



A History of the Office of the Director of Public Prosecutions
1975–2025
Niamh Howlin



With thanks to our content partner, the National Archives Ireland



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Acknowledgements

This book commemorates the establishment of the Office of the Director of Public Prosecutions fifty years ago, and there are a number of people and organisations whose contribution to this project must be acknowledged.

The energy, enthusiasm and encouragement of several individuals in the Office of the DPP has made the writing of this book a very enjoyable experience. Prosecution solicitor and historian Sean Smith did much to get the project off the ground, and he has provided me with invaluable practical support. Sarah Sheils has done a wonderful job on the book's design and layout. This publication is part of a wider programme of commemorative events, tirelessly coordinated by Orlagh Flood, the head of Governance and Public Affairs. I wish also to record my sincere thanks to the current Director of Public Prosecutions, Catherine Pierse for commissioning this research, being open to suggestions and for affording me the necessary academic freedom.



I am very grateful to those who agreed to be interviewed for this book. Current and past Directors Catherine Pierse, Claire Loftus and James Hamilton, as well as past Deputy Director Barry Donoghue, past Director of Case Work Michael Liddy, and current Head of Facilities Management Joe Mulligan, all gave freely of their time. They were willing to speak openly about their experiences, insight and opinions. In my view, these first-hand narratives greatly enhance the written record.

The decision by the National Archives of Ireland to digitise a selection of the documents relevant to the establishment and evolution of the Office of the DPP is a welcome development which not only enhances this project but will facilitate future scholarship. Particular thanks are due to Keeper Zoë Reid and to Linda Tobin from the Reprographics section.

Thank you to the staff of the National Archives of Ireland, the National Library of Ireland, UCD Library, the UCD Archives and the Library of the Office of DPP for facilitating access to the various documents, reports, books and files used in compiling this history.

Finally, I wish to thank my colleagues at the UCD Sutherland School of Law, my family and my husband for their continued support.

Dr Niamh Howlin
March 2025



Foreword

As we mark the 50th anniversary of the establishment of the office of the Director of Public Prosecutions, it is a moment to reflect on the journey the Office has taken over the past fifty years. Since 1975, the Office has grown to become an integral part of our criminal justice system, ensuring an independent, fair and effective prosecution service on behalf of all the people of Ireland.

Dr Niamh Howlin, through her research for this book, provides an opportunity to look back on the milestones that have defined our Office, the cases that have shaped our legal landscape, and the individuals whose commitment to justice has carried the Office through decades of change. It also serves as a reminder of the responsibility we bear to uphold the rule of law; to protect the rights of the accused, victims and the community; and to perform our functions impartially, without prejudice or influence.

I would like to take this opportunity to thank Dr Niamh Howlin for all of her work on this project. Her dedication, research and thoroughness have been invaluable in bringing this project to life. Dr Seán Smith, Prosecutor in our District Court Section also played a key role through his meticulous research and digging through the National Archives. His enthusiasm for the project was infectious to us all. Orlagh Flood and Sarah Sheils in our Governance and Public Affairs Unit oversaw the project, and I thank them for all of the courteous nudges to keep it on track, and for designing this book in-house.

I would also like to acknowledge and thank my predecessors James Hamilton and Claire Loftus as well as retired Deputy Director Barry Donoghue, retired Director of Casework, Michael Liddy, and our Head of Facilities Management, Joe Mulligan, all of whom kindly provided their time and wealth of knowledge to contribute to this book.

This anniversary is not just a look at where we have been, but also an opportunity to think about the future of the public prosecution service – how we continue to evolve in response to new challenges, technologies, and the needs of a changing society.

As current Director of Public Prosecutions, I am proud to lead an Office that has been an essential part of our criminal justice system for the past fifty years. I look forward to the next fifty years for the organisation that will undoubtedly bring new obstacles, but also new opportunities to further strengthen our contribution to the administration of justice.



Catherine Pierse
Director of Public Prosecutions
March 2025

1 Introduction

The mission of the Office of the Director of Public Prosecutions is to deliver a fair, independent and effective prosecution service on behalf of all the people of Ireland. Its role is to decide, based on evidence from An Garda Síochána or other bodies, whether to prosecute individuals, and to pursue such prosecutions in the courts. Prosecutorial decisions are made in line with guidelines which were developed and refined over the past fifty years. The DPP is now such a fundamental facet of the administration of Irish criminal justice that it is easy to forget that this was not a constitutionally-established Office of the State. The rationale for its establishment in the mid-1970s has been described as ‘to insulate the prosecution system from extra-legal considerations.’¹ This highlights the independence of the Office as one of its foundational principles. Appointments to the role of Director of Public Prosecutions are not political; the DPP is not answerable to the Government, and there can be no political interference in their decisions. As well as acting independently, the Office seeks to operate

both fairly and effectively. The decision whether or not to prosecute someone can have ‘the most far-reaching consequences for an individual,’² and Articles 38.1 and 40.3 of the Constitution guarantee accused persons the right to be tried in due course of law and the right to fair procedures. The Office also strives to be effective, which means providing the highest quality service to the public. These three principles of independence, fairness and effectiveness have underpinned the work of successive DPPs over fifty years of a dramatically changing criminal justice landscape.

The position of the Director of Public Prosecutions was established by the Prosecution of Offences Act 1974. A quarter of a century after its creation, the Office underwent a significant expansion in its role and responsibilities. Now, after another quarter of a century, it is possible to reflect on those changes and others. This book traces the history of the Office from its modest beginnings in the 1970s to its current

pivotal role in the Irish criminal justice system. It considers some of the challenges and milestones over the past fifty years of independent prosecution. It was pointed out 25 years ago that prosecution systems 'are the products of history, experience and evolution', and 'derive, over time, from local conditions and experience and are deeply rooted.'³ The Irish prosecution service is unique in its history and evolution, and this book explores both.

In compiling this history, I have made use of different sources. Files held in the National Archives of Ireland, from the Offices of the DPP, the Attorney General and the Taoiseach, as well as the Departments of Justice and Finance, shed light on the background to the Prosecution of Offences Act 1974 and the early development of the Office. The publications of the Office itself, in the form of Annual Reports, Strategy Statements, budgetary estimates, policies and guidelines, have been a useful barometer of change and innovation. They signpost the key developments in structure, staffing, policy and work practices, as well as offering insights into the challenges and frustrations sometimes experienced by those working in the Office. Interviews with individuals who have held key leadership positions in the Office have helpfully supplemented the written sources. Of course, as with any research project, hard decisions were made as to what to include and what to leave out. The approach I have taken is to focus on organisational developments rather than on individual cases and decisions by the Office of the DPP. This allows for a high-level survey of the first fifty years of prosecution services in the State in a relatively compact book. No doubt this first foray into the history of the Office of the DPP will be followed by subsequent scholarship.



The Prosecution of Offences Act 1974

Until the 1970s, criminal prosecutions on indictment were taken in the name of the Attorney General.⁴ In each county there was at least one State Solicitor, who liaised between the investigating Gardaí and the Attorney General. Dublin cases were handled by the Chief State Solicitor's Office. Files relating to indictable offences were sent from the State Solicitor's Office or the Chief State Solicitor's Office to the Office of the Attorney General, to be analysed by one of its officers. Broadly speaking, they recommended whether or not to pursue a prosecution and the Attorney General made a decision based on their analysis and recommendation.⁵ Attorney General Patrick Lynch suggested in 1937 that someone ought to be appointed to his Office to direct criminal prosecutions; he considered this preferable to having a standalone prosecutor. While the Department of Finance agreed that there should be a director of public prosecutions established by 'special statute',⁶ no change was made and the Attorney General continued to have responsibility for directing prosecutions for the next forty years or so. As that Office expanded, prosecutorial decisions were delegated internally, and in practice, decisions were often taken by An Garda Síochána.

Our common law neighbours developed different prosecution systems. In England, a Director of Public Prosecutions was established in 1879.⁷ In Northern Ireland, most prosecutions were conducted by police officers from the Royal Ulster Constabulary. Prosecutions on behalf of government departments and serious (indictable) offences were the responsibility of the Crown, represented by Crown Solicitors and Crown Counsel. With the outbreak of sectarian conflict, between 1969 and 1971 there were recommendations aimed at changing the role of the police in criminal prosecutions.⁸ In 1972 a serious escalation of violence saw Bloody Sunday, bombings and riots in the first few months of the year. In March, the Prosecution of Offences (Northern Ireland) Order 1972 allowed for the appointment of a Director of Public Prosecutions for Northern Ireland. The prosecutorial role of the RUC was diminished, and County Crown Solicitors were abolished. The powers of the DPP for Northern Ireland were broader than those of his English counterpart, and the two jurisdictions also differed in the provision made for removing the Director.

These developments were watched with interest in Dublin,⁹ where several factors converged to influence a desire to set up an independent public prosecution service. The need to maintain public confidence in the criminal justice system, particularly in light of the unrest in the North, was a key consideration. Furthermore, the political nature of the Attorney General's role had come under scrutiny during the 1969–70 Arms Crisis. This saw the prosecution in 1970 of Cabinet Ministers Charles Haughey and Neil Blaney,

Memorandum of A.G.'s Office
Jan 1969

MEMORANDUM explaining the proposals for re-organisation in the Office of the Attorney General.

I. The following table indicates in a general way the growth of the work in the Attorney General's Office since 1929 :-

No. of files received for each of the years from 1929.			
1929	...	...	1,197
1930	...	...	1,303
1931	...	...	1,713
1932	...	...	1,610
1933	...	...	2,105
1934	...	...	2,740
1935	...	...	3,622
1936	...	...	4,531

A document from the Attorney General's Office dated January 1969 indicating the increase in files received from 1929 to 1936. (*National Archives*)

along with others, for attempted importation of guns and ammunition to arm Republicans. The District Court found an insufficient case against Blaney and refused to send him forward for trial,¹⁰ and Haughey was acquitted following two trials.¹¹ Attorney General Colm Condon came under significant scrutiny for his prosecutorial decisions, and was criticised for having been politically motivated. A further factor in discussions about the work and role of the Attorney General was Ireland's accession to the European Economic Community (EEC) on 1 January 1973, which greatly increased the volume of work undertaken by his Office. Michael Liddy, who joined the Attorney General's Office in the early seventies, recalls that the advisory side of the Office was very busy during this period and that 'work had to be done quite quickly, as quickly as possible'.¹²

Declan Costello succeeded Colm Condon as Attorney General in March 1973. Leading his Office (which had both advisory and statutory drafting functions) was Declan Quigley, and both were 'very keen on establishing the DPP's Office'.¹³ There followed several months of internal discussion about hiving off the Attorney General's prosecutorial function. By November 1973, Costello was in a position to send a memorandum to Taoiseach Liam Cosgrave setting out proposals for the establishment of a new Director of Public Prosecutions,¹⁴ 'who would be authorised to perform and discharge the functions and duties relating to criminal prosecutions which can, at present, be performed and discharged only by the Attorney General'.¹⁵ Costello articulated two main reasons for establishing a DPP.

First, he emphasised the desirability of relieving the Attorney General of 'the duty of directing and

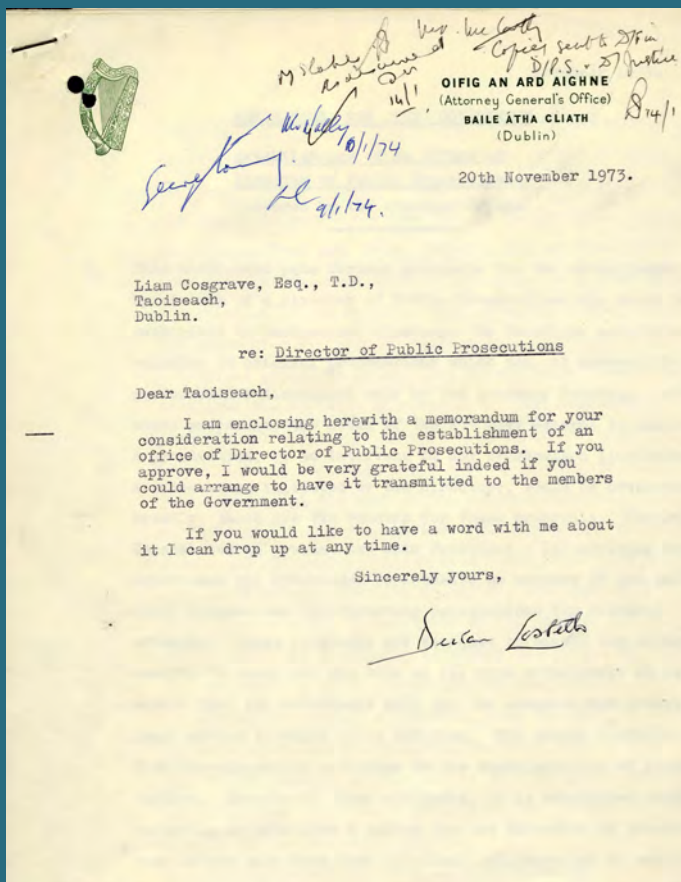
superintending prosecutions, in order that he would be able to concentrate on what can be regarded as his primary constitutional function of adviser of the Government on matters of law and legal opinion.' In particular, Ireland's accession to the EEC meant that 'new responsibilities in the Attorney General's Office have caused a large inflow of time-consuming work.' He also noted 'the continuous increase in the volume of serious crime', the impact of the Criminal Procedure Act 1967 (which dealt with the preliminary examination of indictable offences in the District Court), the activities of unlawful organisations and the establishment of the Special Criminal Court.¹⁶

The second reason set out by Costello was the desirability of creating an Office which would 'be seen by the public to be free from political influence'.¹⁷ This was an important consideration given the ongoing situation in the North and the fallout from the Arms Trial. Costello was also concerned with the perception that prosecution counsel were briefed on the basis of their political affiliation, and suggested that the new DPP would distribute State work in a manner that was 'fair and equitable,' having regard to the public interest and the 'competence and suitability' of counsel.¹⁸ This principle made its way into the Act and is further examined in Chapter 12.

Costello's initial proposals were refined in several respects before the eventual passing of the legislation in 1974. His vision for the independence of the DPP was that the DPP would be an officer in the Attorney General's Office.¹⁹ Furthermore, the DPP's assistants 'would be part of the Attorney General's staff' and there would be 'free interchangeability' of the staff between the two Offices. The Minister for Justice, Patrick Cooney, had reservations about this proposal, suggesting

to the Taoiseach that there was unlikely to be 'ready acceptance of the idea that the Director of Public Prosecutions would be independent in the performance of his functions if he were made "accountable to" the Attorney General (or to any Minister).'²⁰ He suggested that the DPP 'should not be (or appear to be) attached to the Attorney General's Office – or to any Department or Government Agency – but should constitute the head of a separate Office with his own staff.' He argued that it was essential that the 'statutory basis on which the Office is established should be clearly seen to be one that guarantees independence in the discharge of the functions of the Office.' Apart from the relationship between the DPP and the Attorney General, Cooney was also concerned about security of tenure as an important aspect of the independence of the new role. His proposal was that 'the Office should be held on the same basis as that of a District Justice (whose security of tenure is guaranteed by statute though not by the Constitution.' The Minister also considered it 'essential that the post should be sufficiently well remunerated to be generally accepted as a "top of the line" post from which promotion to "higher" office – judicial or other – would not be expected or regarded as normal.' Cooney's thoughtful and well-reasoned feedback on the proposals helped to shape the role of the DPP. He also suggested that State solicitors should 'operate under the supervision and control of the Director', though as will be seen in Chapter 6, this was not something which made its way into the 1974 Act.

The practical implications of the independence of the proposed DPP needed to be teased out. Attorney General Declan Costello was alive to the



Letter from Declan Costello, Attorney General, to Liam Cosgrave, Taoiseach dated 20 November 1973.
(National Archives)

November 1973.

MEMORANDUM FOR THE GOVERNMENT

Establishment of an office of
Director of Public Prosecutions

1. This memorandum puts forward proposals for the establishment by statute of a Director of Public Prosecutions who would be authorised to perform and discharge the functions and duties relating to criminal prosecutions which can, at present, be performed and discharged only by the Attorney General. Under these proposals, the power of the Attorney General to initiate a prosecution, or to intervene in any prosecution (including a prosecution initiated by the Director), would be preserved. Briefly, there are two reasons for these proposals. The Attorney General has at present two main functions - (a) advising the Government and Government Departments on matters of law and legal opinion and (b) directing prosecutions for criminal offences. These proposals are designed to enable the Attorney General to carry out his role at (a) more effectively so as to ensure that the Government will get the accurate and prompt legal advice to which it is entitled. The second reason arises from current public attitudes to the administration of criminal justice. Because of these attitudes, it is considered highly desirable to establish a system for the direction of prosecutions that is not only free from political influence but is manifestly so. This consideration has become more compelling since the establishment in 1972 of an Office of Director of Public Prosecutions in Northern Ireland for the stated reason that "such a Director would be free from political influence and that decisions as to prosecutions should be in his hands rather than in those of the Attorney General who is, in practice, also a politician."
2. The present situation can be summarised as follows. Generally

2.

all prosecutions on indictment in any court are required, under the present law, to be undertaken by the Attorney General. This is the combined effect of Article 30.3 of the Constitution and section 9(1) of the Criminal Justice (Administration) Act, 1924. Section 9(2) of that Act makes provision for the conduct of prosecutions in a court of summary jurisdiction by the Attorney General except where proceedings are taken by a Minister or other person (official or unofficial) authorised by law to do so. The Constitution however contemplated the division of responsibilities suggested in this memorandum. Article 30.3, while expressly providing for the prosecution of offences, other than in a court of summary jurisdiction, at the suit of the Attorney General, itself gives authority for the enactment of legislation conferring this power and responsibility upon "some other person authorised in accordance with law to act for that purpose."

3. Long experience in the operation of the present system, but particularly the experience of recent years, has established the desirability of relieving the Attorney General, in general and subject to certain safeguards, from the duty of directing and superintending prosecutions, in order that he would be able to concentrate on what can be regarded as his primary constitutional function of adviser of the Government on matters of law and legal opinion.
 - (a) Modern government, with its ever-widening fields of activity both in domestic and international affairs, requires legal advice and assistance on matters of importance and complexity to an extent not envisaged until recently. Particularly in relation to E.E.C. matters new responsibilities in the Attorney General's Office have caused a large inflow of time-consuming work. A considerable amount of the legal advice which the Attorney General is called upon to provide is required in circumstances which do not permit of delay in furnishing it. The burden of increased responsibility

Extract from Memo from Declan Costello, Attorney General, to Liam Cosgrave, Taoiseach, setting out the proposal for the establishment of a new Director of Public Prosecutions—November 1973.
(National Archives)

possibility (or perhaps the probability) of the DPP being lobbied in relation to specific cases. Limerick State Solicitor Gordon Holmes wrote to Costello about the proposals in this regard, saying ‘Candidly, we are absolutely plagued with representations here, largely coming, I am afraid, from TDs.’²¹ (In a later letter, he described how one TD had lobbied for both an accused person and a victim in a particular case.²²) Holmes argued, however, that some kinds of representation should nevertheless be allowed, and Costello agreed that ‘it would not be desirable to cut out genuine representation which can help in the administration of justice.’²³ In his memorandum for the Government, he had stated:

It is unfortunately true that there is a widespread belief in this country that political influence can be brought to bear successfully in the administration of the criminal law, and it is obviously very important that this belief be eradicated in order to avoid the rule of law being endangered through erosion of public confidence in its administration ... If decisions concerning prosecutions were clearly seen to be wholly unaffected by political considerations, it would enhance public confidence in the administration of the law and would also provide protection for the Government and the Attorney General from irresponsible or misinformed and frequently malicious criticisms in this area.’²⁴

Minister Patrick Cooney was also concerned with the possibility of attempted interference with the work of the DPP, and suggested that further consideration

be given ‘to the idea of making it a criminal offence to make representations.’ He considered it ‘inevitable that, at least for some time ahead, some people (including public representatives) will persist in believing that a letter or telephone call to the Director (or to the Attorney General or to a Minister) will achieve results.’²⁵ This suggestion made it into the Bill. As John M. Kelly explained in the Dáil,

‘while the act of communication for the purpose set out in the section is to be unlawful, it is not proposed to create a punishable offence in this legislation. It is the Government’s belief that in practice a penal sanction will not be necessary as it is anticipated that the provisions of this Bill should become quickly known and observed.’²⁶

Thus, although section 6(1)(a) of the Act described such communications as unlawful, no specific criminal offence was ultimately created.

Meanwhile, the Troubles continued, with serious criminal activity taking place on both sides of the border in 1974. A week after the Dublin and Monaghan bombings, Costello wrote that he was ‘most anxious that the Bill be enacted as speedily as possible.’²⁷ It was introduced in the Dáil on 28 May 1974 and debated and amended over the summer. Along with Costello and Parliamentary Draftsman Edward Bacon, one of those involved in drafting the amendments to the Bill was Eamonn Barnes.²⁸ The Bill was signed into law by President Erskine Childers in late July 1974, just before the summer recess.

Ein-fhreasra ar an litir seo, is mar
seo ba choir e stiuradh.

Any reply to this communication
should be addressed to—

An Rúnai
(The Secretary)

fe'n uimhir seo—
and the following number quoted—



ROINN DH AGUS CIRT,
(Department of Justice),

72-76 FAICHE STIABHNA,
(72-76 St. Stephen's Green),

BAILE ATHA CLIATH, 2.
(Dublin, 2)

Rúnai,
Roinn an Taoiseigh.

I am directed by the Minister for Justice to refer to Mr. Mally's minute of 14th January enclosing a copy of a memorandum which the Taoiseach proposes to submit to the Government regarding the establishment of an office of Director of Public Prosecutions.

1. The Minister is strongly in favour of the proposal that a director of Public Prosecutions should be appointed as proposed and he is in complete agreement with the view expressed in the memorandum as to the advantages that would accrue from the creation of a new independent office of this kind.

2. There are, however, some aspects of the scheme outlined in the memorandum on which the Minister has reservations. Basically, the problem is that, in order to achieve the desired objectives, it is necessary that the scheme should not only be sound in itself but also such as would, from the very beginning, carry conviction with the general body of the public.

3. The Minister does not think that there would be ready acceptance of the idea that the Director of Public Prosecutions would be independent in the performance of his functions if he were made "accountable to" the Attorney General (or to any Minister). This is the Minister's view notwithstanding that there are what appear to be somewhat similar legal provisions in relation to the office of Director in England and in Northern Ireland. In England the real independence of the Director is accepted by the public because of the well-established constitutional practice that interventions by the Attorney General are quite exceptional. In our situation it seems to the Minister to be necessary, as a minimum, that the statutory basis on which the office is established should be clearly seen to be one that guarantees independence in the discharge of the functions of the office - any exceptions being clearly specified. One of the requirements for guaranteed independence would be security of tenure and, in that regard, one possibility is that the office should be held on the same basis as that of a District Justice (whose security of tenure is guaranteed by statute, though not by the Constitution).

4. For the same reasons, while the Minister agrees that the Director should in the legal sense be a civil servant and that civil servants with the appropriate legal qualifications and experience should be eligible for the post, he considers that it would be essential that the Director should not be (or appear to be) attached to the Attorney General's Office - or to any Department or Government Agency - but should constitute the head of a separate Office, with his own staff. Likewise, he would regard it as essential that the post should be sufficiently well remunerated to be generally accepted as a "top of the line" post from which promotion to "higher" office - judicial or other - would not be expected or regarded as normal.

5. The Minister considers that it would militate against the attainment of the whole objective of setting up the new office of Director if the Attorney General were to retain all his present powers to initiate, conduct and intervene in criminal prosecutions. It would seem to be essential that, insofar as such powers need to be retained, the statute should contain provisions making it clear that they were intended for exceptional use only.

- 2 -

This comment is intended to relate to the general run of criminal offences ("ordinary" crime). The Minister would need further time to consider, and to discuss with the Attorney General, the possibility of its being necessary to have special provisions regarding prosecutions in cases under the Offences Against the State Acts, etc.

6. The memorandum for the Government does not deal with the role of the Chief State Solicitor or local State Solicitors in the new scheme of things. Presumably, in relation to prosecutions, they should operate under the supervision and control of the Director. Since local State Solicitors have a significant role in relation to prosecutions, it appears to the Minister that the achievement of the objectives set out in the memorandum would also require that in future these offices should be seen to be filled solely on the basis of merit - e.g. through the Civil Service Commission.

7. The position in relation to Garda responsibility for the initiation of prosecutions will also need to be examined in the context of the proposals in the memorandum. The Minister takes the view that there may be a strong case that some of the existing Garda responsibility in this area should be transferred to the new Director, i.e. in the case of the more serious offences, both indictable and summary. This is a matter which would need to be considered in consultation with the Commissioner of the Garda Síochána and the Attorney General.

8. The Minister fully accepts what is said in the Memorandum that the problem of attempts to bring influence to bear in relation to criminal proceedings is a serious one. Nevertheless, he would suggest that further consideration needs to be given to the idea of making it a criminal offence to make representations. It is inevitable that, at least for some time ahead, some people (including public representatives) will persist in believing that a letter or telephone call to the Director (or to the Attorney General or to a Minister) will achieve results - or, even if they do not believe that, they will want a constituent (or "client") to see that some effort had been made. It is scarcely to be contemplated that if a Minister (or the Attorney General) received such a letter, or telephone call, he should be expected to report the matter to the Director with a view to prosecution, or that the Director himself would take proceedings against a Deputy or Senator who telephoned or wrote direct to him about a case. Moreover, an attempt at intervention could be formally worded as an "enquiry" about the case thereby (presumably) evading the legal prohibition. If it is agreed that these points are valid, and that therefore it would be quite apparent to the public that the legal provision would not in practice be enforced, its introduction could on balance be harmful (inasmuch as it would tend to bring the law into disrepute) rather than beneficial even if it were certain to deter some people from making representations.

10. The Minister suggests that the Government be asked to agree in principle to the creation of an independent office of Director of Public Prosecutions and to authorise the drafting of the necessary legislation on the basis that the foregoing comments will be the subject of discussion between the Minister and the Attorney General.

2 January 1974 Memo from the Office of the Minister for Justice to An Taoiseach suggesting the Office of the DPP should be 'independent in the performance of his functions'. (National Archives)

Word
2/ Janair, 1974.

Section 2 of the 1974 Act established the office of Director of Public Prosecutions, while section 3 provided that the Director should thenceforth 'perform all the functions capable of being performed in relation to criminal matters ... by the Attorney General'. Section 6 made it unlawful to make representations to the DPP or Attorney General 'for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in

criminal proceedings.' This restriction did not apply to accused persons, their family members, or others involved in a particular case. Section 2(5) provided that the DPP was to be 'independent in the performance of his functions'. He could only be removed from Office by the Government following the report of a committee comprising the Chief Justice, a judge of the High Court and the Attorney General.



As the Troubles continued, Declan Costello wrote to An Taoiseach outlining that he was anxious for the Bill to be 'enacted as speedily as possible'—24 May 1974 (National Archives)

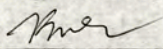
S.19100

28 Bealtaine, 1974.

Gleireach na Dála

I am directed by the Taoiseach to enclose three certified copies of the Prosecution of Offences Bill, 1974, and accompanying Explanatory Memorandum, and to request that you arrange for printing and circulation to Deputies.

The Bill was introduced by Long and Short title in Dáil Éireann this afternoon.


th/c Rúnai

Memo instructing circulation of
the Bill—28 May 1974
(National Archives)



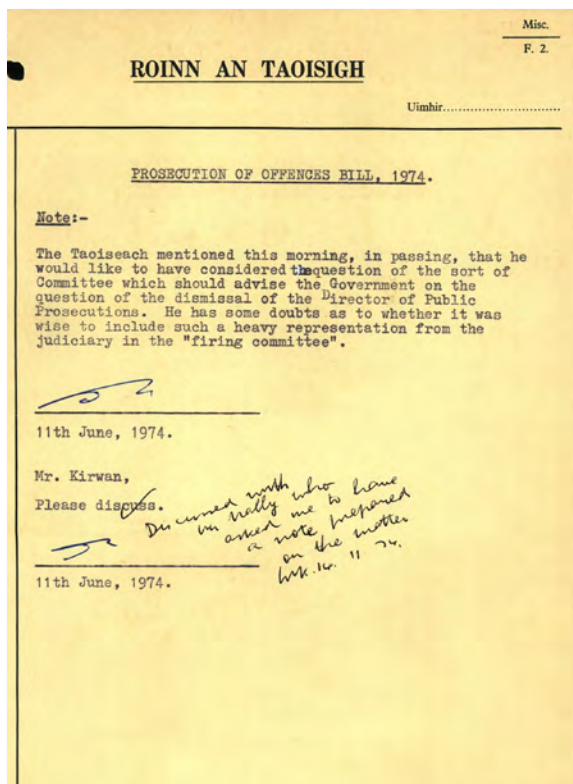
AN BILLE UM IONCHUISEAMH I gCIONTA, 1974
PROSECUTION OF OFFENCES BILL, 1974

Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas

ARRANGEMENT OF SECTIONS

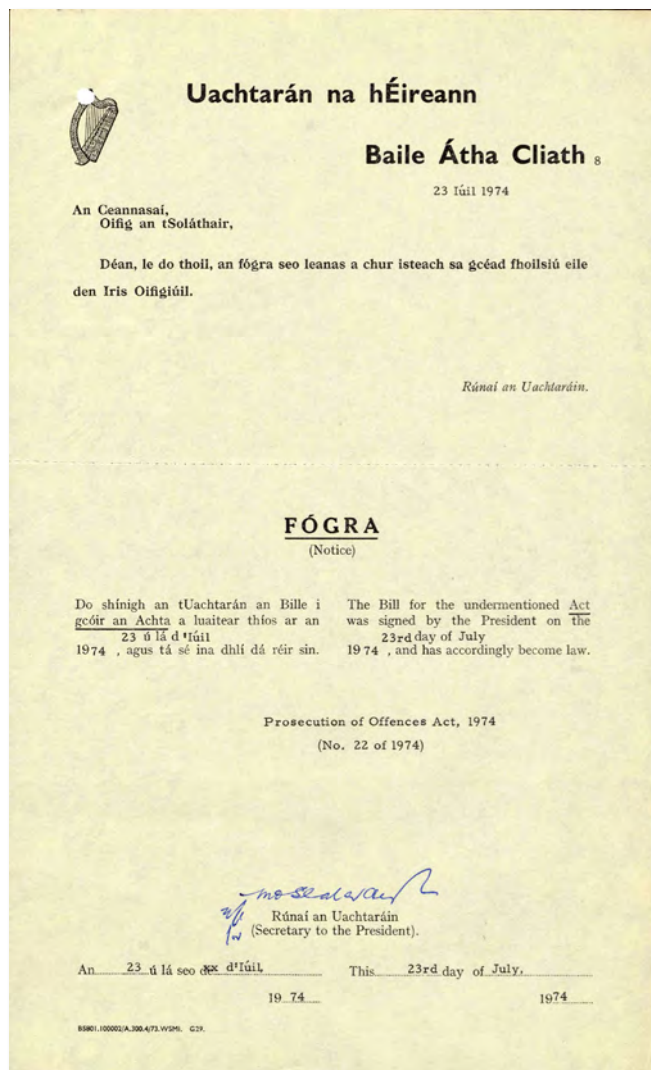
Section

1. Definitions.
2. Director of Public Prosecutions.
3. Functions of Director.
4. Performance of functions of Attorney General and Director.
5. Proceedings by Attorney General.
6. Prohibition of certain communications in relation to criminal proceedings.
7. Retaining of barristers on behalf of State.
8. Proof of certain documents.
9. Power of Taoiseach to make certain temporary and other appointments.
10. Regulations.
11. Repeal of section 22 of Criminal Justice Act, 1951.
12. Laying of orders and regulations before Houses of Oireachtas.
13. Expenses.
14. Short title and commencement.



Right: Notice dated 23 July 1974 from Uachtarán na hÉireann to the Attorney General informing him that the Bill had been signed into law (National Archives)

Left: Note dated 11 June 1974 of the Taoiseach's doubts regarding the "firing committee" for the DPP (National Archives)





3 Appointing the first DPP

Section 2(7) of the Prosecution of Offences Act 1974 provided that the Director of Public Prosecutions would be appointed after selection by a panel comprising the Chief Justice, the Chair of the Bar Council, the President of the Law Society, the Secretary to the Government and the Senior Legal Assistant in the Office of the Attorney General.²⁹ In May 1974, the Taoiseach wrote to the members of the proposed selection committee to ask whether they had any objection to being involved in this process.³⁰ Once the legislation had been enacted, in September 1974 he wrote again to each member outlining the process and enclosing some proposed draft regulations for the committee.³¹ In October, he formally requested each member of the committee to select candidates. The sudden death of Chief Justice William O'Brien FitzGerald

on 17 October threw the process into disarray, and there ensued a delay of some months. Meanwhile, the promotion of Welden Parke SC to the bench of the High Court, and the coming to an end of Peter Prentice's term as President of the Law Society also necessitated some substitutions. Eventually, the final selection committee was appointed: Chief Justice Thomas F O'Higgins; Ronan Keane SC (Chair of the Bar Council); William Osborne (President of the Law Society); D O'Sullivan (Secretary to the Government) and Declan Quigley (Senior Legal Assistant). Things progressed rather quickly from that point. The post of DPP was advertised in daily newspapers and in legal periodicals in November 1974, with a closing date for applications of 16 December.³² As was generally the case with public sector appointments, there were different salary

scales published depending on whether the person appointed was a man or a woman; in this case, £8,978 for a man or £8,369 for a woman,³³ something which drew the ire of many.³⁴

The selection committee met and interviewed candidates in Dublin's Shelbourne Hotel³⁵ on 2 and 3 January 1975. On 6 January, the Chief Justice wrote to the Taoiseach informing him of the three candidates which had been selected by the committee.³⁶ All three were barristers: Anthony J Hederman SC; Eamonn M Barnes BL and Diarmuid P Sheridan SC. It was for the Taoiseach to choose from this list of three. He wrote to his preferred candidate the very next day, and the appointment was announced publicly on 9 January 1975. Eamonn Barnes was to be the first Director of Public Prosecutions.

Right: Advertisement for the post of
Director of Public Prosecutions
(*The Irish Times*—November 1974)

Left: The Shelbourne Hotel where the interviews for the post of DPP took place.
(Peter 'Pip' Gaskin, former Office of the DPP staff member)

**Applications are invited from suitably qualified persons
to fill the position of :**

Director of Public Prosecutions

The office of Director of Public Prosecutions was established under the Prosecution of Offences Act, 1974. The Director will, subject to the provisions of the Act, perform the functions of the Attorney General in relation to criminal matters and election petitions and referendum petitions.

ESSENTIAL QUALIFICATIONS: On the date of his appointment the Director must be :-

- (1) a practising barrister or a practising solicitor, and
- (2) have practised as a barrister or solicitor for at least ten years.

For the purpose of (1) and (2) above, service for any period in a position in the Civil Service for which practice as a barrister or a solicitor was a necessary qualification, will be regarded as practice as a barrister or a solicitor for that period and persons while holding such positions will be regarded as practising barristers or practising solicitors as the case may be.

STATUS: The Director shall be a civil servant in the Civil Service of the State and shall be independent in the performance of his functions.

SALARY: Man : £8,978 per annum

Woman : £8,369 per annum

(These rates are inclusive of the 1st phase of the 15th round.)

SUPERANNUATION: There is provision for superannuation.

ANNUAL LEAVE: 30 working days, exclusive of public holidays and on the basis of a 5-day week.

Applications will be considered by the Committee established under the Act to select candidates for appointment to the office. Candidates may be interviewed: in such an event the Committee may, at their discretion, decide that a number only of the applicants shall be invited to attend for interview. The appointment will be made by the Government.

Applications, giving full details of qualifications, experience, age, etc., should be addressed to "The Secretary, Selection Committee (Director of Public Prosecutions), Department of the Taoiseach, Room 113A, Government Buildings, Upper Merrion Street, Dublin 2" and should be marked "Personal and Confidential". The closing date for the receipt of applications is Monday, 16 December, 1974.

Canvassing will automatically disqualify.

S.19267

6 Eanáir, 1975.

A Chara

I am to inform you that the Government have today appointed you to be the Director of Public Prosecutions.

The Taoiseach, after consultation with the Minister for the Public Service, has determined that you shall hold office on the terms and conditions set out in the enclosure to this letter.

Mise le meas,

Dis.
Runai

Mr. E.M. Barnes,
33 Kilgobbin,
Stepaside,
CO DUBLIN.

Brief letter to Eamonn Barnes dated 6 January 1975 informing him of his appointment to the position of Director of Public Prosecutions.
(National Archives)

Telephone 981908

W. W. [Signature]
33, Kilgobbin
Stepaside
Co Dublin

7th January, 1974.

An Runai,
Roinn an Taoisigh,
Baile Atha Cliath 2.

A Chara,

I acknowledge with thanks the receipt of your letter of the 6th instant informing me of my appointment by the Government to be Director of Public Prosecutions.

Mise, le meas,

A. M. Barnes

Runai, 9/1

To see [unclear]

Runai 9/1/75

*Handed back by
Mr Barnes today
Runai 9/1/75*

Reply from Eamonn Barnes (mis)dated 7 January 1974 acknowledging the appointment with handwritten note "Handed to me by Mr. Barnes today".
(National Archives)

4 Early Days: Setting up the Office



Eamonn Barnes, appointed as the first DPP in January 1975 (Frank Gavin Photography)

Called to the Bar in 1958, Eamonn Barnes had joined the Attorney General's Office in 1965 as a Legal Assistant. As such, he had been involved in some of the preparatory discussions about the 1974 Act. Faced with the challenge of establishing an entirely new Office, he got straight to work in January 1975. Securing adequate personnel and suitable premises were the two most pressing items on his agenda. Michael Liddy, who had worked with Barnes in the Attorney General's Office, recalled being asked to move to the new Office of the DPP and was glad to do so: 'I liked Eamonn Barnes. I knew he would be good at the job, very intelligent, very affable, very relaxed and ... a good listener.' He described the early staffing:

“

'Eamonn Barnes, myself, Simon [O'Leary], the three of us, and then we were joined by Walter Carroll who was in the Chief State Solicitor's Office and had been dealing

with crime there for many years – a very senior man – and so he came along to provide a lot of experience.’

It was a small Office in the early days. The modest staffing was possible in part because the Director and members of his Office did not appear in court themselves, but were represented by barristers retained and paid by the DPP, as well as by State Solicitors and members of An Garda Síochána. More legal and administrative staff were soon recruited into the Office, and Michael Liddy commented that the staff got along well and ‘the fact that it was such a monumental change didn’t cause us much angst.’ Barry Donoghue points out that ‘a lot of the structure and the descriptions of the posts were similar to the Attorney General’s Office,’ and this included the nomenclature for the various positions in the Office.

Initially, the Office of the DPP was temporarily located in the South Block of Government Buildings on Upper Merrion Street, in what had formerly been the Department of Agriculture. By May 1975 the Office had decamped to the third and fourth floors of 44 St Stephens Green, above Arthur Cox solicitors and the Bank of Chicago. Michael Liddy recalled moving ‘to assert our independence,’ and that although they did not move far, it was important to be located ‘where the geography would help to give the impression we were a separate body.’ Barnes threw himself into all aspects of kitting out and furnishing the new premises. He advised on the sort of typewriters to be purchased (‘I have knowledge of the typewriter issued to the AG. A similar type would be eminently suitable here’³⁷), as well as suggesting which firm of cleaners ought to be engaged.³⁸

In addition to a physical space, the new Office required access to relevant law books, statutes and case reports to inform decision-making and policy development. It was generally accepted that the DPP could not ‘fulfil his statutory functions without an adequate supply of legal publications in his Office.’³⁹ Sharing books with the Attorney General’s Office was only practicable while the DPP remained temporarily in Government Buildings. In March 1975 Barnes asked the Department of Finance to sanction the purchase of various publications,⁴⁰ including two copies of relevant legal texts; one for his private Office and one for general usage. He advised the Department that sets of law reports were ‘very difficult to get’ but could be acquired when ‘the effects of a deceased judge are being sold.’⁴¹ Barnes kept in touch with the Law Society’s librarian, Colm Gavan Duffy, who was described by Declan Quigley as ‘the authority on the valuation of legal books.’⁴² Through various purchases and subscriptions and borrowings from other departments, Barnes was determined to set up a decent working law library.

The surviving correspondence regarding setting up the new Office paints a picture of the first Director as both practical and pragmatic. Barnes took on the logistical challenges and pushed for expenditure which he deemed essential. In an interview a few years after establishing the Office, he described ‘the first few extraordinary months, when we had to seek premises, staff, desks, library, and other facilities, and at the same time, keep the show on the road.’⁴³ Within about six months of taking up his role, Barnes had firmly established the place of the Office of the DPP, and the following year it received over 2,000 files.

23rd April, 1975.

Mr. McLoughlin,
O & N Section
Department of Finance

I wish to be supplied with an I.B.M. Correcting typewriter, model 895, 15½" carriage, dual pitch, for use in my office. Due to the volume of correspondence with agencies outside the State, preparation of legal documents, etc., I consider the issue of an electric typewriter to this office to be essential. In the preparation of legal documents for presentation in the Courts as evidence, any errors or erasures necessitate the complete re-typing of the document with resultant loss of time and paper. It is therefore, necessary to have a machine with a correcting device.

I have knowledge of the typewriter issued to the Attorney General. A similar type would be eminently suitable here.

I.B.M. quotes price of £405 (Govt. Price) subject to value added tax - quotation valid for 30 days from 17/4/1975.

I am to request the sanction of the Minister for Finance for the purchase of above typewriter at cost as shown.


Director of Public Prosecutions.

Left: Letter from Eamonn Barnes dated 23 April 1975, seeking sanction for a typewriter similar to that of the Attorney General.
(National Archives)

an fhreagra chun —
na n-ádh (to —)

AN RUNAÍ
The Secretary

umhíir seo —
"S 332/1/75
fon } (01) 767571
tóné



ROINN NA SEIRBHÍSE POIBLÍ
(Department of the Public Service)

72/76 FAICHE STÍABHNA,
(72/76 St. Stephen's Green)

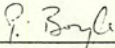
BAILE ÁTHA CLIATH, 2
(Dublin, 2)

12 Bealtaine 1975

Stiurthóir Ionchúiseamh Poiblí

I am directed by the Minister for the Public Service to refer to your minute of 23 April, 1975 and to convey sanction for the purchase of an IBM Correcting typewriter, model 895 at a cost of £405 plus VAT.

Sanction is subject to the condition that the relevant subhead of your Department's vote is not exceeded.


Management Services (General)

Right: Sanction approved (with conditions) 12 May 1975.
(National Archives)

Seol an fhreagra chun—
(Address any reply to:—)

AN RÚNAÍ
(The Secretary)

Teleafón } 01 67571
Telephone }

faoin uimhir seo—
(quoting:—)

1 Lúnasa 1975

Department of Public Prosecution
3rd Floor
44/45 St Stephen's Green

With reference to the attached account it is pointed out that sanction for the purchase of the typewriter was "subject to the condition that the relevant subhead of your Department's Vote is not exceeded".

Expenditure from the relevant subhead (Subhead B - £4,500) at the time the typewriter was purchased was £8600. As the condition under which sanction was given has not been complied with please obtain the sanction of the Public Expenditure Division of the Department of Finance for the expenditure.

S. B. Brown

BRAINSE NA gCUNTAS,
(Accounts Branch)

AN ROINN AIRGEADAIS,
(Department of Finance)
PUBLISHERS HOUSE
PLAS HE WACHT,
Kilgore Street
BAILE ATHA CLIATH. 2.
(Dublin, 2)

IONCHUSAMH POB'LI

Left: Letter dated 7 August 1975, from the Department of Finance requiring that the Office of the DPP seek sanction from the Public Expenditure Division for the overspend on the typewriter.
(National Archives)

Seol an fhreagra chun—
(Address any reply to:—)

AN STIURTHOIR
(The Director)

faoin uimhir seo—
(quoting:—)

Teleafón } (01) 789222.
Telephone }

STIURTHOIR IONCHUSEAMH POB'LI.
(Director of Public Prosecutions)

44/45 FAICHE STIABHINA,
(44/45 St. Stephen's Green),
BAILE ATHA CLIATH. 2.
(Dublin 2.)

20th August, 1975.

Attention - Mr. T. Flynn - Public Service with on 5/10/75 together with similar typewriter for AG & CSS

The Secretary,
Department of Finance,
(Public Expenditure Division),
Up. Merrion Street,
DUBLIN 2.

Please see attached copy of a communication received from your Accounts Branch regarding purchase of an electric typewriter from I.B.M.

In original application to Mr. McLoughlin, O. & M. Section, Department of Finance, it was pointed out that the issue of an electric Typewriter (corrector model) was essential in the preparation of legal documents for presentation in the Courts as evidence, as any errors or erasures would necessitate the complete re-typing of the document.

It was not adverted to at the time that the relevant sub-head of Law Charges Account Vote had been exceeded. I attach for information:

- (a) copy of application made to Department of Public Service on 23/4/75.
- (b) Sanction from Department of Public Service to purchase.

The machine was delivered to this office on 11th June, 1975 by "I.B.M."

In the circumstances I request sanction for the purchase of the machine which is in use since date of issue.

F. Clancy

F. Clancy.

Right: Letter dated 20 August 1975 from Fursey Clancy, Office Manager, seeking sanction for the typewriter. (National Archives)

5 Reviewing the Office

After its establishment, the Office was from time to time the subject of reviews or re-examinations, sometimes in the wake of high-profile cases, controversies or public discourse on criminal activity. This was particularly evident in the mid-1990s, when there was also increased scrutiny of the civil service and of public bodies, accompanied by a desire to enhance accountability, transparency and freedom of information.⁴⁴ Two reviews of the structures, procedures and resources of the Office of the DPP were published in 1996,⁴⁵ and in September of that year a Review Group was established to examine the law offices of the State.⁴⁶ The following year, the Public Prosecution System Study Group was appointed under the chairmanship of Dermot Nally, former Secretary to the Government. Its members included judges, barristers, senior civil servants and representatives from the Offices of the DPP, Attorney General and Chief State Solicitor.⁴⁷ Its terms of reference were to review the legal and organisational arrangements for the public prosecution system. Members made international visits and considered prosecution services in other jurisdictions. Submissions were received from various organisations, and DPP Eamonn Barnes made 'a wide-ranging presentation'.⁴⁸ While it did not propose major changes to the system of prosecutions, the *Nally*

Report highlighted some anomalies and shortcomings and made recommendations for structural changes, which are examined in more detail in Chapter 6. The recommendations were adopted by the Government in October 1999, and this had ‘an immediate and profound effect on the organisation of the Office.’⁴⁹ A Review Group, chaired by James Hamilton, reported in 2002.

Other systemic reviews of the criminal justice system over the years have considered aspects of the work of the DPP, including the Committee on Court Practice and Procedure,⁵⁰ the Working Group on the Jurisdiction of the Courts⁵¹ (chaired by Nial Fennelly) and the more recent High Level Review Group on the Role of An Garda Síochána in Public Prosecutions⁵² (chaired by Dermot McCarthy).



Dermot Nally (1927–2009), Chairman of the Public Prosecution System Study Group
(*The Irish Times*)

6 Organisational Changes

The most significant organisational change to the Office of the DPP occurred at the mid-point of its first fifty years. As noted in Chapter 3, the DPP engaged members of the independent Bar to represent him in court. An important role was also played by the other branch of the legal profession – solicitors. In general terms, the role of a solicitor in a criminal prosecution is the general preparation of the case, which includes preparing books of evidence, dealing with pretrial matters, ensuring that the case is ready for court, instructing counsel and attending court. From the establishment of the Office of the DPP in the 1970s, the Chief State Solicitor acted as solicitor for the DPP in Dublin cases. The organisational structure for this arrangement was that while the DPP was independent of the Attorney General, members of the Chief State Solicitor's Office remained under the Attorney's authority. However, the DPP continued to work closely with the Chief State Solicitor's Office in the prosecution of cases, despite not having formal authority over the staff there; as the *Nally Report* pointed out, the DPP had 'no function in relation to his appointment or the management of the Chief State Solicitor's Office.'⁵³ Beyond Dublin, local (or county) State Solicitors provided a solicitor service to the DPP. Most counties had one State Solicitor; Limerick, Galway and Tipperary each had two, while Cork had four. They were not civil servants but were appointed

on contract to the Attorney General. The *Nally Report* highlighted that there was 'no direct line of command between the State Solicitors outside Dublin and the Office of the Director of Public Prosecutions.'⁵⁴ This could lead to accountability difficulties in the rare instances of poor performance or misbehaviour.

In the early years of the Office, Eamonn Barnes had sought to have solicitor services provided internally. In 1978 he wrote to the Department of the Public Service, pointing out that many summary trials in the District Court were dealt with

*'by the very limited number of solicitors available for that purpose in the Office of the Chief State Solicitor. I cannot emphasise enough the debt which this Office owes to that of the Chief State Solicitor for the feats performed in this regard with the limited resources available ...These prosecutions would more appropriately be handled by solicitors attached to and working out of this Office.'*⁵⁵

However, 'sheer pressure of work' made it difficult to follow up on many proposals.⁵⁶ The separation of functions and the indirect lines of authority led to inefficiencies, duplications and delays.

By the early 1980s the working arrangements between the Offices of the DPP and the Chief State Solicitor were strained. A handwritten note in the Attorney General's files for 1982 asked 'Is there a problem in the artificial separation of the DPP and Chief State Solicitor's Offices, with papers getting held up in piles, when a 'phone call could decide the issue if the two Offices operated

as one? I've heard the above on fairly good authority!'⁵⁷ Two years later, Barnes complained to Attorney General Peter Sutherland about the 'haphazard and incohesive structures under which the criminal justice system operates.'⁵⁸ He wrote that the 'seriously defective' structural arrangements led to 'considerable inefficiency and waste.' His frustration was evident as he described how, as county State Solicitors and those in the Office of the Chief State Solicitor were essentially officers of the Attorney General, the DPP could

*'neither delegate any of his decision making functions to them nor direct them to present a case or perform any other legal service in any particular manner. He cannot even decide who is to attend to a particular court or case. The Chief State Solicitor goes to very great lengths to facilitate him, but his freedom of action in this regard is itself severely limited. If the Director has a problem with a particular State Solicitor he must rely on the good offices of the Attorney General of the day to have it effectively solved. He is thus accountable for the actions of persons over whom he has no administrative control.'*⁵⁹

He highlighted the 'loss of cohesion and efficiency and the waste and duplication of work' and argued for a 'unified prosecution service'. The advantages he foresaw were that:

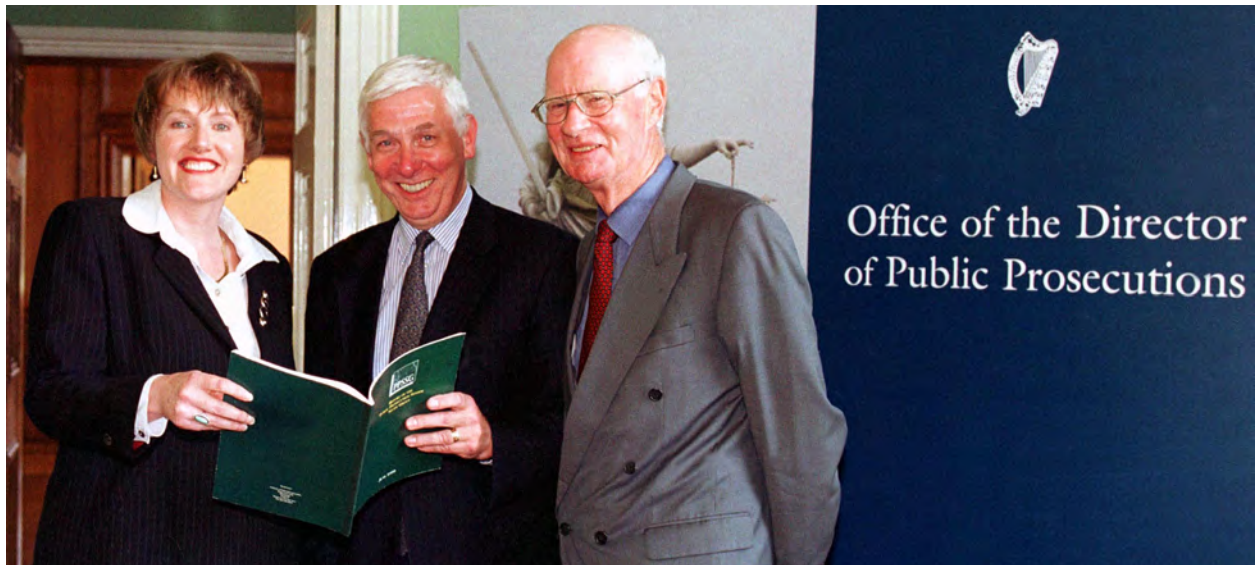
'Very considerable savings would be achieved and unnecessary expense avoided by the elimination of premature charging, of repeated court appearances

with witness's expenses and waste of Garda time, and of the discharging of cases because of delays in obtaining necessary directions.'

No progress was made, and Barnes continued to call publicly for a unification into the mid-1990s. He was 'fully convinced' of the need for 'a fully efficient and cohesive prosecution service.'⁶⁰ The Office published a Strategy Statement in 1997 which highlighted the problems of fragmentation,⁶¹ and expressed a strategic goal of implementing 'a directly controlled, integrated and unified national prosecutorial function.'⁶² Eamonn Barnes was not the only one calling for a more unified or rationalised system around this time. Academic James Casey was deeply critical, and considered it 'curious' that

State Solicitors, though not under the control of the DPP, sent files to his Office for directions.⁶³ Dermot Gleeson's Review Group considered arguments for and against a unified prosecution service in 1997, and recommended that a high-level study be undertaken.⁶⁴ There was a broad consensus emerging that the existing structures needed to be re-examined.

The *Nally Report*, discussed in Chapter 5, acknowledged that the DPP had 'statutory responsibilities without commensurate control over the means and resources used in carrying out the related actions.'⁶⁵ It noted that the Director had '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



Claire Loftus, James Hamilton and Dermot Nally pictured at a reception in 2002 to mark the appointment of the first Chief Prosecution Solicitor and establishment of the Solicitors Division in the Office of the DPP, on foot of recommendations from the *Nally Report*. (*Lensmen Photography*)



Centre front: Head of Administration, Declan Hoban; Deputy Director, Barry Donoghue; Director, James Hamilton; and Chief Prosecution Solicitor, Claire Loftus—pictured in 2007 following the transfer of responsibility for the State Solicitor Service from the Office of the Attorney General to the Office of the DPP. (*Office of the DPP*)

or complex cases, submitted to his Office.⁶⁶ It further pointed out that eighty per cent of State Solicitors' work related to prosecutions in the name of the DPP. However, supervision and quality control were challenging. Not only did the DPP lack control over this work; even the Attorney General was not in a position to supervise much of it.⁶⁷ Similarly, the Chief State Solicitor did not have sight of work done by local State Solicitors, whose files went straight to the DPP. Reflecting on these developments, Claire Loftus, who worked in the Chief State Solicitor's Office in the 1990s, observes that 'because the Chief State Solicitor was dealing with all the civil work for the Attorney General and the DPP, the DPP felt that from time to time his work wasn't well resourced.'

The *Nally Report* recommended 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.⁶⁸ It also recommended creating an Office of Solicitor to the DPP.⁶⁹ Thus Claire Loftus from the Chief State Solicitor's Office was appointed as Chief Prosecution Solicitor in a designate capacity in November 2000, formally taking over in December 2001. She spent a year 'giving effect to everything; moving the staff, getting a new building, setting it up, setting it out.' With her from the Chief State Solicitor's Office came 'a fantastic core of people who only wanted to do crime ... They were crime to their fingertips.' She suggests that this significant expansion was not universally welcomed at the time; some in the DPP's Office felt that they were being 'inundated' with new colleagues.⁷⁰ However, as will be seen below, the next couple of decades witnessed increasing cohesion in the Office.

The State Solicitors outside of Dublin were largely unaffected by these developments, and James Hamilton, who succeeded Barnes in 1999, observed that it remained ‘impossible to have a “joined-up” prosecution service’⁷¹ while this was the case. He expected the transfer of responsibility for the local State Solicitor service from the Attorney General to the DPP to happen in 2004.⁷² Once the necessary legislation was in place,⁷³ ‘protracted negotiations on new contracts’ with State Solicitors ensued, and it took longer than expected to reach agreement.⁷⁴ Eventually, in 2007 responsibility for the State Solicitor service transferred from the Attorney General to the Director of Public Prosecutions. As James Hamilton commented, this completed ‘a vital part of the work of transforming the Office into a national prosecution service.’⁷⁵

Aside from the addition of the Solicitors Division, there have been other internal organisational changes in the Office. With expansion came specialisation. The *Nally Report* had suggested, in line with the Department of Finance’s 1996 recommendation, that a unit be established ‘with responsibility for research, statistics, planning, library and information technology.’⁷⁶ In 2006, James Hamilton pointed out that the staff in the Office were

“*‘regularly being called upon to address matters of legal policy. To date this has been managed from within existing resources. However, I am of the opinion that it is now time to establish a dedicated legal policy unit to address these issues in a more structured and focused way.’*”

Later that year he received Government sanction to establish such a unit, which he predicted would ‘be able to concentrate on fundamental long-term questions which

are important for the future of how the Office conducts criminal prosecutions.’ Specifically, he envisaged the new unit addressing ‘guidelines, standards and directions for prosecutions, advice concerning the practical implications of proposed criminal legislation when we are asked for such advice, policy towards victims of crime and analysis of prosecutorial decision-making with a view to improving standard-setting and ensuring consistency of approach.’⁷⁸ The head of the newly established Prosecution Policy Unit was appointed at the end of 2007 and the Unit commenced work in January 2008. One of its priorities was to ‘develop policies in relation to new legislation.’⁷⁹

The Office’s internal structures were not unaffected by what was happening elsewhere. For example, the financial crisis of 2008 led to the establishment of a Special Financial Crime Unit. A Communications and Victims Liaison Unit was established in July 2015, and in April 2021, the Office created a special Sexual Offences Unit to obviate the ‘lack of continuity in handling very



Helena Kiely, Chief Prosecution Solicitor, and Elizabeth Howlin, Head of Directing Division, pictured following the establishment of the Communications and Victims Liaison Unit in July 2015. (*Office of the DPP*)

sensitive and complex cases.’ Although more resource intensive, this Unit (now the Sexual and Serious Offences Unit) was deemed to benefit victims,⁸⁰ something which will be explored further in Chapter 8. The various Units are now organised into four Divisions, including a Corporate Services Division which deals with human resources, governance, communications, ICT, finance and infrastructure.

The position of the Director has evolved since 1975. When Eamonn Barnes was appointed as the first DPP, this was a permanent appointment, and he remained in the post for 25 years. On his retirement in 1999, the position of DPP was advertised as a seven-year appointment,⁸¹ something *The Irish Times* described as ‘an error of judgment.’⁸² Incoming Attorney General Michael McDowell re-advertised the appointment without a term limit,⁸³ and James Hamilton was duly appointed in September 1999. He retired early after twelve years and the post of Director was subsequently advertised as being for a period of ten years, non-renewable. The introduction of term limits was a significant change. Both James Hamilton and Claire Loftus consider it important for the independence of the role that there be no possibility of renewal at the end of the ten-year tenure. Directors are thereby freed from having to contemplate the potential effects of their decision-making on their career progression. Views differ on whether ten years is the optimum term length. In interview, James Hamilton commented, ‘if you haven’t done what you’re hoping to do within ten or so years, you’re probably not going to do much more after that,’ whereas Catherine Pierse suggested seven years might suffice. Either way, the introduction of limits is generally seen as a positive development. As Catherine Pierse points out, ‘there’s a risk in staying in a leadership role too long; your blind spots could become the organisation’s blind spots.’



Barry Donoghue, retired Deputy Director, pictured as Accounting Officer before the Public Accounts Committee in 2019.

The nature of other senior positions in the Office also evolved, including that of Senior Legal Assistant or Deputy Director role. The Deputy Director is the Accounting Officer for the organisation and the person who would appear before Oireachtas Public Accounts Committees as needed. It is now a role that involves significant corporate leadership responsibilities as well as being a senior legal role.⁸⁴ Other job titles evolved over time too. Lawyers in the Office were originally called Legal Assistants and this changed to Professional Officers and then Prosecutors. Joe Mulligan describes how, as the organisation grew, senior administrative roles also changed; ‘jobs I had been doing in a smaller way because the Office was smaller now broke out into their own individual units.’⁸⁵

7 Expansion and Relocation

The organisational changes outlined in Chapter 6 impacted upon the size of the Office, and changes in the criminal justice system (discussed in Chapter 10) affected workloads. In the beginning, the Office was ‘set up on a shoestring ... a tiny, tiny number of people were there at the start’.⁸⁶ However, within a decade, Eamonn Barnes was at pains to point out that there had been a doubling of the caseload without any increase of staff.⁸⁷ In 1976, there were 2,298 files received by the Office; by 1986 this had risen to 4,263 and ten years later it was 6,687.⁸⁸

Staffing in the Office increased sharply in the early 1990s; the 1996 *Finance Review* noted that there had been an increase of 81% between 1991 and 1995; ‘over seven times the rate of growth of the civil service as a whole’.⁸⁹ However, it acknowledged that this growth came from a low base. By 1999, the DPP was supported by 34 staff⁹⁰ and by 2000, there was a total of 50.⁹¹ A major staffing expansion followed with the introduction of the new Solicitors Division. Claire Loftus brought 43 new members of staff from the Chief State Solicitor’s Office and recalled that ‘the Chief State Solicitor at the time very kindly gave anybody on the staff who was currently in crime the choice of whether they wanted to go or not.’ As well as the initial 43, she remembers ‘interviewing nonstop,’ such that by 2002, there had been an expansion to approximately 170 staff.⁹² Throughout the early



2000s, staffing numbers continued to climb; by the end of 2007 the total staff complement for the Office was 203, as compared to 174 at the same time the previous year. There were restrictions on staffing levels imposed during the financial crisis, but in 2021 an additional 35 posts were sanctioned by the Department of Public Expenditure and Reform to deal with Covid backlogs and an increase in the number of files being submitted to the Office. By the end of 2023 there were 265 people working across the various units.

Looking back just before his retirement in 2011, James Hamilton reflected that ‘the expansion of the Office from a staff of about 35 to nearly 200 necessitated extensive organisational change.’⁹³ When it outgrew the premises on St Stephen’s Green, the 17 members of staff moved to Merrion Street in March 1992. Joe Mulligan, who oversaw this move, considered this a huge improvement in terms of facilities, space and security. However, within twenty years the Office had outgrown this space; by July 2012, there were 62 members of staff.⁹⁴

Claire Loftus recalled moving with the new Solicitors Division to ‘two floors of a brand new building on Abbey Street ... a shell of a building.’ Getting all divisions of the Office under one roof was a priority for James Hamilton, who remained in Merrion Street with the Directing Division. He repeatedly expressed the need for a new premises. In 2004, he complained that the ‘spread of the Office over two locations and chronic overcrowding are impeding the planned organisational integration and having a detrimental effect on the work of the Office.’⁹⁵ He also pointed out that it was ‘wasteful of resources.’⁹⁶ By 2006 it was found that the overcrowding would soon necessitate a third building,⁹⁷

so for a time the Office had three locations, on Merrion Street, Upper Abbey Street and North King Street.

In his 2003 report, James Hamilton had commented, rather pragmatically, that

“

‘[i]n the long run, the delay in resolving our accommodation problem may turn out to be an advantage, since it is now proposed to build a new criminal court complex incorporating most of the criminal courts serving Dublin. It will obviously be desirable that the Office of the DPP be located near that new centre.’⁹⁸

”

A former Department of Defence building on Infirmary Road was identified as a suitable premises. Its location next to the new Criminal Courts of Justice was ideal. Hamilton described how the Office of Public Works ‘drew up wonderful plans ... Celtic Tiger plans’ for the building: ‘it’s a lovely big Gandon building and then they were going to build two storeys below it and around it.’⁹⁹ However, a combination of factors led to these plans being scaled back, and it was not until 2012 that the two divisions began to physically come together. At first, there was only a partial move to Infirmary Road, as other State departments continued to occupy sections of the building. By 2014, more staff from North King Street had moved to the new premises, but as Claire Loftus observed at the time, ‘completion of the project [was] still some way off.’ She predicted that the necessary works would not be completed until ‘well into 2016.’¹⁰⁰ The relocation of all staff into one corporate headquarters was finally completed in June 2017, and physical proximity

ultimately helped with the professional and cultural integration of the Office. Many current staff appreciate the Office's location near both the Criminal Courts of Justice and the Phoenix Park. As Joe Mulligan reflects, 'We're privileged to be here, and to be able to work here, to protect it, to listen to the birds in the trees, to look at those autumn colours ... it's home forever here.'



Office of the DPP headquarters on Infirmary Road, Dublin 7—pictured from the Phoenix Park. *(Patrick Hogan)*

The DPP and Victims of Crime

For decades after Independence, little regard was paid to the position of victims in the criminal justice system. Barry Donoghue described victims in the early 1980s as ‘invisible’, but by 1988 two cases before the superior courts¹⁰¹ had laid ‘the foundation stone of a victim’s charter.’¹⁰² Progress was slow, but developments in Europe helped to support and encourage changes domestically. The Council Framework Decision on the status of victims in 2001¹⁰³ was the precursor to the EU Victims Directive of 2012.¹⁰⁴ James Hamilton noted in 2004 that the relationship between the prosecutor and the victim of crime was ‘a most difficult thing to get right,’¹⁰⁵ and welcomed the establishment of a Commission for the Support of Victims of Crime in 2005.¹⁰⁶ In many ways the Office of the DPP pre-empted the new developments in relation to victims. Claire Loftus recalled ‘much internal discussion as to what the Directive meant’, James Hamilton consulted with victims’ groups and Barry Donoghue pointed out that the DPP ‘had a Victims’ Unit up and running before the Victims Directive actually became law’. Writing more recently, Campbell et al. observe that ‘notwithstanding the absence of any formal legal obligation to do so, the Office of the DPP nevertheless undertakes in the Victims’ Charter to consider the views of a victim when deciding whether or not to prosecute an accused.’¹⁰⁷ The Office has continued to seek to improve how the Office deals with victims, and sought training and feedback from NGOs that work with victims.¹⁰⁸

Another important feature of the Office's approach to victims is its policy regarding giving reasons for prosecutorial decisions. In the early years of the Office, reasons for decisions not to prosecute were not publicly stated, though they were given to the Gardai. This was a continuation of the pre-1970s practice of the Attorney General. Eamonn Barnes, in an interview with the *Irish Press* in 1979,¹⁰⁹ explained that giving reasons for a decision not to prosecute could be viewed as saying that he believed someone was guilty, but did not have the evidence to prove it. In the wake of the Malcolm MacArthur controversy in 1982,¹¹⁰ Barnes came under public and political pressure to explain why one of the murder charges against MacArthur was not proceeded with. Around this time, the DPP was also publicly criticised in relation to other cases,¹¹¹ and in an attempt to quell speculation and discourse, Barnes released a press statement setting out his position:

'It was the invariable practice, for a very long time before the establishment of the Office of the Director of Public Prosecutions, to refrain from giving reasons for decisions not to institute or proceed with criminal prosecutions. The Director has continued that practice. There is a coercive reason for it. If reasons were given in one case they must be given in all. Otherwise wrong conclusions will inevitably be drawn in relation to those cases where the reasons are refused, resulting in either unjust implications regarding the guilt of the suspect or former accused, or suspicions of malpractice, or both. If on the other hand reasons are given in all cases, and those reasons are more than bland generalities, the unjust consequences are even more

*obvious and likely. In a minority of cases, the reasons would result in no damage to a reputation or other injustice to any individual. In the majority, such a result would be difficult or impossible to avoid.'*¹¹²

Once Barnes had set down this statement, members of the Office, according to Hamilton, 'believed it as an absolute article of faith.' As Barry Donoghue saw it, Eamonn Barnes' position of not giving reasons even extended beyond national borders:

'The Director made a statement that essentially you can't give reasons ... and that statement was used by the prosecution services in other parts of the world because Eamonn was heavily involved in the International Association of Prosecutors and would have known other prosecutors and so forth.'

In a 1986 interview, Barnes questioned why so much furore had erupted over the MacArthur case when there had been 'numerous precedents of double homicides where the prosecution proceeded to conviction in relation to one death only.'¹¹³ Again, he reiterated his belief that to give reasons in one case would mean giving them in every case in which they were requested. The following year a Dáil Select Committee examined the issue of prosecutorial discretion, and considered the 'growing volume of public disquiet being expressed about the operation and the efficiency of the system for prosecuting offences.' In particular, it noted the 'widespread public concern about certain decisions taken by the Director of Public Prosecutions not to prosecute in certain instances.'¹¹⁴ Acknowledging that refraining from giving

reasons was a practice common to other prosecution systems,¹¹⁵ the Committee suggested, however, that under section 2(6) of the Prosecution of Offences Act 1974, a procedure could be established whereby a person with an interest in a case could apply to the Attorney General to inquire into the circumstances of a particular prosecutorial decision:

‘The Attorney General would then have a formal or informal preliminary consultation with the DPP regarding the case and then, if he considers it appropriate to do so, he may ask for the Office file. His function would be to examine whether or not the decision was arrived at in accordance with proper legal criteria. If it was, the person enquiring can be so informed. If it was not, it becomes a matter for consultation under Section 2(6). Ultimately, however, it is a matter for the DPP to take the final decision. In the event of a disagreement between the DPP and the Attorney General, it would be open to the Attorney General to announce that after full consultation and discussion, the decision was taken on the basis of legal criteria with which he disagreed.’¹¹⁶

The policy of not disclosing reasons for decisions not to prosecute was upheld by the Supreme Court in May 1994 in *H v DPP*.¹¹⁷ O’Flaherty J emphasised that the DPP’s discretion was only reviewable if there was an indication that he had been improperly influenced.¹¹⁸ The Dáil Public Accounts Committee had agreed in January 1994 to take up the matter but there were doubts about its jurisdiction to do so. In September

1995 members of that Committee questioned Michael Liddy, the DPP’s Senior Legal Assistant, about what was claimed to be a low rate of prosecution in child sex abuse cases. Liddy did not consider the Committee to be the appropriate forum to discuss such matters. He was of the view that he was present to answer questions relating to the efficiency of the Office and when pressed, he indicated that the Committee was not entitled to raise other issues.¹¹⁹ James Casey, writing in 1996, outlined what he considered to be the extent of the lack of accountability:

‘The DPP does not normally give reasons for his decisions; nor have we any public statement as to the general policy considerations that may influence the exercise of prosecutorial discretion. And there is no mechanism in existence whereby the DPP’s Office may be made answerable to parliament for its actions and decisions. Indeed, the DPP...is not obliged to submit an annual report to the Houses of the Oireachtas.’¹²⁰

On taking Office at the turn of the century, James Hamilton restated the position that he could not ‘give the public reasons for decisions not to prosecute in individual cases.’¹²¹ However, he was working towards changing the culture, something he later described as ‘quite a slow process ... I put a lot of effort into trying to turn that particular tanker around.’ He launched an examination of the policy against giving reasons to victims of crime or the families of deceased victims. This included ‘a detailed analysis of the policies of prosecution services in other jurisdictions; Irish jurisprudence on decision-making; and the jurisprudence of the European

Court of Human Rights.¹²² In 2005, Hamilton, Loftus and Donoghue, with other members of the Office, visited the Crown Prosecution Service (CPS) in London and were briefed on the CPS's relatively new policy of giving reasons.¹²³ A visit was also made to the Crown Office and Procurator Fiscal Service in Scotland, and members of the International Association of Prosecutors were consulted. A Discussion Paper was published in January 2008¹²⁴ 'with a view to stimulating debate and initiating a wide-ranging public consultation process.'¹²⁵ In October of that year, Hamilton announced a change in the policy.¹²⁶ Under the pilot Reasons Project, the relatives of persons involved in fatal cases could request reasons for prosecutorial decisions. Initially, the number of requests received was quite low, and Hamilton considered it 'unlikely' in 2009 that there would be 'sufficient material to make a full evaluation'¹²⁷ and so he extended the pilot. In November 2015, under the Directorship of Claire Loftus, the DPP began giving reasons in all categories of cases where they were requested.



The Criminal Justice (Victims of Crime) Act 2017 now allows victims to request information regarding a decision not to proceed with or to discontinue any criminal prosecution or potential prosecution. Catherine Pierse has described this legislation as 'a complete game changer.' As Campbell et al. have observed, '[t]he contours of Ireland's criminal justice system have undergone significant revision in recent decades in order to demonstrate an increased sensitivity to the needs and concerns of victims of crime.'¹²⁸ During 2011 the Office received 12 requests for reasons. These requests have become less of a rarity and in 2022 there were 592 such requests.¹²⁹ The information is provided in carefully crafted individual letters. Several people interviewed for this book commented on the challenges of writing such letters. As Catherine Pierse points out, 'they're very difficult letters to write because you're ... trying to provide meaningful information about why a case wasn't prosecuted but at the same time you have to respect the privacy of third parties ... You have to respect the presumption of innocence of the suspects.'¹³⁰

Information booklets published by the Office of the DPP, following the implementation of the EU Victims' Directive in 2015

Independence, Fairness and Effectiveness

As noted in Chapter 2, the pressing need to ensure the independence of the DPP was a key consideration in the drafting of the 1974 Act. On his appointment, Eamonn Barnes set about sending clear signals regarding his independence. He sought separate premises away from the Attorney General's Office, and began populating his own library so that he would not need to rely on the Attorney's resources. Claire Loftus described Eamonn Barnes as having 'absolutely copper-fastened the independence of the Office.' In her view,

'The fact that the Office is so independent – and the most independent of any prosecution service in the world frankly – is that he stood up back in the seventies and made sure that the politicians understood that he was at arm's length.'

Barry Donoghue suggests that Barnes 'found it difficult to establish his independence vis-à-vis the Government at the time ... it was a slow process.' Barnes was quick to make public statements emphasising his detachment from politics when he deemed it necessary,¹³¹ and initiated legal proceedings when his independence was impugned. He reached a settlement with the *Irish Press* in 1988 after it suggested he was not independent of the Government.¹³² Overall, James Hamilton described Eamonn Barnes as having done 'a brilliant job'¹³³ in establishing the independence of the Office. In his final Annual Report in 2010, he explained that this meant that 'at no time during my period in Office have I been subject to any pressure from the political world to decide any case in any particular way.'¹³⁴ An incident from Eamonn Barnes' early years in Office was recounted by more than one interviewee. This involved a group of British soldiers hiking, fully armed, through the Cooley Mountains near the Border with Northern Ireland. They were arrested

and, without consulting anyone in Government, Barnes proceeded to have them charged with the relevant offences. This was a delicate time for Ireland's relationship with the UK, but Barnes was deemed to have acted without any consideration of the political implications.

The independence of the DPP is distinguishable from its accountability. As Barry Donoghue pointed out, the independence of the Office 'doesn't mean we're not subject to accountability or auditing.' According to the Select Committee on Crime, Lawlessness and Vandalism, independence meant that the DPP could not 'be told what to do in any particular case.'¹³⁵ Although decisions by the DPP are in principle judicially reviewable, the courts have recognised that the DPP enjoys a wide discretion in the exercise of its prosecutorial functions.¹³⁶

Another aspect of the independence of the Office of the DPP is its remove from the locality where Gardaí, victims,

witnesses and suspects may all know one another. It has long been considered important to have a separation between the prosecution and the Gardaí so that in serious cases the decision whether to prosecute was not clouded by matters such as the family background or local reputation of any of the parties involved.

Attempts to influence prosecutorial decisions declined considerably within a few years of the establishment of the Office. James Hamilton recalled that, very occasionally, letters were received by his Office from public representatives in relation to specific cases. It will be recalled that section 6 of the 1974 Act deemed these communications unlawful, and sometimes a member of staff would respond to letter-writers to point this out. On one occasion Hamilton wrote to the Ceann Comhairle and the Cathaoirleach of the Seanad asking them to remind members of the unlawfulness of attempting to influence the Director of Public Prosecutions.



Former Directors, James Hamilton, Claire Loftus and Eamonn Barnes (*Office of the DPP*)

Although pressure from the Government was never brought to bear on a DPP to attempt to influence them in relation to individual cases, sometimes this came from elsewhere. James Hamilton, for example, said that there was occasionally 'considerable pressure from some elements in the media, occasionally driven by a sensationalist and populist approach to crime.'¹³⁷ Claire Loftus also warned in 2013 of the dangers of some types of media reporting on criminal cases:

*'I want to take this opportunity to say something generally about the risks of pre-trial publicity interfering with the right of an accused person to a fair trial. The media and commentators have a high degree of responsibility to ensure that not only do they not commit a contempt of court by publishing or broadcasting prejudicial material but also that such publicity is not the cause of a trial being postponed for a long period, or even indefinitely. These risks increase as any trial date approaches.'*¹³⁸

Catherine Pierse points out that while 'it is rare that there would be a political comment about an individual case but certainly there can be commentary about cases or types of cases, or on the back of an incident.'

The need for fairness in decision-making is ingrained in the culture of the Office of the DPP. As Claire Loftus expresses it, 'unlike other facets of Irish life where people assume it's who you know and it's all about pull... we are absolutely above all that and it just doesn't come into the equation.' Fairness in relation to prosecutorial decisions encompasses both victims and accused persons.

Catherine Pierse makes the point that prosecutors are not 'looking for a conviction at any cost... It's about a just outcome.' The Prosecution Guidelines helped to ensure that decisions were not made subjectively, and the team structures in the Office also provided checks and balances. Pierse explains that 'at its core, the basic job is to maintain high standards of decision making and high standards of fairness.'

The Office has also sought to be effective in its work. Effectiveness, in the words of Claire Loftus, 'is all about efficiency and management and making sure that we are as good a public service as we can be.' Eamonn Barnes was described in the 1980s as being 'very mindful of public money.'¹³⁹ The fragmented nature of the prosecution system impeded its effectiveness for many years, something which both Barnes and Hamilton repeatedly highlighted in their calls for greater unification.

The transparency of the Office and its work have been the subject of debate over the past fifty years, and knowledge even of its physical location sometimes proved elusive. Joe Mulligan recalled that, in March 1985, he was appointed to the Department of Justice where he spent a full day while people tried to figure out where the Office of the DPP was physically located: 'no one knew where it was in the Department of Justice... it was that secretive... they eventually discovered where it was.' This suggests a general lack of awareness about the Office and its work. In the 1970s and 1980s, there was scant publicly-available information about the Office or its work. As Mulligan, points out, the Office 'published nothing. There was no information.' In his 1979 and 1986 press interviews and his 1983 press release, Eamonn Barnes sought to explain his role and that of his Office, but misunderstandings persisted. Little had changed in this regard by the mid-1990s; the Department of Finance observed that

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‘Despite the existence of the Office for over 21 years, there would seem to be widespread uncertainty in the mind of some members of the general public as to what is the actual role of the DPP. This is much in evidence from public comments about the Office.’¹⁴⁰

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It went on to suggest that people’s understanding of the DPP’s role may have been influenced by ‘films or television stories from other jurisdictions’, where prosecutors had investigative powers. The Department noted that ‘[t]he DPP has tried on several occasions to raise public understanding of his role but to little avail; there is frequent public criticism of the DPP for not carrying out activities which are beyond his remit.’ One of Barnes’ attempts in this regard was his authoring of an article aimed at Gardaí in 1995,¹⁴¹ in which he pointed out that there was ‘a great deal of misunderstanding regarding the role of the DPP and the place of the Office in the criminal justice system.’ He was also interviewed by Marian Finucane on RTÉ Radio’s ‘Liveline’ in November 1995.

A shift in attitudes towards accountability and transparency was evident from the early nineties. James Casey argued in the mid-nineties that the Irish prosecutorial system ‘failed the test of openness and accountability’¹⁴² which had been put forward by a Royal Commission in the UK.¹⁴³ He made a case for imposing ‘a statutory obligation on the DPP to furnish an annual report on the activities of his Office,¹⁴⁴ similar to that set out in section 9 of the Prosecution of Offences Act 1985 in England and Wales. It would also require ‘an obligation to state the general principles which govern the exercise of prosecutorial discretion,’ similar



The first Annual Report of the Office of the DPP, published in 1998

to section 10 of the 1995 Act.¹⁴⁵ Other commentators did not go so far as to recommend a statutory reporting obligation. Criticisms of the way the Office processed child sexual abuse cases led to TDs in the Dáil asking questions about staffing, resources and the number of cases received and processed by the Office.¹⁴⁶ These requests, as Joe Mulligan recalls, meant that staff had to begin collating figures and statistics. This was essentially the precursor to the detailed annual reporting which now takes place. The Department of Finance



The first Statement of General Guidelines for Prosecutors, published in 2001

suggested in 1996 that it would be 'possible for the Office to produce an annual report,'¹⁴⁷ and the *Nally Report* a few years later indicated that there was '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.'¹⁴⁸ It commended the Office for having recently published its first such Report, and expressed a hope that it would be an annual occurrence.¹⁴⁹

Since 1998 annual reports have indeed been published and most are now available on the website of the Office

of the DPP. The first Report, which covered the year 1998 provided, for the first time, a descriptive account of the work of the Office.¹⁵⁰ These reports strike a balance between providing the public with high-level overviews of the work of the Office, and maintaining a veil of discretion over decisions taken in relation to specific cases. In the 1999 report, James Hamilton wrote: 'I thought that in this Report it might be helpful to deal in a general way with some areas where prosecutorial decisions occasionally cause public controversy. Sexual and fatal road traffic offences are two areas of law of particular difficulty for the prosecutor.'¹⁵¹ On being interviewed, he observed, 'you can calm people quite a lot without going into any detail about particular cases.' From 2002 on, the focus of the annual reports shifted to the production of detailed statistical information about the criminal prosecution system.

The annual reports were one of a number of initiatives which sought to make the work of the DPP more accessible and transparent at the turn of the century. As James Hamilton reflects, he was 'trying to open up to the public because [he] felt that the Office was far too secretive ... and it had quite a good story to tell but it wasn't telling it.' The introduction of annual conferences was another innovation in the late nineties. The first National Prosecutors' Conference 'brought together all those involved in or interested in the operation of the prosecution service.'¹⁵² These annual events have continued to attract members of the Bar, An Garda Síochána and representatives from organisations within the criminal justice system and related agencies. Later, the Office began to host Annual State Solicitors' Seminars. Regular Strategy Statements have also been published since 2001, as well as the Prosecution Guidelines. A website was launched in 2000 and James Hamilton engaged frequently with the media: 'I could

quite happily talk to journalists if I thought they were good journalists, not about cases, but about general principles and what we were trying to do.’ However, a balance has always been sought between engaging with the media at a general level, and ensuring that details of individual cases are not disclosed. Catherine points out that the Office long enjoyed a strong reputation for not ‘leaking’ information to media outlets. ‘We either prosecute it and then the case will be fully transparent in Court, or we don’t prosecute it and it is communicated back to the victim and then we write to the victim.’¹⁵³

Another example of public engagement was the DPP’s collaboration with the National Adult Literacy Agency in the early 2000s. This led to the publication of two plain-language information booklets aimed at demystifying aspects of the criminal justice system.¹⁵⁴ 23,000 copies of these booklets were distributed in the first three months after their launch in September 2003.¹⁵⁵ Such was the positive reaction to the initiative that the series was subsequently expanded, and as noted in Chapter 12, the booklets are now available online in several languages.

Transparency and clear communication with the public have increasingly been part of the Office’s culture. In her address to the 25th Annual National Prosecutors’ Conference in 2024, Catherine Pierse discussed the balance to be struck between independence, accountability and collaboration. She highlighted the extensive engagement with stakeholders across the criminal justice system, as well as the extensive data provided in the Annual Reports.¹⁵⁶ These developments have made it easier to measure and evaluate the Office’s adherence to its own principles of fairness, independence and effectiveness.



Catherine Pierse, Director speaking at the 25th Annual National Prosecutors’ Conference in Dublin Castle, November 2024 (*Office of the DPP*)



Plain English booklets—produced in collaboration with the National Adult Literacy Agency—first published by the Office of the DPP in September 2003

10 Changes in Criminal Law and Procedure

The volume of legislation dealing with criminal justice and criminal procedure over the past fifty years is striking. The Office of the DPP was not merely reactive to such developments; its staff sometimes advised on the operational impact of proposed legislation. Barry Donoghue recalled having ‘a lot of interaction with the Department of Justice about legislation, and meetings with them, and we’d show them drafts.’ Catherine Pierse, however, emphasises that the Office was careful to avoid offering views on policy.¹⁵⁷

Changes in substantive criminal law and procedure affected the way that cases were prosecuted. For example, the Criminal Justice Act 1984 allowed for the pre-trial detention of a suspect without charge for the purpose of facilitating a Garda investigation. Regulations made in 1987¹⁵⁸ set out rules and safeguards for such detention. Both Michael Liddy and Barry Donoghue highlighted this as a fundamental change in criminal procedure. Liddy pointed out that the

DPP’s Office was ‘better able to decide on prosecutions. We were able to consider admissibility of evidence more, with greater scrutiny and greater transparency.’ Developments in case law also had a significant impact. For example, Claire Loftus described the impact of the Supreme Court decision in *DPP v JC*:¹⁵⁹ ‘prior to that judgment, it is fair to say that we had the strictest exclusionary rule on the admissibility of evidence in the common law world.’¹⁶⁰ Eamonn Barnes sometimes seemed frustrated at the pace of criminal justice reform. He pointed out in the late nineties that ‘the last review of procedure was contained in the Criminal Procedure Act 1967 and that reforms designed to make the processing of cases through the courts more speedy, efficient and cost effective have since then been adopted in many comparable jurisdictions.’¹⁶¹

In several areas of criminal justice, the work of the Office adapted and evolved over fifty years. For example, the Committee on Court Practice and Procedure had

recommended in 1993 that in certain circumstances the prosecution should have a right to appeal against a directed acquittal.¹⁶² It also recommended that the prosecution should, in exceptional cases have a right of appeal against sentence. Legislation passed that year allowed the DPP to ask the Court of Criminal Appeal to review unduly lenient sentences in trials on indictment.¹⁶³ This meant the emergence of a new area of work for the DPP, and one which Hamilton described as having given rise to 'some debate'.¹⁶⁴ In 2010, following a review by the Law Reform Commission,¹⁶⁵ legislation was passed providing for 'with prejudice' appeals by the DPP.¹⁶⁶ Something else which impacted on the way the Office of the DPP worked was the increased use of probation following the Whitaker Report in the 1980s.¹⁶⁷ Joe Mulligan explained that this meant 'extending the lifetime of "live" cases',¹⁶⁸ as defendants were brought back into court on multiple occasions and counsel had to appear on behalf of the DPP on each occasion.

Prosecutions relating to driving offences were traditionally a significant aspect of the work of the DPP.¹⁶⁹ In the late 1980s, the DPP brought judicial review proceedings against several District Justices.¹⁷⁰ These related to orders made or charges dismissed in relation to driving offences. The Courts (No 3) Act 1986, which had recently come into force, was passed to remedy a defect in the procedure for missing summonses for the District Court.¹⁷¹ Around this time the Office of the DPP was being criticised for prosecuting individuals for careless or dangerous driving rather than for the more serious offence of dangerous driving causing death. In an interview given that year, Eamonn Barnes pointed out the difficulties in securing convictions for the more serious offence. He said that while some prosecutions were brought, the number of convictions for dangerous driving causing death under section 53 of the Road Traffic Act 1961 was 'infinitesimal'.¹⁷² This, he suggested, indicated that juries were reluctant to convict, and it was 'a factor



Barry Donogue and Eamonn Barnes pictured in 2011
(Office of the DPP)

which any prudent public prosecutor who wants to enforce the Road Traffic Acts effectively and without wasting court time and public money has to take into consideration.'

At the turn of the century, the Revenue Commissioners indicated an intention to concentrate more resources on the investigation of crime. Staff from the Office of the DPP were sometimes seconded to the Revenue Commissioners to provide legal advice on investigations and subsequent prosecutions.¹⁷³ The Competition Authority, which had been established in the 1990s,¹⁷⁴ also signalled an intention to concentrate more resources on investigations into criminal activity, particularly in relation to cartels and price fixing, in the early years of the new century.¹⁷⁵ A Cartel Immunity Programme was agreed between the Office of the DPP and the Competition Authority. Around this time, the Office of the Director of Corporate Enforcement was also established.¹⁷⁶ These bodies, along with others such as the Health and Safety Authority,¹⁷⁷ the Garda Síochána

Ombudsman Commission and the Environmental Protection Agency¹⁷⁸ have played an increasing role in the investigation of regulatory offences. As Catherine Pierse observes, it has been increasingly important for the Office of the DPP to have the necessary specialisation for such prosecutions.

Substantive legal reforms over the past fifty years included the Theft and Related Offences Act 2001, which overhauled the laws relating to larceny and other theft offences. In the area of fraud and white collar crime, prosecutions were relatively uncommon (though not insignificant) until the financial crash of 2008. As Claire Loftus observes, Ireland was ‘an outlier in terms of our response to the crash.’ She describes the ‘seismic’ legal response to the financial crisis, which saw CEOs, bank officials and legal professionals prosecuted and convicted. In her view, ‘with the increase in regulatory and white collar crime prosecutions ... people realised more than ever before that just because you were middle class or

educated, you were not immune from being prosecuted’. There was an increase in cases relating to money laundering and various types of fraud, and these cases have become ever-more complex, with some now having up to five million documents of potential relevance.¹⁷⁹

International and European legal and policy developments to combat organised crime targeted, in particular, money laundering, drug trafficking and trafficking in human persons. The enactment of the European Arrest Warrants Act 2003 gave considerable responsibilities to the Office of the DPP, whereas previously the drafting and securing of warrants for the arrest of persons wanted in connection with criminal offences was a matter for An Garda Síochána. The Office noted in 2018 that the workload in relation to European Arrest Warrants had increased significantly,¹⁸⁰ while treaties on Mutual Legal Assistance and Extradition have further increased workloads. In 2022, for example, there were 933 requests seeking mutual legal assistance from other countries, and 109 European Arrest Warrant



The Four Courts, Dublin—developments in case law and various Supreme Court decisions had a significant impact on the prosecution of certain offences over the past 50 years.

(Patrick Hogan)

requests.¹⁸¹ Catherine Pierse identifies the challenge of ensuring that EU-derived offences ‘are actually prosecutable’ in the Irish system.

Sexual offences cases have always been a significant part of the work of the DPP, but the nature of such cases and the way they are prosecuted has evolved over the past fifty years. Legislation from the 1980s on,¹⁸² as well as significant developments in case law, created new offences and refined or removed older offences. Around the turn of the twenty-first century the Office began to deal with an increased number of complex and serious sexual offences, including historic sexual abuse cases. These historic cases brought their own challenges. The decision of the Supreme Court in *SH v DPP*¹⁸³ was, in the words of Claire Loftus, ‘a huge breakthrough’, because the prosecution ‘no longer had to explain why a child might have delayed until they were an adult to make a complaint.’ She also recalled the significant work in relation to victims of sexual crime, discussed in Chapter 8.

Originally the Prosecution of Offences Act 1974 gave the DPP jurisdiction over fisheries cases. However, given the diplomatic and potentially politically sensitive nature of cases involving rights over Ireland’s waters in the context of EEC membership, four years later legislation reverted this jurisdiction to the Attorney General.¹⁸⁴ Since 2009, the DPP has resumed responsibility for the prosecution of sea fisheries offences.¹⁸⁵

From the 1990s several tribunals were established under the Tribunals of Inquiry (Evidence) Act 1921. While the tribunals themselves had a fact-finding rather than a prosecutorial function, several of them (such as the McCracken, Mahon and Moriarty tribunals), led to the receipt of material for consideration by the Office of the DPP.

Criminal judicial review has been another area of work for the DPP. Applications became more common over time

and were described in 2013 as ‘a substantial area of work for the Office.’¹⁸⁶ By that stage there was a dedicated judicial review section in the Solicitors Division.

The nature of the evidence adduced in many kinds of criminal cases has changed dramatically over the past fifty years. In the late twentieth century, the main developments were the emergence of CCTV and advances in forensic science. In recent decades, the role of social media and the exponential growth of digital data from mobile phones and apps have impacted hugely on the work of the Office. In 2024, Director Catherine Pierse acknowledged the ‘challenge of dealing with an ever-increasing volume of digital data in almost all categories of cases.’¹⁸⁷ The increase in evidential data has also affected disclosure in criminal trials. The constitutional rights found in Articles 38.1 and 40.3 of the Constitution oblige the prosecution to disclose to the defence all relevant evidence which is within its possession.¹⁸⁸ This is generally done through the book of evidence. The Criminal Procedure Act 1967, as amended, sets out what is to be included in the book of evidence, and it includes copies of documents intended to be admitted, as well as witness statements. Disclosure also includes material not used in evidence at trial. As prosecutions have become more complex, the volume of material that must be reviewed and provided to accused persons has grown, and can dwarf the book of evidence.¹⁸⁹ Successive Annual Reports and Strategy Statements have repeatedly cited the disclosure of large volumes of digital material as a distinct challenge for the Office to manage.¹⁹⁰ In 2018 the Office commenced a project to carry out disclosure electronically. It was observed that ‘when the disclosure in a single case can be quite voluminous due to advances in technology and social media, this has made an enormous difference to the efficiency of the process.’¹⁹¹

The Impact of Social and Political Developments

The Office of the DPP, while independent, has not operated in a vacuum. Social, political and economic developments have had an impact on its work. The Troubles of the 1970s were the backdrop to the establishment of the Office, and each successive decade has seen events which significantly impacted society and criminal justice. Earlier chapters discussed the impact of changing attitudes to sexual offences and victims of crime, as well as the impact of changes to criminal justice law and policy at the European level.

The Office undertook some novel and complex prosecutions arising out of the 2008 financial crisis, which resulted in some of the longest trials in the history of the State.¹⁹² The crisis affected both the types of cases taken and the staff workloads. Acknowledging the changed economic circumstances in which the country found itself, in his 2008 Annual Report James Hamilton pointed out that ‘a reduction in the services we provide is not a viable option.’¹⁹³ In 2009 the Office pointed out that ‘the changed economic circumstances’ in the wake of the financial crash would be the ‘most significant challenge’ for the Office.¹⁹⁴ Writing in 2010, Hamilton said the Office was ‘fully stretched’ and warned that if there were any further increases in workload, ‘something will have to give.’¹⁹⁵ As noted in Chapter 7, there were staffing reductions for a number of years following the crash, but these were eventually reversed.

In 2016, the United Kingdom voted to leave the European Union. This process was completed in 2020 and the impact of Brexit on Irish criminal justice continues to be felt in different ways. Effective extradition arrangements with the UK are essential given the level of interaction between the two jurisdictions. For example, the UK was the State with which Ireland had the greatest interaction in relation to European Arrest Warrants;¹⁹⁶ Claire Loftus pointed out that 'in 2017 the vast majority of European Arrest Warrants sent abroad were sent to the UK.'¹⁹⁷ In 2021, the Office started to apply for Arrest Warrants under the Trade and Co-operation Agreement (TCA) with the United Kingdom.

The Covid-19 pandemic affected the way the criminal justice system operated in 2020 and 2021. For example, social distancing measures presented particular challenges for jury trials, while prosecution staff and counsel had to get used to remote court hearings. Director Claire Loftus pointed out in 2021 that the pandemic had also affected 'the sort of business that it was possible to conduct.'¹⁹⁸ Custody cases got priority in the early stages. She recalls that during the early lockdowns, 'practically the only cases that were being actually prosecuted and heard ... in the District Court were domestic violence cases'. Furthermore, new criminal offences were introduced via Public Health Regulations. Covid offences constituted a complex area of work requiring a lot of detailed attention, given the frequent changes to the regulations, the creation of new



The Criminal Courts of Justice complex which opened in 2010 (*Office of the DPP*)

offences and the modification of others.¹⁹⁹ It was not possible to run many jury trials in 2020 and 2021, for example, which led to an enormous backlog of trials on indictment at both the Central Criminal Court and Circuit Court levels.

When the Office of the DPP was established, there were four judges in the Supreme Court,²⁰⁰ six in the High Court,²⁰¹ nine in the Circuit Court²⁰² and thirty-four in the District Court.²⁰³ Twenty years later, these increased to eight, nineteen, twenty-four, and fifty respectively.²⁰⁴ As the workloads of the courts have increased, so too have the workloads of the Office of the DPP. For example, the opening of the new Criminal Courts of Justice complex in 2010 increased the number of sitting courts, which had implications for the case-load of the Office, as additional staff and counsel were needed to cover the extra sittings. Increased sitting days were also evident at the appellate level. From 2005 to 2007 there was approximately a threefold increase in the number of sitting days that the Court of Criminal Appeal sat, in an effort to address backlogs of cases and improve disposal times.²⁰⁵ Backlogs in that court were a matter of concern for several years. In 2012 further additional sitting days were added, then in 2014 the new Court of Appeal was established following a constitutional amendment and the passing of legislation.²⁰⁶

The Government decided in 2016 to establish a second Special Criminal Court to deal with a backlog of cases awaiting hearing in the existing Special Criminal Court. The assignment of additional judges to the Central Criminal Court in 2021 'greatly assisted in alleviating delays for rape and murder prosecutions',²⁰⁷ and the number of judges in that court increased from four to nine.²⁰⁸ The DPP reported in 2024 that there were now 'up to twelve Central Criminal Courts sitting on

a weekly basis, an increase on five courts in 2018 and nine in early 2023'.²⁰⁹ Sitting dates in the Dublin Circuit Criminal Court increased by 24% during this period. The DPP welcomed the decision to appoint an additional 44 judges to serve across all court levels at locations around the country, but cautioned that 'any investment in one part of the criminal justice system needs to be accompanied by an equal commitment to fund the other parts'.²¹⁰

As well as scheduling more sitting days and appointing more judges, another development in the past decade or so has been the sittings of the Central Criminal Court outside of Dublin. In 2018, for example, cases were heard in both Cork and Limerick. In 2019, 127 court dates in the Central Criminal Court were held outside of Dublin. At the end of 2023 this figure had risen to 517. While generally welcomed as promoting access to justice and efficiencies, these regional sittings can present logistical challenges for the staff of the DPP's Dublin-based Office.

Working in the Office of the DPP

Much of the work of the DPP over the past fifty years involved deciding whether or not to pursue a criminal prosecution in a given case. This was not generally carried out by the Director acting alone, but was delegated to other staff in the Office. Junior prosecutors generally worked with more experienced staff members and would 'learn the job and initially they would not make any decision without running it past the senior officer.'²¹¹ Safeguards were put in place to ensure high-quality decision-making. Michael Liddy, when he was appointed Director of Case Work, had responsibility over prosecutorial decisions up to a certain level, while more serious matters were submitted to either the Deputy Director or the Director. James Hamilton explains, 'I wanted to see any case involving terrorism for example. I wouldn't necessarily need to see every murder, but I would want to see any case involving a novel point of law or involving any question of principle.' In other jurisdictions, the standard which

prosecutors sought to meet was described by Hamilton as 'a 50% rule ... whether it's more likely than not that the jury would convict.' This rule was not applied by Irish prosecutors, with Hamilton making the point that

'If you applied that rule you might prosecute even fewer rape cases than are the case. You would prosecute few if any smuggling cases in the border counties. Many homicides between family members would be prosecuted as manslaughter even where there was evidence of premeditation. The rule which we applied was that a jury, properly instructed on the law, could convict for the offence charged, not that they would convict. In other words, would the judge leave the case to the jury to decide, rather than directing an acquittal.'

Eamonn Barnes similarly described the standard to be met as being that of the strong *prima facie* case: 'evidence which could, though not necessarily would, lead a court to decide, beyond a reasonable doubt, that the person is guilty of the offence.'²¹² Hamilton also pointed out that prosecutorial decisions had to be based on the prosecutor's reading of the evidence, rather than on a second-hand description of the case from, for example, an investigating Garda, because 'the case when you hear it on the telephone will always be much stronger than what you actually get when you see it in writing.'²¹³

Every case which came before the Office was unique and had to be considered on its own merits. Prosecutorial discretion involved the 'assessment of matters not capable of decision on a purely legal or mechanical basis.'²¹⁴ These included 'personal responsibility, youth, age, health, special mitigating circumstances and the public interest.' In 1979, Eamonn Barnes said that decisions not to prosecute were more difficult than decisions to prosecute,²¹⁵ and in 1995 he wrote '[t]here have been many times when I wished there was no such thing as prosecutorial discretion ... Unfortunately, life and human behaviour and relationships are too complex for a simplistic approach.'²¹⁶ Written guidelines to help ensure fair and impartial decisions were made public for the first time in 2001. The Statement of General Guidelines for Prosecutors was intended to 'achieve consistency of standards',²¹⁷ and has been updated in light of various legal developments.

For many years, there was relatively little specialisation in the Office. As James Hamilton put it,

'We were very wary about specialisation which might require staff to work exclusively on sexual offences or cases

involving child abuse or other very stressful cases. We tried to ensure a fair distribution of difficult work although of course that can make it harder to ensure specialisation where this is necessary or desirable.'

However, with the passage of time, as noted in Chapter 6, specialised units were developed, dealing with sexual offences and financial crime, for example. Claire Loftus recalled that when the proposal for a new Sexual Offences Unit was presented to staff, 'the only concern of the vast majority of those who were dealing with rape cases day in day out was that there would be room for everyone that wanted to join the new unit. A sign of their dedication but also perhaps resilience.'

Concerns about secondary or vicarious trauma for those working in the Office have been addressed in different ways. James Hamilton invited specialists 'to give talks about depression, how to recognise signs if you were being affected by the work you were doing... we did have a number of courses where people were taught about how to deal with stress and what to do and recognising signs of being stressed.' Understandings of the impact of this work on the professionals involved developed over time. Claire Loftus commissioned a study to measure the vicarious trauma experienced by staff dealing with distressing cases, some of the findings of which were reported on in the press.²¹⁸ Staff now have access to specialist trauma counsellors, and in addition to such supports, more emphasis on training for staff is evident in policy documents from 2004 onwards. Those interviewed for this book described a generally positive and supportive working environment.

When the Office was established there were relatively few women in the legal professions, but the 1970s saw

a significant increase in women being called to the Bar and qualifying as solicitors.²¹⁹ That women barristers were regularly briefed by the DPP is evident from the records of the Office,²²⁰ and Barry Donoghue praised Eamonn Barnes for ‘trying to progress female barristers.’ Michael Liddy recalled women joining the Office in the seventies ‘in dribs and drabs.’ He pointed out that ‘there were more women becoming available for the nature of the work that we were dealing with, so we were quick to take them on board.’ There were many factors which influenced women joining the Office. James Hamilton described the Offices of both the DPP and Attorney General as ‘much more family friendly’ than the Bar. The independent Bar could be a difficult place in which to succeed, and Barry Donoghue pointed out that many defendants did not want a female barrister representing them. Hamilton commented that the standard of women applicants for posts in both Offices was extremely high, and that many of them left the Bar ‘despite being excellent barristers.’

In addition to the strong representation of women in the Office, the DPP has, in different ways, reflected the impact of Ireland’s increasingly diverse society on the criminal justice system. Since the early 2000s, for example, the Office made information and resources available in other languages on its website, including leaflets about going to court.²²¹ By 2007, these information resources were available in eight foreign languages.²²² Braille and audio cassette versions of the information for victims and witnesses were also made available.

The work of the Office in relation to the Irish language is also worth noting. While the right of an accused person to use the Irish language is beyond doubt, the mechanics necessary to ensure that the whole



James Hamilton, Director and Michael Liddy, retired Director of Casework (*Office of the DPP*)

process of the prosecution is fair were examined in *MacCarthaigh v Minister for Justice*.²²³ From the early 2000s the Office made its Annual Report, Strategy Statement and other publications available bilingually. An Irish Language Scheme²²⁴ was prepared under section 11 of the Official Languages Act 2003. The primary objective of this Act was to ensure better availability and a higher standard of public services through Irish. This outlined the services which were available in the Irish language, noting that only a small number of cases were conducted through Irish. A decision was made to appoint an Irish Language Officer to enhance the level of service provided through Irish. Further Schemes were set out in 2010, 2014 and 2018, with statistics collected on the number of Irish-language interactions annually.

13 External Relations

It has always been viewed as important for the Office of the DPP to have good relationships with relevant state agencies and criminal justice actors. Each Director has maintained good working relations with outside agencies. Eamonn Barnes was a gregarious figure who networked with external bodies and individuals. For example, in July 1979 he hosted a delegation from the Royal Commission on Criminal Procedure in England and Wales, as well as ‘a group of eminent French judges and lawyers’,²²⁵ and two years later he entertained visitors from Washington DC.²²⁶ James Hamilton emphasised communicating with the public about the work of the Office. Claire Loftus had a particularly good relationship with the forensic science laboratories, with expert witness groups such as the forensic psychiatrists, child psychiatrists and psychologists, and the Medical Bureau of Road Safety, and with victims’ groups. While relations with the Departments of Justice, Public Expenditure and the Office of the Taoiseach were traditionally very positive, in recent years Catherine Pierse has emphasised the importance of collaborating with other criminal justice partners to bring about improvements for people who use the criminal justice system, including victims and accused persons.

One important external stakeholder since the establishment of the Office has been An Garda Síochána, with whom relations evolved significantly over fifty years. Michael

Liddy recalled that before the establishment of the DPP, when the Attorney General's Office oversaw criminal prosecutions, 'the guards played really quite a role in the business of deciding on charges, preferring charges and then only thereafter submitting files.' There was a general sense among those in the newly-created DPP's Office in the 1970s that the Office should play a greater role than the Gardaí in prosecutorial decisions.

At common law, any person who could give information regarding a breach of the law had the right to prosecute in respect of that breach. Such persons became known as common informers. It was pointed out in *People (DPP) v Roddy*²²⁷ that section 9(2) of the Criminal Justice (Administration) Act 1924 'did not interfere with the then existing machinery for the prosecution in a summary court by a Minister, a Department or by police officers acting as common informers'. This meant that any Garda could prosecute summarily as a common informer.²²⁸

Under a general authorisation given in 1975,²²⁹ Gardaí could prosecute cases in the name of the DPP. They thus prosecuted the majority of summary offences and indictable offences tried summarily without reference to the DPP's Office, but in the name of the DPP. In practice, much was left to the discretion of the Gardaí in District Court cases. As Barry Donoghue put it, 'in pure legal terms the Gardaí could charge somebody with murder without reference to the Office.' This was something which exercised Eamonn Barnes. He complained in 1978 that 'four murder charges reached the Central Criminal Court without this Office being informed about them. In three of them the preparatory work (ie the preparation of the book of evidence and other proofs) was seriously defective, a factor to which, in at least one of those cases, I attribute the failure of the prosecution.'²³⁰ He pointed out that 'the uniform, efficient and independent' performance of his functions 'lacks reality when a very high proportion of indictable offences are processed through the Courts'



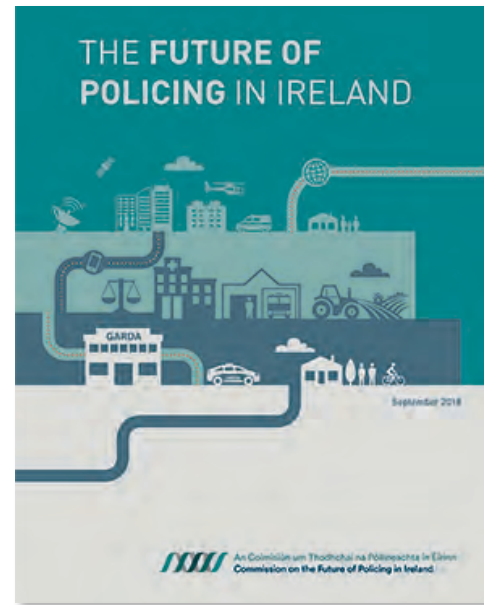
The staff of the Office of the DPP regularly provide training to the Gardaí in Templemore

in the name of the DPP ‘without his officers or any other State lawyers even being informed.’

Barry Donoghue recalled working in the Chief State Solicitor’s Office in the 1980s when there were only a handful of lawyers in the DPP’s Office. When staff in the Office of the DPP received case files ‘they would say “proceed as recommended by you.” That would be the most they would say in a straightforward case ... the straightforward cases would be returned for trial without a direction from the Office.’

The Garda Síochána Act 2005 abolished the system which allowed a Garda to prosecute as a common informer. Under the Act, Gardaí could institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions, and in compliance with any direction of the DPP. In principle, the DPP has the power to take control over summary Garda prosecutions. The Act established that when members of An Garda Síochána act on behalf of the DPP they do so within the prosecution guidelines. To prepare for the implementation of this Act, the Office facilitated a programme of briefing sessions for hundreds of Gardaí in Dublin.²³¹ More generally, the Office has provided training for Gardaí in Templemore on a range of topics.

Up to the early 2000s, lower-ranking members of An Garda Síochána ‘were not allowed to contact the DPP’s Office directly.’²³² This changed with the integration of the Solicitors Division into the Office, so that contact between Gardaí and DPP staff at all levels became commonplace. As well as strategic leadership at the top, there is ‘much contact over and back at an operational level between the directing officers and court-going staff here, and Garda members on the ground.’²³³ Catherine Pierse observes that the working relationships now have ‘very deep roots over



The Future of Policing in Ireland Report, published in September 2018

generations of prosecutors and generations of Gardaí.’ There is frequent communication with the Garda units which specialise in the investigation of specific categories of crime, including the Garda National Bureau of Criminal Investigation, the Garda National Economic Crime Bureau, the Garda National Protective Services Bureau, and the Garda National Cyber Crime Bureau.

The Commission on the Future of Policing in Ireland in its 2018 Report on Garda involvement in the prosecutorial function, recommended that all prosecutorial decisions should be taken away from An Garda Síochána and given to an expanded State Solicitor service or national prosecution service.²³⁴ It also recommended that the practice of Gardaí prosecuting cases in court should cease. In December 2018 the Government adopted these

recommendations in principle, though in 2024 the High Level Review Group on the role of An Garda Síochána in the Public Prosecution System recommended a more incremental approach.²³⁵ A Summary Prosecution Reform Steering Committee, chaired by Niamh O'Donoghue, was recently appointed to implement the Review Group's recommendations.

Apart from An Garda Síochána, other agencies have also been important to the work of the DPP. Established in 1975, the Forensic Science Laboratory and its staff were described as 'great unsung heroes' of the criminal justice system by Barry Donoghue. Alongside it, the Medical Bureau of Road Safety provided independent expert evidence in relation to criminal matters. The staff of the DPP's Office worked closely with each of these bodies, as well as with state pathologists.

As discussed in Chapter 10, over the past fifty years an increasing number of specialised regulatory agencies have submitted files to the Office. These have included the Revenue Commissioners, the Competition and Consumer Protection Commission, the Office of the Director of Corporate Enforcement (and later, the Corporate Enforcement Agency), the Health & Safety Authority, local authorities, the Standards in Public Office Commission and the Garda Síochána Ombudsman Commission. Good working relationships have been helped in some instances by secondments between departments. Catherine Pierse points out that DPP staff contribute to a wide range of working groups across the public sector. They have also regularly had input into aspects of legislative drafting and policy development with the Department of Justice, and, according to Catherine Pierse, the Office recently developed 'a strong legislative engagement structure' to facilitate this. Liaising with the Courts Service since its establishment in 1999²³⁶ has also been important.

Relations between the Offices of the Attorney General and the DPP have tended to be cordial and mutually respectful. The first two Directors came from the Attorney General's Office and therefore had personal relationships and helpful understandings of institutional processes and structures. Section 2(6) of the 1974 Act provides that the Attorney General and the DPP 'shall consult together from time to time in relation to matters pertaining to the functions of the Director'. In practice, this provision 'is rarely formally invoked',²³⁷ but the Attorney and Director have tended to meet 'as occasion requires, to discuss matters of mutual concern'.²³⁸ Michael Liddy described these encounters as 'mutually respectful'. Writing in the 1990s, James Casey pointed out that section 2(6) 'does not make the DPP a subordinate of the Attorney, and it is not intended to diminish his independence. Nor is he accountable to the Attorney ... Thus the Director's position is quite different from that of his counterparts in England and Northern Ireland'.²³⁹

Barry Donoghue explained that at these meetings, "particularly constitutional cases concerning both Offices were discussed'. In the aftermath of *CC v Ireland*²⁴⁰ the meetings took on extra significance. In addition, over the years there were 'numerous meetings between the senior officials of the two Offices'.²⁴¹ Such communication related to cases, legislation and other legal developments.

The Chief State Solicitor's Office was (and still is) part of the Office of the Attorney General. The relationship between the Office of the DPP and the Chief State Solicitor's Office has changed significantly over fifty years. Before the establishment of the Chief Prosecution Solicitor and the Solicitors Division, members of both Offices worked closely with one another. Chapter 6

outlined the unusual position in which the DPP found himself when he relied on members of the Chief State Solicitor's Office over whom he had no official authority. However, there were always strong interpersonal relationships between the staff of both Offices. People like Barry Donoghue and Claire Loftus, who moved from the Chief State Solicitor's Office to the Office of the DPP, brought with them valuable insights into the structures, personalities and culture of the former.

Much of the advocacy work of the DPP's Office has traditionally been outsourced to members of the independent Bar.²⁴² Section 7(2) of the 1974 Act requires the Director to ensure that those who he briefed were 'chosen, from amongst those barristers who have indicated their willingness to so act or advise, in such manner as to effect a distribution of such retainers amongst them that, in the opinion of the Director, is fair and equitable.' While Catherine Pierse points out that 'the Irish prosecution service is unusual in how outsourced it is,' this system has many perceived advantages. For example, the *Nally Report* highlighted that

*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 buildup 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.*²⁴³

Barry Donoghue professed to be 'a great believer in the idea of using the independent Bar as prosecutors in the serious cases. It brings an independence to the process.' Outsourcing to the Bar is also relatively cost-effective; as he commented, 'we looked at the idea of having full time prosecutors and the costs would be absolutely enormous ... I don't think it'd make economic sense apart from anything else.' Having specialist full-time advocates on call to present cases as needed has also been seen as a way of ensuring the provision of a high quality service. Catherine Pierse commented that it was 'a huge strength ... to have access to so much specialist advocacy,' pointing out that defendants also had access to such specialist advocacy.

The political nature of State briefing practices has always been a matter of some interest at the Irish Bar,²⁴⁴ and was alluded to in the Dáil during the debates over the 1974 Bill.²⁴⁵ Section 7(2) requires the Director to brief in a manner that was 'fair and equitable,' had regard to 'the public interest' and took account of the barristers' 'suitability.' James Hamilton interpreted this as an 'obligation to brief regardless of party affiliation.' Michael Liddy explained how prosecuting barristers were briefed:

'There was an appointment of a particular barrister ... to prosecute in each of the counties. That, that used to be done ... by the Attorney General. It was maintained by the DPP. Then it was decided that the person ... to prosecute in those various counties should be a person decided on by a panel that would look for those who were interested in the job to present themselves before and the panel would then decide who should get the particular post.'

Similar processes were described for the appointment of Dublin-based prosecuting counsel. The DPP also maintained relations with the legal professions' representative and regulatory bodies, the Law Society and the Bar Council.

In addition to engagement at a national level, the Office has traditionally maintained an international focus. Eamonn Barnes was heavily involved in the establishment of the International Association of Prosecutors (IAP) in 1995 and he served as its second President. In its early days the Association sought to establish links as widely as possible, with representatives from a variety of legal traditions around the world. This involved a considerable amount of travel and preparatory work for Eamonn Barnes. James Hamilton subsequently served as a President of the IAP and the connections with the Association have continued, with both Claire Loftus and Catherine Pierse serving on its Executive Committee. Its third and twenty-first Annual Conferences were hosted in Dublin in 1998 and 2016. Another international conference with which the Office of the DPP has been involved is HOPAC, the Heads of Prosecution Agencies Conference.

More locally, the DPP also traditionally engaged with his or her UK counterparts. Interjurisdictional meetings and communication with the public prosecutors for England and Wales, Scotland, and Northern Ireland were a regular feature since the early days of the Office. Indeed, in the 1970s the Office of the DPP received useful advice and information from its Northern equivalent in relation to organisational structures. Bernard M McCloskey, the Deputy DPP for Northern Ireland, wrote to explain how the Belfast Office operated and provide statistics on the number of cases it processed, and helpfully enclosed a copy of the Prosecution of Offences Order 1972.²⁴⁶ Barry



Director, James Hamilton and Sir Alasdair Fraser, CB, QC, DPP for Northern Ireland, pictured outside Parliament Buildings in Belfast during the HOPAC Conference in September 2005 (*Harrison Photography*)

Donoghue recalled that Eamonn Barnes had 'a very good relationship with his opposite number' in Northern Ireland, and he himself, as Deputy Director, had 'a lot of contact' with his own Northern counterparts. James Hamilton observes that

*'Preserving the independence of the Office was always a core preoccupation for Northern Ireland DPPs and for them to do so in the divided society of Northern Ireland was no mean achievement. The NI DPP's Office (unlike the Police) was rarely accused of sectarian bias. I have no doubt that the strong links between our two offices helped to maintain and strengthen the Northern Ireland DPP's independence.'*²⁴⁷



Claire Loftus at the opening of the 21st Annual Conference and General Meeting of the International Association of Prosecutors (IAP) hosted by the Office of the DPP in the Convention Centre Dublin in September 2016. *(Hu O'Reilly)*



Delegates pictured in the Convention Centre Dublin at the 2016 IAP Conference, hosted by the Office of the DPP *(Hu O'Reilly)*

Since 1975 there has also increasingly been engagement and communication between prosecutors at the European level, with now two events per year for the heads of prosecution services. The EUROJUST agency was established in 2002 and has been responsible for co-ordination among EU prosecutors in relation to transnational crime.

Successive DPPs have found these various international links to be invaluable for understanding best practices and ascertaining prosecutorial norms. For example, James Hamilton described the practice of waiting

until a file had been seen before directing a charge, and pointed out that ‘this is a universal thing I know from the international organisations. Every person in every country would tell you that.’ Engaging with other common law prosecution systems through HOPAC, the IAP and the links with the UK, has been helpful, because, as Catherine Pierse explains, those prosecutors tend to have to deal with ‘the same sort of really difficult questions’ as the Irish DPP. She considers them useful for ‘sharing problems [and] hearing about other systems,’ noting that ‘international co-operation has become a bigger feature of the world.’



L-R: Tom Murphy, Principal Private Secretary to Stephen Herron; Stephen Parkinson, DPP, England and Wales; Stephen Herron, DPP Northern Ireland; Catherine Pierse, DPP Ireland; Marion Berry, Deputy Director; Claire O'Regan, Head of Prosecution Policy and Research Unit, Office of the DPP; John Logue, Crown Agent, Scotland; and Harvey Palmer, Principal Private Secretary to Stephen Parkinson—pictured at an interjurisdictional meeting held in the Office of the DPP, Dublin on 14 February 2025. (*Office of the DPP*)

14 Changes and Modernisation

As demonstrated in earlier chapters, the character of the Office of the Director of Public Prosecutions has always been one of change and innovation. As early as 1984, Eamonn Barnes was arguing for modernisation, asserting that it was ‘essential to introduce some degree of automation to enable us to achieve rapid case information retrieval and case management.’ He said that many avoidable mistakes were being made for want of such a system, and gave the example of ‘one habitual criminal appearing in the one week in a large number of cases, some interrelated, in different Courts and prosecuted by several barristers none of whom knew of the existence of the cases in which they had not been retained. The waste of Garda time, witness expenses and professional fees was considerable.’²⁴⁸ Barnes argued, in his first Statement of Strategy, that the Office of the DPP ‘should have actual strategic direct control over the entire prosecutorial function and should, for that purpose, interact directly with the investigative service.’²⁴⁹

It was pointed out that staffing, IT, facilities and other resources were affecting the Office’s performance.²⁵⁰

Change sometimes came more slowly than Directors would have wished. James Hamilton observed in 2011 that ‘[t]he Office I entered in 1999 was seriously under-resourced and not well equipped to meet the challenges of the new century.’²⁵¹ He described how, on taking Office as DPP, ‘there were computers on the desks but there was actually no software, just blank screens.’²⁵² He saw this ‘blank canvas’ as an opportunity. Soon there was a ‘very rudimentary’ interim system up and running, while a longer-term project to design a file management system was undertaken. The 2001–2003 *Strategy Statement* emphasised the need to ‘provide rapid access to all necessary and up-to-date information concerning current cases and should record and allow for the efficient processing of criminal proceedings at every stage.’²⁵³

File management was always a challenge. Speaking about the early 2000s, Claire Loftus described ‘vast amounts of material arriving into one building, having to be transferred across to the other building ... any paper submissions that were done by solicitors in relation to a case had to be brought by hand.’²⁵⁴ A team of messengers brought papers back and forth between the two Divisions when they were located in different parts of the city. An electronic management and file tracking system was introduced in 2008. From 2014 on, there was greater use of technology to present cases in court, particularly in the area of fraud and white collar crime.

Aside from those technological developments, the Office has sought to keep pace with the many changes in policing, substantive criminal law, public perceptions and

resourcing discussed in previous chapters. The expansion of the Office and its move to new premises also facilitated more efficient ways of working and communicating. Despite the significant changes in practice and procedure over fifty years, and the increased staffing in the Office, the core principles of independence, fairness and efficiency were consistently restated and reimagined. In addition to the mission statement, the Office of the DPP has also in recent years articulated five core values that underpin its work: independence, integrity, excellence, respect and collegiality. In its Strategy Statement 2022-2024, the Office set out four Strategic Goals, in the areas of ‘service’, ‘digital’, ‘collaboration’ and ‘people’.²⁵⁵ These demonstrate the changing nature of the Office, which now has a staff of over 280 and regularly receives approximately 17,000 files each year.



Office of the DPP's values (as articulated in the Office's Strategy Statement 2025-2027)

15

Conclusions

Eamonn Barnes was acutely conscious of his role as the first Director of Public Prosecutions, and suggested in 1979 that the ‘single most important duty’ imposed upon him on his appointment was to set new standards of decision-making and of justice.²⁵⁶ The turn of the century was a period of significant change, with the appointment of James Hamilton as the second DPP, the publication of the *Nally Report* and the establishment of the Solicitors Division soon afterwards.²⁵⁷ Around this time there was also a resetting of the Office’s approach to public accountability, communication and transparency.

Over fifty years, the Office of the DPP has encountered various challenges. Michael Liddy recalled that in the eighties and nineties the courts were ‘often clogged up with cases.’ This went hand-in-hand with inadequate staffing and resources. Budgetary constraints in the early 1980s also posed a significant challenge for the Office. In 1981 the Department of Finance asked government departments and bodies to indicate how they might reduce non-capital expenses. Fursey Clancy, the Office administrator, pointed out that to achieve the proposed savings under ‘pay and pensions’,

“

‘It would be necessary to dispense with the services of ... the entire non professional staff in the Office or alternatively to dispense with the services of the Senior Legal Assistant and the two second Legal Assistants. If either were implemented it would be tantamount to closing the Office.’²⁵⁸

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He also added that the target reduction in ‘non-pay’ expenses ‘would prevent the prosecution of 50% of criminal trials throughout the country.’

Another challenge was developing and maintaining good working relationships with members of An Garda Síochána, members of the Chief State Solicitor’s Office and the State Solicitors around the country. The later integration of the Solicitors Division was culturally challenging for the Office of the DPP, and several commentators recall that the integration was not immediate and seamless. There were also logistical challenges which stemmed from being spread across multiple premises. Alterations to the structure of the courts system and to substantive criminal law and criminal procedure, increases in the volume and complexity of cases, along with an expanding courts system and judiciary and decentralised justice have also presented challenges.

Maintaining the independence of the Office throughout these various political, economic, legal and social changes has not always been straightforward, but the work of the Office has, by necessity, continued, regardless of external forces. Although the 1974 Act allows any barrister or solicitor with ten years of

experience to apply for the role of the DPP, all four Directors to date have come from the ranks of the public service.

There has undoubtedly been a strong public service ethic permeating the work of the Office since its establishment. Those who were interviewed for this book praised the dedication of successive staff members in the Office of the DPP. James Hamilton, for example, said ‘people do take the job very seriously ... They’re very conscientious, they’re very aware of the importance of the decisions they make.’ Michael Liddy described this as ‘feeling that you were doing some good for the community as a whole’. In the words of Catherine Pierse, ‘every single case you decide on here ... impacts victims, accused, witnesses, and you know that there’s people involved in every single case.’

The Office of the DPP was born out of a need to depoliticise criminal prosecutions and maintain public confidence. Writing around the time of its establishment, one academic described the motivation ‘to remove the decision to institute prosecutions from any appearance or suspicion of amenability to political pressure.’²⁵⁹ Barry Donoghue commented that ‘the worst thing you can have in a democracy is a popular DPP,’ making the point that a degree of insulation from public opinion is important to allow the Office to focus on its core decision-making function.

The Office has experienced its share of controversy, challenges and change over its fifty-year history, and has played a major role in Ireland’s criminal justice system. An independent prosecution service is now acknowledged as essential for upholding the rule of law.



Directors of Public Prosecutions 1975–2025



Eamonn Barnes 1975 – 1999
(Frank Gavin Photography)



James Hamilton 1999 – 2011
(Office of the DPP)



Claire Loftus 2011 – 2021
(Lensmen)



Catherine Pierse 2021 to date
(Cian Redmond)

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Abbreviations used:

NAI:	National Archives of Ireland
TAOIS:	Office of the Taoiseach
AGO:	Attorney General's Office
FIN:	Department of Finance
UCDA:	University College Dublin Archives

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