.

4.5.4 The use of members of the Garda Síochána as prosecutors has benefits for the operation and management of the force. Gardaí who have to present the prosecution case in open court and face the rigour of court procedures and judicial supervision and criticism are likely to be diligent in assembling and assessing evidence. In cases where a senior garda officer prosecutes, the normal managerial supervision of performance is strengthened when the manager, in his or her role as prosecutor, has to be comprehensively briefed by the investigating garda. The beneficial effect of the present system on garda operations, discipline and administration would be difficult to over-emphasise. We note also that there is no pressure from the Garda Síochána or its union representatives – or indeed from other representative organisations which made submissions to us – that the gardaí be relieved of the prosecutorial function on the grounds that it is an onerous burden or otherwise.

4.5.5 The gardaí who act as prosecutors are not mere laymen with no appreciation of the specialised requirements of the task. The Garda Training College in Templemore has been significantly upgraded in recent years and is now recognised by the National Council for Educational Awards as an institution teaching to university degree standard. Part of the training at the college is in court practice and procedure, provided with the assistance of staff from the DPP's Office, as well as former judges and other experts. The college has a replica courtroom to add realism to its training facilities. We comment further in chapter 5 on the training available to the Garda Síochána and make some recommendations.

4.5.6 Three advantages of the present system which would be lost in a unified system centred on the DPP's Office were put to the group. First, it was seen by some as an advantage that the DPP's Office could concentrate on the tasks of determining prosecution policy and shaping the ethos of the system. That is the essential function of the DPP and his Office. That Office now deals with about 7,000 files annually. To overwhelm it with detail, by involving it in substantially more of the 500,000 or so cases going through the District Courts annually at present, would dilute if not destroy the ability of the Office to discharge its core function. Others – the gardaí, barristers, the state solicitor system – undertake the actual work of prosecution in the name of the DPP, but he decides (when the matter is serious enough to warrant reference to him) whether to prosecute and, through guidelines and the corpus of his decisions, shapes the pattern of prosecution decisions. It is in the way this function is discharged that the real value of the Office can be judged.

4.5.7 Second, prosecutions are not carried out by solicitors or barristers employed as staff by the DPP. Where barrister services are needed, barristers in private practice are used. While these are people who have indicated a willingness to prosecute, they do not confine themselves to prosecution only. In that way, they acquire a broader focus and, it was said, a more rounded perspective on the task. The present system prevents the build-up of a 'them' and 'us' mentality between the prosecutorial system and the public it serves, thus encouraging community support for the criminal justice system as a whole. This arrangement also provides ready access for the system to a lively and competitive source of prosecutorial talent as it develops.

4.5.8 Third, there is little evidence to suggest that a fully institutionalised prosecution system would be less costly than the present system. Indeed, the experience of other jurisdictions suggests that, on the contrary, the cost of a fully institutionalised system would be a multiple of the £15 million or so which the present system costs.

## **Information**

### **4.6 Information and communication**

4.6.1 Because the prosecution service is so closely bound up with the liberty of the individual and with the bringing of offenders to justice, there is understandable concern that its operation should be open and transparent. The need to protect the DPP's statutory independence is universally acknowledged, as is the difficulty of providing information to victims on the reasons for decisions, without violating the rights of others. There is, nevertheless, a widespread feeling that information on the nature, pattern and quantity of work carried out in the Office might be provided on a regular basis, such as in an annual report. This demand was expressed by a number of the contributors to the Dáil debates on the Private Member's Motion and Bill referred to above. The Study Group was pleased to note that the DPP's Office had recently published the first such report. It commends this move and hopes that it will be repeated annually.

4.6.2 More generally, a recurring difficulty is that of establishing commonly agreed data on offences reported, prosecutions brought by each agency, their outcomes, the time taken at various stages and the cost. The development of advanced information technology systems in the courts and the Department of Justice, Equality and Law Reform provides an opportunity to meet this need.

## **CHAPTER 5 CONCLUSIONS AND RECOMMENDATIONS**

### **No major change**

5.1 Having reviewed the submissions and presentations made to us, weighed the points made by those most closely involved in the operation of the prosecution system and studied the operation of the prosecution systems in some other countries, the Study Group was not convinced that a major change in the broad structure of the present system would be justified. The overwhelming thrust of the views expressed in the group and by the organisations and groups we consulted was that the present system works, is reasonably efficient, economic and equitable with a wide degree of public acceptance, and that there is, as a consequence, no need to change it.

5.2 The acceptability of the system is a potent factor which should not lightly be risked in favour of an untried alternative. In particular, the Study Group considered that a change to a unified prosecution system offered, in practice, only illusory benefits at considerable cost – estimated by the group, on the basis of experience elsewhere, to be more than

twice the cost of the present system – without any promise that the unified system would be any better than the present system.

5.3 In reality, a truly centralised system is not possible. In public administration generally, those charged with responsibility for particular functions usually have only limited control over the resources – for example, finance and personnel – they need to draw on. Departments and offices have to operate within a network of interacting agencies. In that respect, the public prosecution service is not unique. What ultimately matters is how effectively the different parts of the system work in harmony; and we have no evidence to suggest any institutional lack of co-operation in the present system.

5.4 In the following paragraphs, we present the Study Group's more detailed conclusions.

## **Garda Síochána**

### 5.5 Use of gardaí in prosecutions

5.5.1 We were convinced by the weight of opinion that there are excellent reasons for the continued use of the gardaí in presenting prosecutions. The desirability of institutionally separating the investigative function from the prosecutorial seems to be less compelling than the imperative under our Constitution to separate the prosecutorial from the judicial. Certainly, practice internationally suggests so. Many jurisdictions, even if not authorising the police to prosecute, place the investigative activity of the police under the direction of a prosecutor – thus combining in a different way the separate roles of investigation and prosecution, without any apparent damage to the requirement that justice be done. The question whether prosecuting should be entrusted entirely to lawyers or continue to be done in a great many instances by gardaí may therefore best be viewed as a pragmatic issue of effectiveness and cost.

5.5.2 All the indications are that the gardaí, by and large, present prosecutions in a professional and competent manner. Their prior familiarity with the material, their training and their experience of court work enable them, in the great majority of cases, to ensure that the prosecution is well served by their presentation. While professional lawyers would bring to the task a superior grasp of the law, this advantage is, the Study Group believes, matched by the greater ease with which the gardaí can become familiar with the background to the case. Their contact with the community and with the victims of crime is also obviously closer; and their public role as the authority with the frontline responsibility for dealing with crime is a major consideration. Furthermore, the gardaí operate as a single cohesive service throughout the country, with 11,000 members under the administrative control of the garda commissioner, his deputy and assistant commissioners. Their high success rate is quite remarkable and is at least partly due to the fact that, with their unified and cohesive organisation, they can bring to the task a continuity which would otherwise be lacking. In the group's view, such factors more than outweigh the gardaí's possible lack of specialised legal expertise, especially since the cases in question are those being tried summarily and are therefore the more minor cases. The training received by the gardaí (see paragraph 4.5.5) is designed to ensure that garda

prosecutors are well equipped to cope with both practical and legal issues. The group was impressed by this training and would like to see it even further improved systematically.

5.5.3 The Study Group noted that there was valuable co-operation between the DPP's Office and the Garda Síochána in the presentation of this training. The group considered that it should be possible for the DPP's Office (or the Office of Solicitor to the DPP, recommended in paragraph 5.7.4) to play an even more prominent role in both the design and delivery of the training, insofar as it relates to all aspects of prosecution work from the decision whether to prosecute to the presentation in court. The group also reflected on the practice in Denmark, where some 270 members of the police force are qualified lawyers and are the only members of the force entitled to prosecute. We do not advocate such an approach in this country. Indeed, there is, we understand, a substantial number of gardaí with qualifications as barristers and current practice is that garda management takes the initiative in identifying those who should be given financial assistance to follow such courses. If, as we recommend in section 5.8 below, steps are taken to reduce the volume of cases tried in the District Courts, a useful direction in which garda training might develop would be to emphasise the presentation of evidence in the higher courts.

5.5.4 We gave special consideration to the possibility that a garda officer, having investigated the offence or been close to the investigation, might find his judgment, whether in deciding to prosecute or in presenting the prosecution, overwhelmed by his commitment. As indicated in paragraph 4.4.6, we understood that such an approach would be truly rare and we felt that the internal regulation of the force provided an adequate safeguard against any such abuse of the system. Furthermore, we considered that the restraint imposed by the necessity first, in the majority of cases, to have the case examined by a superior officer and second, to appear before an independent judiciary and face possible questioning in open court, provided a valuable protection against that danger. The Study Group recognised that it is an extremely serious matter for any individual, even if not convicted, to be wrongfully arrested, detained or charged. Since the remit of the group is concerned only with the prosecution system, we focused on the risk of a prosecution being wrongly brought or over-zealously pursued.

5.5.5 The Study Group considered that the arrangements at present in place in garda stations, and those being phased in, are a safeguard against excessive zeal. When a garda arrests and detains a suspect, he or she generally has to justify his or her actions to the member-in-charge, normally a sergeant. Outside the Dublin Metropolitan Area, where prosecutions are presented by a superintendent or inspector, the prosecuting officer has not normally been directly involved in the investigation. The introduction of this second layer acts as a protection against personal bias, while the prosecuting officer will also be able to judge whether a prosecution can be sustained. In Dublin, the court presenter system, being gradually extended, similarly ensures that each case is seen by a second (usually more senior) garda. While those arrangements seemed to the group to work well in practice, we believe it would be preferable that they be developed formally as a standard set of safeguards. The group would also like to see the court presenter system extended to all District Courts as quickly as possible.

5.5.6 It is probably impossible to establish the precise cost of prosecutions carried out by the gardaí. The Garda Síochána estimates the cost per case of prosecutions presented by superintendents and inspectors in a recent year at £16.64 and the cost per case of prosecutions presented by gardaí and sergeants in a Dublin court using the court presenter system at £6.34. The latter figure represents the cost of the court presenters alone, on the basis that the arresting garda would have had to be in court as a witness in any event and his time should not be separately charged against the cost of prosecuting. However, while both figures incorporate overheads in the cost of police time, they represent only the cost of attendance in court. To make any definitive comparison, one would need to factor in the time spent by the Garda Síochána in preparing the file, briefing (where the investigating officer is not the presenting officer) and consultation with the DPP's Office (where it arises), as well as a proportion of the cost of the DPP's Office attributable to giving specific advice or promulgating general guidelines. It was not possible however, to arrive at any basis on which such cost factors could be accurately estimated but we are satisfied that they are modest. Most of them would arise irrespective of who was prosecuting.

5.5.7 Substantially to replace garda prosecutors by lawyers would cost a multiple of the cost of present arrangements. Only about 10 per cent of the time of superintendents and inspectors who undertake prosecutions outside Dublin is attributable to prosecution work, according to garda estimates, while in Dublin the gardaí who prosecute would, as mentioned, be in court as witnesses under any system. In round figures, the total cost of the present system, including the cost of the gardaí involved and the total cost in the current year of the DPP's Office (which includes fees to counsel), the CSSO, the state solicitors and the Revenue Solicitor's Office, is of the order of £15 million. The Crown Prosecution Service in England and Wales costs some £320 million (sterling), or about IR£390 million. That is equivalent to some IR£26 million when adjusted for the different population sizes. The Scottish prosecution system costs almost £50 million (sterling), or about IR£61 million for a population some 25 per cent greater than that of Ireland. The Scottish system employs some 320 lawyers, who deal with about 291,000 cases a year, of which fewer than 200,000 go to court. In view of that and of the figure of about 350 lawyers employed in the prosecution service in Denmark, one might expect the Irish prosecution service, with its much higher volume of cases, to require far more than 400 lawyers if all prosecutions were to be presented by lawyers.

5.5.8 Quite apart from cost, there must be serious doubt about the feasibility of instituting a centralised prosecution service. The decision in England and Wales to establish the Crown Prosecution Service and give it the prosecution functions previously discharged by the police, was based in large part on the fact that the existing system failed, on occasion, to achieve the necessary standard of fairness. There were wide differences in prosecuting policy between the forty-two different police forces operating in the area in question. Those considerations do not apply in Ireland. Further, the system of magistrates in England and Wales is different in important respects from the professional District Court system in Ireland. The remedy in England and Wales was not without its own disadvantages and the system is now criticised for its excessive bureaucracy and for causing tensions between the police and the prosecution service.



5.5.9 Even in Ireland, with some 500,000 prosecutions a year in the District Court alone, intolerable delays and the overburdening of the DPP's Office would be likely if all decisions to prosecute or not to prosecute were taken by that Office and the prosecutions presented by lawyers reporting to it. Indeed, even in the present situation in which so many prosecutions are presented by gardaí, the work burden is such that the DPP finds it of practical benefit to give blanket approval to the gardaí to deal with certain types of cases without specific referral to his Office. There is also the possibility that a system in which the prosecuting role at present played by the gardaí was transferred to the DPP would generate not just a more bureaucratic approach to the handling of files but a tension between the gardaí and the Office of the DPP that is happily absent at present. And finally, there is general agreement that unnecessarily extending lines of communication, say, as between gardaí and prosecuting lawyers in the large number of comparatively minor cases now undertaken by the gardaí, would be to set up just the opposite of the quick and lean service which the public wants – without any apparent improvement in the delivery of justice.

5.5.10 Those considerations do not in any way rule out the possibility of a move by the DPP, on organisational grounds, because of pressure of work in a particular area, to establish a regional office or offices. Even in that eventuality, however, the Study Group does not consider that it would be feasible to involve the DPP's Office in the huge volume of minor cases at present prosecuted by the gardaí without reference to that Office. To do so would undermine the intended effect of any such regional offices by further burdening the central prosecution system.

5.5.11 For all the above reasons, the Study Group does not recommend changing the arrangement under which minor offences are prosecuted by the gardaí in a great many cases. This arrangement does not rest on any explicit statutory foundation. As has been indicated above, the gardaí have a common-law right to prosecute as 'common informers' and have been held to be entitled to prosecute in the name of the DPP and have, in fact, been given a general authorisation by the DPP to do so.

5.5.12 It is, as mentioned in paragraph 4.4.12, undesirable (despite the improbability of its occurring under present practice) that a garda can initiate a prosecution in a case involving his or her functions as a garda, acting as a common informer, without any power on the part of the DPP (or anyone else) to discontinue the prosecution if it is without merit. Since the right of a common informer to prosecute is a common-law right, available to everybody, which predates Irish law and even the Constitution, it does not appear feasible to restrict that right by legislation in the case of the Garda Síochána alone. However, the garda is a member of a disciplined force, subject to various restraints on his/her actions in public. The group considered that it would be desirable that, as a matter of police discipline, a member of the gardaí should be required to obtain the approval of a senior officer before commencing a prosecution in his own name. We would like to emphasise again that this recommendation is made, not because we have reason to doubt the integrity and impartiality of the gardaí, but because we consider it important that the process as a result of which prosecutions are brought is transparent and that the law is seen to apply equally to all persons.

5.5.13 The Study Group addressed the question of the recording of interviews of suspects in garda stations. We are aware that an experimental system of audio and video recording of interviews on a voluntary basis has been in progress in a small number of stations for some time. The group recommends that steps be taken urgently to complete the experiment and formally introduce such a system.

5.5.14 In summary, the Study Group recommends maintaining the practice by which minor offences are prosecuted by the Garda Síochána and proposes strengthening and formalising some aspects of it. In addition to the further development of police training recommended in paragraph 5.5.3, we would like to see the recently introduced court presenter system adopted universally. While we did not find any indication that the power of the gardaí to bring a prosecution was abused, in the interest of transparency we would favour some standardisation of the safeguards within garda stations against any possible abuse of the process. We recommend an administrative restriction on the freedom of gardaí to bring criminal prosecutions in their own name, as common informers, and the early introduction of the recording of interviews of suspects in garda stations.

## **Barristers**

### 5.6 Use of barristers

5.6.1 On the question whether prosecutions in higher courts should be presented by barristers directly employed by the DPP as prosecutors or by barristers in independent practice, the overwhelming weight of opinion offered to us was in favour of retaining the present arrangement under which the DPP is represented by barristers practising independently at the Bar. We have already referred (see paragraph 4.5.7) to the advantage, in terms of broader focus, which lawyers who defend as well as prosecute can bring to the task. In the group's view, this is a point of substance in favour of the present arrangement. We also believe that public confidence, which is the bedrock of the criminal justice system, is enhanced by the practice of having different lawyers, who are not public servants, appear from time to time as counsel for the prosecution or for the defence.

5.6.2 We were concerned also about the quality and experience of barristers whom one might expect to recruit as full-time prosecutors. It appears likely that such posts would attract a disproportionate number of applicants with little post-qualification experience, seeking experience of prosecution work before moving on to develop their careers more broadly.

5.6.3 A further practical consideration is the greater flexibility inherent in the system of retaining barristers as required. Workloads inevitably vary, making it very difficult to staff a service economically. Staffing levels needed to cope with peak loads (or even frequently reached case levels) will prove uneconomic at times of less pressure. Furthermore, full-time staffing levels have to be based on the notion of payment for sick and annual leave, while a barrister retained for a particular case is paid only for work done.

5.6.4 Further, we believe that a system of barristers or solicitors employed by the DPP as prosecutors would take from the character of the DPP's Office as the central core unit concerned, not with operational detail, but with policy and administration.

5.6.5 The Study Group favours continuing the present arrangement under which prosecutions in the higher courts are presented by barristers retained by the DPP.

## **State Solicitors**

### **5.7 The State Solicitor Service**

5.7.1 The thirty-two state solicitors perform a range of functions for the DPP, the Attorney General and government departments, but in practice, the bulk of their work—about 80 per cent – is prosecution work for the DPP. Apart from the practice of having a representative on the interview boards established to recommend persons for appointment as state solicitor, the DPP has neither control over their appointment or deployment nor any direct means of ensuring good performance on their part.

5.7.2 While that situation is clearly not entirely satisfactory, it is inherent in the arrangement under which the law offices of the state are statutorily divided and the state solicitors perform functions for different statutory authorities. However, it seems to the group that it would be more logical to make the state solicitors responsible to the DPP, as the main user, with the Attorney General using their services as required, rather than to have them report to the Attorney General while performing the bulk of their work for the DPP. Clearly, the effective advantage of that arrangement would be to enable the DPP to choose and oversee the state solicitors. If the opportunity of this change were taken to introduce legislation expanding the reference to the 'professional officers' of the DPP to include solicitors acting under a contractual relationship with the DPP, that would enable the prosecution functions to be delegated to them. In the short term, in view of the contractual obligations already entered into, the group envisaged that the DPP would simply take over the existing contracts of the state solicitors from the Attorney General. In the interest of perceived objectivity and impartiality, the group considers that the Civil Service Commission should be mandated to recommend candidates for appointment as state solicitors.

5.7.3 The Study Group, therefore, proposes that, in future, the local state solicitors be selected following a recommendation by the Civil Service Commission and that they be appointed by and on contract to the DPP instead of the Attorney General, with provision for the delegation of prosecution functions to them in appropriate cases.

5.7.4 The Chief State Solicitor and his Office also perform a range of functions for the Attorney General, the DPP and other State entities. The Chief State Solicitor is responsible to the Attorney General, a situation the Group considers logical, as only about one third of the CSSO's work is done on behalf of the DPP. That part is, however, clearly identifiable, being the work assigned at present to 23 professional, 13 technical and 20 clerical staff in the Criminal Division. In the interest of control, accountability and

transparency, the Study Group would favour creating an office of Solicitor to the DPP to perform the functions at present performed by the Criminal Division of the CSSO, but only provided certain resourcing and other requirements are met. The Solicitor to the DPP would have the same relationship to the DPP that the Chief State Solicitor has to the Attorney General. The new Office would provide solicitor services to the DPP, including the briefing of counsel. The professional staff of the Solicitor to the DPP could be made professional Officers of the Director, by legislation if necessary.

5.7.5 Experience makes it clear that organisational change attempted without sufficient resources will not achieve the benefits expected of it. We recognise that resources additional to those currently available in the criminal division of the CSSO may be required in the new situation, when account is taken, for instance, of the need for appropriate back-up staff and other factors. It should be emphasised that peak workloads in the criminal division, most frequently caused by the preparation of the book of evidence, are handled by the diversion of typing staff from other areas in the CSSO – a remedy which would not be available if the division were to be separated from the Office. That and other factors need to be kept in mind in considering the necessary staffing level. We would recommend, therefore, that the proposed transfer of the criminal division to the DPP's Office should go ahead only if staffing is provided at the level agreed to be necessary by those in a position to assess such matters.

5.7.6 Each of the various legal offices in the civil service is a self-contained unit for the purposes of appointment, transfer and promotion. The position is further complicated by the existence in the different legal offices of different staffing structures, which in practice means different pay scales. A relatively small office of solicitors transferred to the DPP's Office is unlikely to prove an attractive unit from the point of view of staff invited to serve in it. It would be essential to the success of the proposed transfer that there be fluidity of movement between the various groups within each profession. The Study Group recognised that certain problems – related to the grading, appointment, transfer and promotion of staff – could arise, which would have to be disposed of to the satisfaction of the Offices concerned and in consultation with the staff involved.

5.7.7 The Study Group accordingly recommends that a common pool of staff, who would be entitled to apply for transfer and promotion in accordance with accepted civil service procedures, be established among the various legal offices. An office should, of course, be required to accept only those officers whom the head of the office considers suitable. The benefits in quality of service and staff morale should outweigh the difficulties of grading and industrial relations which, we recognise, are inevitably involved in implementing such an arrangement. We would re-emphasise, however, that the recommendation to transfer the relevant portion of the CSSO to the DPP's Office will not work properly unless there is a common pool competing for posts in both offices, which in turn must be based on appropriate grading structures and acceptable procedures for making appointments, taking into account the difficulties created by the existence of a divided profession.

5.7.8 The Study Group considered whether some functions of the DPP, particularly the taking of decisions on whether to prosecute in certain cases, might be delegated to state solicitors (in the provinces) or to the Chief State Solicitor. On the face of it, there is an inconsistency in a situation in which the gardaí, who are not lawyers, are empowered to take such decisions in defined types of case while no such authority is given to the state solicitor service. The 1974 Act does not empower the DPP to delegate functions except to his professional officers; the arrangement with the gardaí simply continues a practice which predates the legislation. This question is referred to in paragraph 5.7.2.

5.7.9 If the criminal division of the CSSO were transferred to the DPP's Office, on the basis suggested in paragraph 5.7.4, its staff would be considered as the Director's professional staff and functions could be statutorily delegated to them. This would have the merit of reducing paperwork by eliminating the submission of files in certain cases which at present require such submission. Such an arrangement would constitute a significant decentralisation of the decision-making process without endangering the consistency of approach of the present system. The measure would also ease slightly the pressure of work in the Dublin area, where such pressure is at its greatest. The group recommends that consideration be given by the DPP to the delegation to the proposed solicitor to the DPP of power to take decisions on whether to prosecute specific categories of case.

5.7.10 It may be, as a result of pressure of work in some areas, that the DPP might wish, in the future, to appoint regional officers of the solicitor to the DPP (or of the DPP himself) to act in his name locally, and the Study Group considers that he should be free to do so if he considers it appropriate for organisational reasons. This would enable him to delegate responsibility to regional officers, should pressure of work, for example, in the larger cities, require such a step. (Such a measure would also respond to the argument of the present DPP that such regional or local prosecutors are a successful feature of systems in other jurisdictions and that Ireland is somewhat anomalous in not having such a system.) The group considered recommending the introduction of such an arrangement on an experimental basis in one area. However, we felt that there was no compelling reason to introduce such a change on an experimental basis, with a view to its extension if it should prove effective. Instead, the group considered that the matter is best dealt with as an internal organisational issue by the DPP. While the system of state solicitors has, in general, worked well in an area where there is a relatively small amount of business, the pattern of work in some of the larger urban areas may be developing towards that found in Dublin and comparable solutions may, in time, have to be considered by the DPP. The sub-division of such areas into smaller units may not be the most appropriate response, given the diseconomies of small scale. The delegation of prosecution work to employees of the local state solicitor, over whose appointment the DPP has no control, can also be a far from ideal solution. It seems essential that any such appointment should be cleared with the DPP.

5.7.11 The Study Group considers that the arrangements currently in place for the prosecution of revenue offences in the name of the DPP by the Revenue Solicitor, in the Dublin Metropolitan Area, and by state solicitors, outside Dublin, should continue. This

is our conclusion whether or not the criminal division of the CSSO is transferred to the DPP and a solicitor to the DPP appointed, as recommended in paragraph 5.7.4.

## 5.8 Lightening the burden on the prosecution system

5.8.1 The Study Group formed the impression that the public prosecution system in Ireland was obliged to carry a particularly heavy workload. We have already commented on the fact that far more cases appear to be processed through the system to the courts here than in the other jurisdictions which we visited. In both Scotland and Denmark, countries with populations some 25 per cent higher than Ireland's, the prosecution systems deal with substantially fewer cases and the courts fewer still. In Scotland, the total number of files handled by the prosecution service is only 291,000, compared with over 500,000 here, and about one in five of the Scottish cases are dealt with by fixed penalties, fiscal fines and other alternatives to trial in court. In Denmark, only a small proportion of crimes are prosecuted through the courts and part of the reason for that is the use of alternative sanctions, such as fixed penalties.

5.8.2 The Study Group is of the opinion that it is urgently necessary to take measures to reduce the burden on the Irish system, for two reasons. First, any measure which reduces delays in the courts enhances justice by making it more prompt. And second, the inexorable growth in legislation continually creates new offences, leading to further pressure on the prosecution system, with the consequent risk of serious errors.

### **Fines**

5.8.3 Pressure on the prosecution system (and the courts) is obviously reduced to the extent that alternatives to the process of prosecution and trial are used. While recognising that, under the Constitution, justice must be administered by the courts, the Study Group recommends that extension of the existing practice of summarily imposing fines should be considered, to the extent that the right to due process is not infringed. In 1997, over 400,000 on-the-spot fines were issued by gardaí and traffic wardens for minor traffic offences such as non-display of licence disc, speeding and illegal parking. The group recommends that a substantial extension of the range of offences (not confined to traffic offences) which can be dealt with in this fashion be considered, amending the legislation to the extent necessary. The Garda Commissioner is of the opinion that such a development would create a far more effective garda service and a far more effective criminal justice system, and the group concurs in that view.

5.8.4 The Study Group was aware of the possible dangers which such an approach could present. For example, it would be clearly wrong to assign to the Garda Síochána functions which could be considered to be the administration of justice (constitutionally reserved to the courts). It would also be undesirable that those who could most afford to pay a fine would be best able to avoid the inconvenience and publicity of appearing in court. The group therefore considered that certain criteria should inform decisions as to which offences might most appropriately attract a fixed on-the-spot penalty. The criteria which the group recommends are the following:

1 Offences the commission of which involves no great moral culpability and which are merely regulatory in nature.

2 Offences which do not involve a subjective (rather than an objective) decision by the detector.

3 Offences which are triable summarily only and without the option of trial on indictment by either the prosecutor or the accused.

5.8.5 In accordance with those criteria, we have listed in Appendix 5 some categories of offence which could be considered suitable for inclusion in an extended application of the regime of fixed on-the-spot penalties. In some instances, certain offences in those categories should be included only when suitable legislation has been enacted, for example, road traffic offences which attract a mandatory endorsement or disqualification. The regime might be extended after further substantial legislative and procedural change to a wider range of offences, including a range of offences connected with driving under the influence of alcohol and driving a dangerously defective vehicle.

5.8.6 The Study Group also considered whether other alternatives to prosecution might be usefully introduced. In some – perhaps many – instances, it might be more beneficial to issue a warning or caution rather than to charge an offender. Such an alternative could have the twin advantages of deflecting the offender from the path of crime and reducing the pressure on the prosecution and courts systems. The introduction of such a practice on a widespread basis would amount to a significant use of discretion by the gardaí in deciding whether to charge and prosecute or simply to warn the offender. If it were to be introduced, therefore, it would be desirable that the DPP would issue detailed guidelines to the gardaí setting out the types of situation in which such an approach should be used. Subject to such an arrangement being in place, the group recommends the use of warnings instead of charge in appropriate cases.

### **Preparing the Book of Evidence**

5.8.7 We have mentioned in paragraph 4.4.11 the time-consuming though generally straightforward task of preparing books of evidence. This arises from the obligation to assemble the evidence and from the requirement in Section 6 of the Criminal Procedure Act, 1967, to supply ‘a statement of the evidence that is to be given by each of [the witnesses for the prosecution]’. The CSSO and the state solicitors edit all prosecution statements to exclude extraneous and inadmissible matters (for example, hearsay). This imposes a considerable work burden and can lead to delays. As a matter of practice, the defence seek and are supplied with the full text of statements of prosecution witnesses as well as any other witness statements available to the prosecution. It would clearly reduce the workload, and hence the potential for delay, if the serving of the full statements of prosecution witnesses were deemed sufficient to meet the requirements of Section 6 of the Act.

5.8.8 The Study Group welcomes the intention, expressed in Part III of the Criminal Justice Act 1999, to abolish the preliminary examination in the District Court of cases to be heard in the Circuit Court. Its effect will be to remove the present role of the District Court in deciding whether the accused has a case to answer. The District Court will, except in certain specified eventualities, be obliged to send the accused forward for trial. It will still be necessary for the prosecution to serve the accused with the documents required under present legislation – in effect, those at present contained in the book of evidence.

5.8.9 The Study Group recognises that present practice is that the defence normally requests and receives full disclosure of the evidence and statements available to the prosecution. In view of that fact, and of the need to reduce the burden of preparing the book of evidence, which replicates much of the material disclosed to the defence, the group favours the adoption of a less cumbersome procedure. We therefore recommend that consideration be given to changing present law so that:

- the documents to be served on the accused would comprise
  - a statement of the charges
  - a list of the exhibits
  - a list of the statements taken from all witnesses
  - the full statements taken from prosecution witnesses;
- a pre-trial procedure would be introduced whereby, in cases of doubt, the accused could seek clarification from the prosecution as to which parts of a witness's statement will be relied upon;
- statements obtained from all other witnesses by the prosecution would be made available to the accused on request, subject to claims of privilege, confidentiality or public interest, unless the DPP decides otherwise,

Except for those changes, Section 6 of the 1967 Act would continue to apply in full.

## **Information**

### 5.9 Information, research and technology

5.9.1 We have earlier in this document welcomed the recent publication by the DPP of a report and expressed the hope to see such reports published annually. Such a move would, in the opinion of the Study Group, respond to the demand for greater transparency in the operation of the Office, in common with public service institutions generally. The DPP's annual report should, in the view of the group, be a source of public information about the types and volume of cases dealt with and the general criteria used in decision making.



5.9.2 Information which would help those involved to assess how well the prosecution system functions is difficult to assemble and even more difficult to relate to data on the rest of the criminal justice system. There is no focal point in the prosecution system for assembling and analysing such material. In our view, the DPP's Office should constitute that focal point, but we recognise that it is not resourced to do so at present. For that reason, the Study Group recommends, in line with an earlier recommendation by the Department of Finance study of the Office in 1996, that a unit be established in the Office with responsibility for research, statistics, planning, library and information technology (IT).

5.9.3 The DPP's Office gives guidance to the gardaí to assist them in their prosecution work, but this is on an ad hoc basis related to specific cases or specific statutory or other developments. With the passage of time, the Study Group believes that it would be helpful to codify and consolidate those guidance notes to form a constantly updated set of guidelines, which should remain confidential within the prosecution system to the extent that this is necessary. We recommend that this task be undertaken and assigned to the proposed research unit, which should work in close liaison with the Garda Síochána.

5.9.4 The Study Group is aware that significant IT systems are being developed within the Garda Síochána, the court system and the Department of Justice, Equality and Law Reform. While these systems are designed to serve individual parts of the criminal justice system and there may be confidentiality reasons for keeping the different elements separate, it seems important to seize the opportunity to improve the efficiency of common systems. In particular, the group considers that systems should be designed to enable cases to be monitored and tracked for the benefit not only of the law offices but also the victims of crime. We recommend that the opportunity of the development of these IT systems be taken to develop co-ordinated databases and information systems which will enable the operation and effectiveness of the prosecution system to be evaluated on a continuing basis. For that purpose and in order to have input into the classification of offences, it would be important that the DPP's Office be involved at the design stage.

## **Recommendations**

### 5.10 Recommendations

5.10.1 The Study Group recommends that, in general, the present system should not be replaced by a unified prosecution system but that the system should be enhanced to improve co-ordination and effectiveness. The following specific recommendations are made.

5.10.2 The Garda Síochána should continue to prosecute in summary trials, but steps should be taken to:

- ? extend the court presenter system as quickly as possible to all areas;
- ? further improve garda training in relation to prosecution work through increased participation by the DPP's Office in that training and through greater emphasis on the skills of presenting evidence in higher courts;

? formalise and standardise the safeguards within Garda stations which prevent the abuse of the prosecution initiative by an investigating garda;  
? restrict by internal disciplinary restraints the right of gardaí to initiate a prosecution as a common informer where the case involves the garda's functions as a member of the Garda Síochána;  
? accelerate the introduction of recording of garda interviews of suspects.  
(Paragraph 5.5.14.)

5.10.3 The DPP should continue to retain barristers in independent practice to prosecute on his behalf.  
(Paragraph 5.6.5.)

5.10.4 Responsibility for the State Solicitors should be transferred from the Attorney General to the DPP, with legislative provision to enable the DPP to delegate to them.  
(Paragraph 5.7.3.)

5.10.5 The appointment of state solicitors should be made on the recommendation of the Civil Service Commission.  
(Paragraph 5.7.3.)

5.10.6 Subject to agreement on adequate staffing levels and appropriate staff structures, the criminal division of the CSSO should be transferred to the DPP's Office to form a unit headed by a solicitor to the DPP, with statutory clarification that its professional staff would be professional staff of the DPP within the meaning of the 1974 Act.  
(Paragraph 5.7.4.)

5.10.7 A common pool of staff, who would be entitled to apply for transfer and promotion among the various legal offices in accordance with accepted civil service procedures, should be established after appropriate consultations.  
(Paragraph 5.7.7.)

5.10.8 The Director of Public Prosecutions should consider delegating to the solicitor for the DPP certain categories of decision at present reserved to the DPP.  
(Paragraph 5.7.9.)

5.10.9 Present provisions for on-the-spot fines should be extended, to the extent compatible with due process, to encompass a much greater range of offences, thus reducing pressure on the prosecution system and the courts.  
(Paragraphs 5.8.3 to 5.8.5.)

5.10.10 As a further measure to reduce the volume of cases prosecuted through the courts, a system should be introduced whereby offenders would, in certain circumstances to be specified from time to time by the DPP, be issued with warnings by the gardaí instead of being prosecuted.  
(Paragraph 5.8.6.)

5.10.11 Consideration should be given to amending the legislation as necessary to provide a less cumbersome method of meeting the requirements of the accused than the present book of evidence.

(Paragraph 5.8.9.)

5.10.12 The DPP's Office should publish its report annually, to include information on the volume and types of cases dealt with and the general criteria used in making decisions.

(Paragraph 5.9.1.)

5.10.13 The DPP's Office should be the focal point for the assembly and analysis of information on the operation of the prosecution system.

(Paragraph 5.9.2.)

5.10.14 A unit should be established in the DPP's Office with responsibility for research, statistics, planning, library and information technology.

(Paragraph 5.9.2.)

5.10.15 The DPP's Office should codify and consolidate the instructions on prosecution matters given to the Garda Síochána so that they form a coherent and constantly updated set of guidelines, which should remain confidential within the prosecution system.

(Paragraph 5.9.3.)

5.10.16 Existing and projected information technology systems in the Garda Síochána, courts and DPP's Office should be developed in a co-ordinated way, with the participation of the DPP's Office, to enable cases to be tracked and monitored by all elements of the criminal justice system and to facilitate continuous evaluation of the operation and effectiveness of the prosecution system.

(Paragraph 5.9.4.)

5.11 The recommendations will require action, following detailed consultations with those concerned, on personnel matters, accommodation, legislation and other issues. The Group consider that if the recommendations are to be put in place, a group with representatives from the Departments of Justice, Equality and Law Reform and Finance, the Offices of the Attorney General, the Director of Public Prosecutions and the Chief State Solicitor, and the Garda Síochána, should be given responsibility for implementation, within an agreed time.

## **APPENDIX 1**

### **List of Organisations and individuals from whom submissions were received by the study group**

(in alphabetical order)

An Garda Síochána  
Association of Garda Chief Superintendents  
Association of Garda Sergeants and Inspectors  
Association of Garda Superintendents  
Bailey, Alan  
Bar Council  
Coghlan, Noel  
Garda Representative Association  
Hogan, John  
Hogan, Paul  
IMPACT (Legal Officers Professional Branch)  
IMPACT (Legal Officers Technical Branch)  
Law Society  
Livingstone, Jimmy  
Monahan, Anthony  
O'Leary, Tim  
Revenue Commissioners  
Smithwick, Judge Peter  
State Solicitors' Association

## **APPENDIX 2**

### **List of published documents consulted by the study group**

Review of the Office of the Attorney General, January 1995  
Report of the Select Committee (of Dail Eireann) on Finance and General Affairs on the Office of the Attorney General, February 1996  
Office of the Director of Public Prosecutions: Structures, Procedures and Resources – initial assessment (Grant Thornton), February 1996  
Organisation and Management Review of the Office of the Chief State Solicitor (Deloitte and Touche), November 1996  
Review of the Office of the Director of Public Prosecutions (Department of Finance), November 1996  
Tackling Crime (Department of Justice), May 1997  
Report of the Review Group on the Law Offices of the State, June 1997  
Office of the Director of Public Prosecutions: Statement of Strategy 1997-2000  
Report of the Steering Group on the Efficiency and Effectiveness of the Garda Síochána (Pn 4630), June 1997  
An Garda Síochána: Annual Report 1997  
Office of the Director of Public Prosecutions: Annual Report 1998  
The Review of the Crown Prosecution Service, The Stationery Office, London, 1998

Christine van den Wyngaert, Finbarr McAuley and Christopher Gane, eds.: Criminal Procedure Systems in the European Community, Butterworths, 1993  
Kristina Kangaspunta, ed.: Crime and Criminal Justice in Europe and North America 1986-90, Helsinki, European Institute for Crime Prevention and Control, 1995  
European Committee on Crime Problems: Synthesis of replies to questionnaire and summary of Report (Council of Europe), 1998  
Moody, S. and Tombs, J.: Prosecution in the Public Interest, Scottish Academic Press, Edinburgh, 1982  
9/1/75

### **APPENDIX 3**

#### **Stiurthóir Ionchuseamh Poiblí**

The Taoiseach has by Order fixed the 19/1/75, as the day on which Sections 3, 5, 7, 9 and 10 of the Prosecution of Offences Act, 1974, shall come into operation. All other Sections of the Act were brought into operation on 18/9/74.

I would be grateful if you would bring the provisions of the Act, particularly those of Section 3, to the notice of members of the Garda Síochána, before the 19/1/75. From the beginning of that day the Director of Public Prosecutions will perform all the functions heretofore performed by the Attorney General in relation to all criminal matters as defined in the Act, subject only to the reservations provided for in sub-sections 3, 4 and 5 of Section 3.

Prosecutions commenced before that date will require no amendment resulting from the coming into operation of Section 3, as provision is made for such prosecutions in Section 3 (2). However, all indictments laid from that day on, whether or not the prosecution was commenced before the coming into operation of Section 3, should be entitled 'The People at the suit of the Director of Public Prosecutions'. Similarly, in prosecutions and other criminal matters commenced before 19/1/75, by or in the name of the Attorney General, orders, notices or other documents in such proceedings made or issued on or after that date should refer to the Director of Public Prosecutions rather than the Attorney General. All prosecutions commenced on or after the 19/1/75, which, but for the Act, would have been taken in the name of the Attorney General should be taken in the name of the Director of Public Prosecutions.

### **APPENDIX 4**

#### **Pattern of cases prosecuted in the District Courts In the Dublin Metropolitan Area**

1. The available computer systems are not designed to track the court outcomes of non-indictable offence proceedings commenced in the thirteen District Courts located in the

Dublin Region. The Garda Síochána, however, conducted a survey for the Study Group covering every such case presented in the District Courts in Dublin in a one-week period in 1999. It has to be stressed that the survey covered one week only and may thus not reflect the pattern which obtains over a full year.

2. Information was collected about the following aspects of each case: the nature of the case, whether the defendant pleaded guilty or not guilty, the outcome of the case and the time it took to conduct it.

3. Offences were divided into six categories: offences against the person (including all assaults, wounding, sexual assaults, etc.); property offences (including attacks on property, such as criminal damage); larceny offences (including larceny, burglary, robberies, all fraud offences); drink driving (including Section 49 and Section 50 of the Road Traffic Act); road traffic offences (including dangerous driving, careless driving, driving without consideration, hit and run, parking, lighting and mechanical defects); and other offences, a category which includes public order offences, drugs etc.

4. The overall conviction rate for all the offences prosecuted was 87%. The conviction rates for the separate categories of offence were as follows:

Traffic Offences 71%

Offences Against the Person 85%

Offences Against Property 88%

Larceny Offences 95%

Other Offences 97%

A separate figure is not shown in respect of drink driving offences because, due to the effect of a test case, only one such case was completed in the period. It is included under traffic offences.

5. Garda records indicate that 1,718 proceedings commenced for drink driving offences which took place in the Dublin region in the year 1997 and convictions were recorded in 1,220 of those, or 71%.

6. The one-week survey in the Dublin District Courts also revealed that 31% of the cases were dealt with in one minute, 91% in ten minutes or less and only 1% took more than 20 minutes.

## **APPENDIX 5**

### **Offences suitable for inclusion in On-the-Spot Fixed Penalty Regime\***

1. Lighting regulations (pedal cycles and mpvs)
2. Not wearing crash helmet (motor cyclist)
3. Road Traffic General Bye-laws, 1964
4. Local Bye-laws

5. Construction equipment and use of vehicle regulations 1963
  6. Defective steering
  7. Vehicle testing
  8. Tachograph offences
  9. Road Transport Acts
  10. Roads Act and Finance Acts - excise duty
  11. Other minor road traffic offences
  12. Found on licensed premises after hours
  13. Soliciting or importuning for prostitution, Section 7
  14. Offences against Street Trading Acts
- \* This list should be read in conjunction with the text in paragraphs 5.8.4 and 5.85 and would be subject to the criteria set out in that text.