

20th Annual National Prosecutors' Conference

Members of the Judiciary and An Garda Síochána, Prosecutors, Ladies and Gentlemen it gives me great pleasure to welcome you to the 20th Annual National Prosecutors' Conference.

As ever we have a number of interesting speakers on a range of topics. On behalf of us all I thank them for giving of their time and expertise today.

Firstly, I want to take this opportunity to announce that a revised version of the Guidelines for Prosecutors has just been published on our website and will be circulated to all prosecutors next week. This is the 5th Edition of the Guidelines which were first published in 2001 by my predecessor James Hamilton. The Guidelines were developed with the aim of setting out in general terms principles to guide the initiation and conduct of prosecutions in Ireland. They are a very important statement of the fair, reasoned and consistent policy which underlines the prosecution process in Ireland.

Article 30.3 of the Constitution of Ireland provides that all indictable crimes should be prosecuted in the name of the People. Making the guidelines available publicly, I believe, further contributes to an increased understanding of the prosecution process by the citizens on whose behalf prosecutions are brought.

The guidelines are available electronically on the Office website at www.dppireland.ie.

The Guidelines were last revised in 2016. Quite a number of changes have been required to reflect developments in the law since then. Individual chapters that have substantive changes include: the chapter on Disclosure, on prosecution appeals and sentence reviews; on confiscation, forfeiture and disqualification, and on communication with the Director of Public Prosecutions (this last chapter mainly as a consequence of developments in the area of data protection). Finally, Chapter 12 on the rights of victims of crime has been updated and revised to reflect the provisions of the Criminal Justice (Victims of Crime) Act 2017, the Criminal Justice (Sexual Offences) Act 2017 and the Domestic Violence Act 2018.

All prosecutors, including members of An Garda Síochána who represent the DPP, are bound by these Guidelines in every case. They are also I think a very helpful, guide to a lot of issues which we encounter in day to day practice. Review of the Guidelines for Prosecutors will remain an ongoing process, reflecting legislative and procedural changes in the criminal justice system.

Many people were involved in updating the Guidelines. I want to thank the Policy Unit led by Tricia Harkin and the Communications Unit led by Oragh Flood together with all those legal staff who made important contributions on individual topics.

Last year in my speech to the 2018 Annual National Prosecutors Conference I mentioned the Commission on the Future of Policing. It had made recommendations that the practice of the Garda Síochána presenting cases in the District Court should cease and that all prosecution decisions should be taken away from the Garda Síochána. As you know, at present Gardaí at Inspector and Superintendent rank make significant numbers of prosecutorial decisions in more minor matters, on foot of a delegation by me under Section 8 of the Garda Síochána Act 2005.

Since last year's conference the Government accepted these recommendations in principle. I welcome the intention of the Government to establish an expert group to examine the full implications of these recommendations, so as to establish the costs and benefits if implemented, in whole or in part. It will be very important that this group looks to the experience of other countries in operating this model of prosecution service. However, as I made clear last year, for the recommendations to be implemented in full, it would involve a major reorganisation of the prosecution service and a considerable expansion of the current staff complement. We will await developments.

Turning now to the topics that we have this morning, we will shortly hear from Professor Maura Conway of DCU who is an expert in the area of online extremism and counter terrorism. This is an ever increasing area of concern. As prosecutors we must familiarise ourselves with current and future trends. I look forward to hearing what she has to say.

We will also hear from Lorcan Staines S.C. who will be speaking about the electronic presentation of evidence.

The move by the criminal justice system to utilise electronic presentation of evidence is welcome. It is an acknowledgement of the increased complexity of cases coming before the courts and also the increased volume of material which juries and judges are routinely required to consider. Electronic Presentation of Evidence (EPE) was most notably used in the large banking cases arising from the collapse of Anglo Irish Bank but it has also been used to very good effect in some other very large fraud cases.

Of course Lorcan's presentation is about electronic presentation of evidence and not the presentation of electronic evidence but lots of cases benefit from electronic presentation because they have so much electronic evidence. As prosecutors we find ourselves presenting cases during what is effectively a digital revolution. We know that digital technology has come on in leaps and bounds in recent years but sometimes it is hard for us to understand just how seismic the change has been. Apparently the total amount of data in the world doubles in size every two years. More than half of the world's web traffic now comes from mobile phones. In terms of the impact of social media on electronic evidence I understand. 14 billion photos are uploaded to Facebook every week.

The fact is that electronic evidence is the norm in our cases now rather than the exception. This creates separate issues for disclosure in very many of our cases. One of the steps we have taken to respond to this challenge is to move to a system for encrypted electronic disclosure to defence solicitors and also by interacting with our own prosecutors electronically.

I believe that we have to embrace EPE as an essential feature of the successful presentation of bigger and more complex cases where vast amounts of documents, emails, social media, maps, graphs and other material require to be presented in evidence. It is also more efficient to use technology in court to retrieve and present exhibits for the court and the Jury. It enables exhibits to be dealt with quickly rather than waiting for everybody to find the right page under discussion.

In the large banking cases that I mentioned earlier, EPE assisted the juries in understanding the relevance and sequencing of events. If we want juries, who we know increasingly use electronic devices rather than paper every day, to engage with and understand criminal cases, we all have to embrace EPE. Over time I would like to see EPE adopted more widely and made available in more and more court rooms. I look forward to hearing what Lorcan has to say, based on his own experience in some of those large cases.

Later in the morning we will be hearing from Assistant Commissioner for Special Crime Operations John O'Driscoll of An Garda Síochána on the challenges of fighting organised crime. John has a wealth of experience to talk on this topic at a time when many cases involving organised crime have gone or are going through the courts. I commend An Garda Síochána for their dedicated work in this area and for the investigative successes they have had.

Finally, Professor Tom O'Malley B.L. and Law Reform Commissioner will deal with one of his many areas of expertise, that is sentencing. He will address inter alia the evolution of sentence guidance in Ireland (including recently on manslaughter) and the implications for sentencing guidelines of the recent Judicial Council Act 2019.

I want to take this opportunity to refer to our plans within the Office for dealing with sexual offence cases. Last month I announced that we would be establishing a dedicated Sexual Offences Unit during 2020. This followed an analysis of the benefits of having one unit dealing with sexual offences from decision to prosecute to the conclusion of the trial. Currently different stages of the prosecution process are managed within different units. This is usually very efficient and staff bring a high level of professionalism and commitment to their cases. However, it does mean a lack of continuity in handling very sensitive and complex cases and I concluded that a change of approach would overall be to the benefit of victims.

I am pleased that the Office has received support from Government to commence the establishment of this unit during 2020, with full funding available for 2021. As this way of

working will be more resource intensive I am also pleased that an additional 10 posts have been sanctioned. It is planned that all sexual offences prosecuted in the Central Criminal Court and in the Dublin Circuit Court will be managed from beginning to end within this new unit. Furthermore, the unit will make prosecutorial decisions on all sexual offences cases originating outside of Dublin. It will take the lead in setting policy for all aspects of the handling of these cases nationwide, and particularly all matters relating to the experience of victims in the process. I am optimistic that this reorganisation, which is a major change project for the Office, will enhance the service victims receive from us. We will keep you informed of developments.

It is timely I think for us to move in this direction given the focus on services to victims generally within the criminal process and also given the working group currently underway chaired by the aforementioned and very busy Tom O'Malley, to examine protections for vulnerable witnesses in the investigation and prosecution of sexual offences. I wish him well in completing this work and look forward to seeing his recommendations when published.

Meanwhile work has continued to increase awareness among prosecutors of all special measures which are available to assist victims through the trial process. In the last 9 months training sessions for prosecutors and state solicitors have been organised by our Victims Unit at various locations nationwide. These have been very well attended and I want to particularly thank Caroline Biggs S.C. for her very generous contribution to this training.

Before I conclude I want to mention our prosecutor colleague Noel Whelan SC who died in July this year. His untimely death at the age of 50 was a shock to us all. Our deep sympathies go to his wife Sinéad, son Seamus, his mother and the Whelan family.

At the time of his death much focus was quite rightly placed on his national profile as a respected political commentator, columnist, and strategist and as a leading social campaigner. He truly was a man for all seasons and national discourse and society in general is the poorer for his passing. However, we also remember him as an exceptional lawyer, a Senior Counsel and prosecutor who managed to combine all his other activities with a very successful career at the Bar. He prosecuted for the DPP for nearly 20 years, becoming prosecutor for Co. Wexford (his home county) in 2006 and then prosecutor for the even busier county of Waterford in 2008. In this as in other aspects of his very full life he gave important public service. He was called to the Inner Bar just last year.

We greatly valued Noel as a prosecutor. He was astute and measured in his prosecution of offences. We owe him a debt of gratitude for his contribution to some important cases, perhaps most notably the case of *DPP v. JC* which originated in Waterford, and which concluded in the Supreme Court in 2015. It reconsidered the strict exclusionary rule laid down in *DPP v. Kenny* IR1990 and developed a new exclusionary rule for the admissibility of evidence. Noel brought his considerable intellect and wisdom to this case as in every case.

Much has been said about Noel's great generosity and I can personally vouch for that generosity with his time, his advice and his support. May he rest in peace.

Finally, as ever I want to thank all of you the staff of the Office, all of our state solicitors and the many independent counsel who represent the prosecution for your continued commitment and hard work. It is much appreciated. I want to particularly welcome our new State Solicitors and prosecution counsel to their first conference.

Thanks too to Orlagh Flood, Kevin Graham, Patrick Morrissey, Grace Stenson and Joseph O'Connor who have organised this conference.

I also want to thank the other stakeholders in the Criminal Justice System, many of whom are here today, for your continued support and collaboration with us.

Thank you for your attention and I hope you enjoy the conference.