

Office of the
Oifig an



Director of Public Prosecutions
Stiúrthóra Ionchúiseamh Poiblí

Annual Report 2009



This Report is also available in the Irish Language

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Foreword

The year 2009 was a challenging one for the Office of the DPP. We were required to maintain the highest prosecution standards and deal yet again with an increase in the number of new files received in the Directing Division, despite having to do so with reduced resources. So far we have managed to cope but the Office now finds itself fully stretched and if there is any further increase in the workload coming into the Office, something will have to give.

During the year we continued to give reasons for decisions not to prosecute in cases involving a fatality occurring after October 2008. The take-up on the scheme has proved to be less than we had anticipated, and it is not clear why this is so. It may be that the scheme has not always been made known to those affected by it, or it may be that in many cases the reason for non-prosecution is obvious – such, for example, as the many fatal accidents involving a single vehicle where the driver is killed and there is no person who could be charged with an offence. We have also learned that giving reasons is quite labour intensive and uses up resources. My ambition is to extend the scheme to other forms of crime, notably the most serious sexual offences, although the shortage of resources will make it difficult to do so.

The year also saw the completion of the Office's integrated Case Document Management and File Tracking System, which came in within the agreed budget. So far the system is working well and makes a vital contribution to the efficiency of the Office.

The Office continues to meet its targets in relation to the timeliness of making decisions to prosecute or not, with 45% of files being decided within 2 weeks of being received, 67% within 4 weeks and 88% being decided within 3 months. The statistics continue to show that the vast majority of cases which are prosecuted before a jury result in a conviction, with roughly 94% of cases resulting in a guilty verdict and about 6% leading to an acquittal.



Once again I want to thank all my staff for their loyal service. I also want to thank all those who work for us on contract or represent us in court cases, especially the local state solicitors and members of the Bar. All of those working for the prosecution in 2009 saw a significant reduction in salaries and fees. Finally, our Office has many interactions with other agencies, particularly the Garda Síochána, the Forensic Science Laboratory, the Courts Service, the Garda Síochána Ombudsman Commission and other investigative agencies, the Department of Justice and Law Reform and the Office of the Attorney General. The service we provide depends on such co-operation and it has always been generously given, thereby assisting us to achieve our mission to provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective.

A handwritten signature in black ink that reads "James Hamilton". The signature is written in a cursive, flowing style.

James Hamilton
Director of Public Prosecutions
October 2010

MISSION STATEMENT

To provide on behalf of the People of
Ireland a prosecution service that is
independent, fair and effective

PART 1:

GENERAL WORK OF THE OFFICE

1.1 GENERAL WORK OF THE OFFICE

1.1.1 The fundamental function of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters.

1.1.2 The majority of cases dealt with by the Office of the Director of Public Prosecutions are received from the Garda Síochána, the primary national investigating agency. However, some cases are also referred to the Office by specialised investigative agencies including the Revenue Commissioners, Government Departments, the Health & Safety Authority, the Competition Authority, the Environmental Protection Agency and local authorities.

1.1.3 The Office of the Director of Public Prosecutions has three divisions:

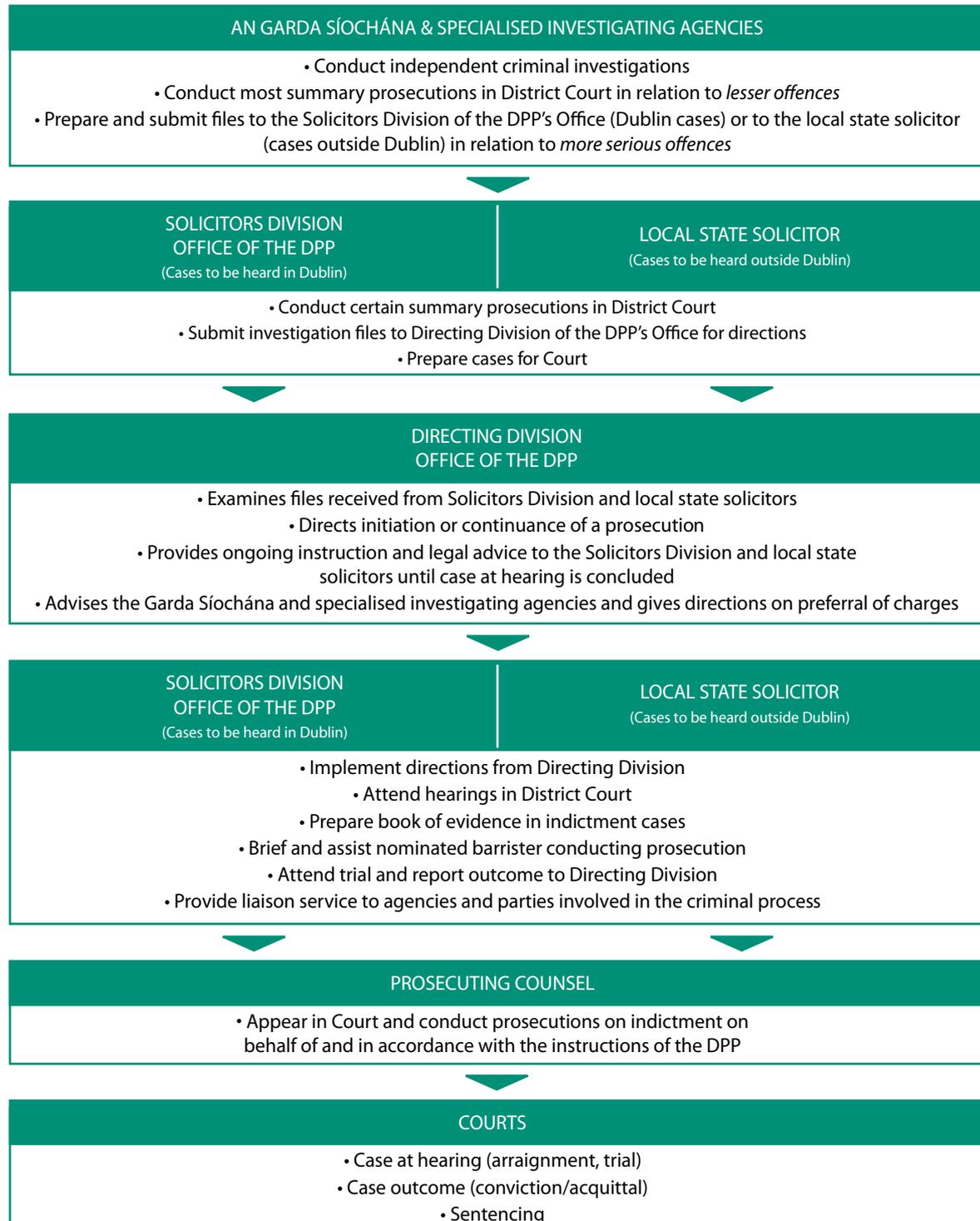
The Directing Division determines, following an examination of an investigation file, whether there should be a prosecution or whether a prosecution commenced by the Garda Síochána should be maintained. The direction which issues indicates the charges, if any, to be brought before the courts. In some cases further information and investigation may be required before a decision can be made. To prosecute there must be a *prima facie* case - evidence which could, though not necessarily would, lead a court or a jury to decide, beyond reasonable doubt, that the person is guilty of the offence.

The Solicitors Division, headed by the Chief Prosecution Solicitor, provides a solicitor service to the Director in the preparation and presentation of cases in the Dublin District and Circuit Courts, the Central Criminal Court and Special Criminal Court, the Court of Criminal Appeal and the High and Supreme Courts. Outside of the Dublin area 32 local state

solicitors, engaged on a contract basis, provide a solicitor service in the Circuit Court and in some District Court matters in their respective local areas.

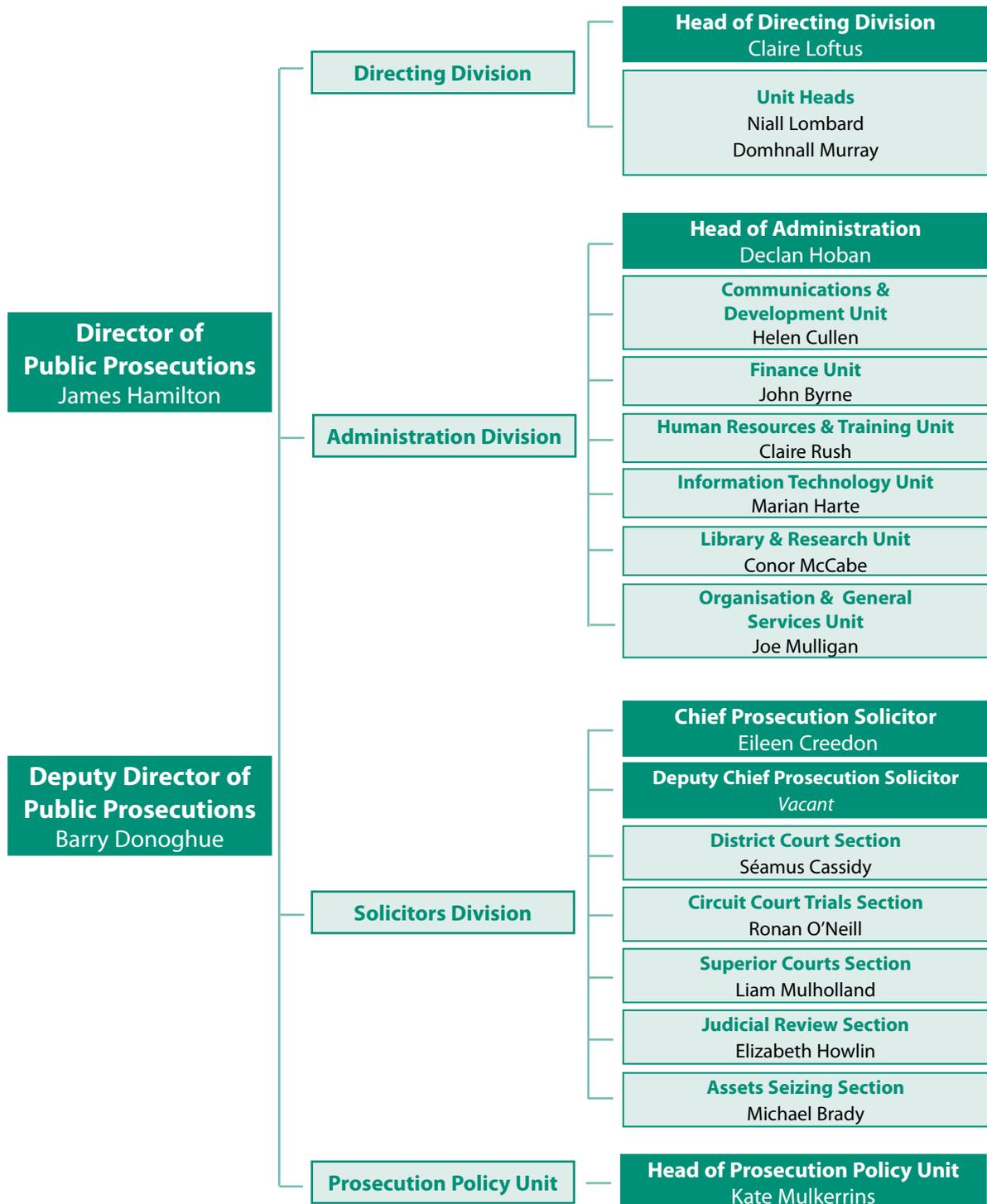
The Administration Division provides organisational, infrastructural, administrative and information services required by the Office and also provides support to both the Directing and Solicitors Divisions.

1.2 OUTLINE OF THE CRIMINAL PROSECUTION PROCESS



1.3 ORGANISATION STRUCTURE

(AS OF OCTOBER 2010)



PART 2:

YEAR IN REVIEW

2.1 YEAR IN REVIEW

2.1.1 The fundamental role of the Office of the Director of Public Prosecutions is to provide a prosecution service that is independent, fair and effective. Detailed statistics are provided in Part 4 of this report on prosecution files dealt with by the Office and the outcomes of cases. Part 1 examines how we utilise the resources allocated to the Office in order to deliver a quality prosecution service.

2.1.2 During 2009, in common with other public sector organisations, the Office faced the challenge of maintaining standards of service in light of the restrictions arising from the current economic environment. The robust support systems developed by the Office under the public service Strategic Management Initiative and the social partnership agreements have provided a framework for more effective and efficient use of the resources allocated to the Office and assisted us in dealing with the particular challenges faced during 2009.

LEGAL ENVIRONMENT

2.1.3 One of the most important factors underpinning the provision of a quality prosecution service is that professional staff acting on behalf of the Director have a thorough understanding of the law and the context of its operation. The ongoing increase in complexity of criminal law and practice requires that our professional staff continuously keep abreast of legal developments. A particular challenge in 2009 was to maintain up-to-date professional expertise while more than halving expenditure on training. In 2008 the Office spent €485,000 on training. This was reduced to €219,000 in 2009.

2.1.4 A particular emphasis was placed during 2009 on ensuring that professional staff were updated on developments in the area of criminal law, both at national and international level. In addition to attendance at a limited number of external conferences and seminars, in-house Legal Network Meetings were arranged to examine areas of criminal law. These meetings were facilitated by senior lawyers from the Office and were undertaken at little or no financial cost. The meetings covered developments in the area of Judicial Reviews; Sentencing; the Criminal Justice (Miscellaneous Provisions) Act 2009; the Criminal Justice (Surveillance) Act 2009; and the Criminal Justice (Amendment) Act 2009.

2.1.5 Our Library and Research services also played a key role in ensuring that up-to-date information on legal developments is made available in a timely manner to professional staff through the library management system, the digital archive and a comprehensive suite of electronic resources, as well as collections of journals and books.

2.1.6 The Library and Research Unit developed initiatives which included: monthly updates on legislation to all legal staff; a Legal Bulletin summarising important cases and developments in law; creation of an electronic legal specialist taxonomy to increase the speed of access to relevant information; the development of an electronic archive for conference notes and a general increase in the level of efficient desktop access to a large amount of information and knowledge.

2.1.7 During the year, our Prosecution Policy Unit concentrated on the development of policy guidelines in relation to fatal offences, including homicides and fatal road traffic

offences. When adopted, the guidelines will provide a comprehensive resource for professional staff involved in the decision-making process and ensure a consistency of approach by barristers and solicitors presenting cases on behalf of the Office.

- 2.1.8** In the first quarter of 2009, the Prosecution Policy Unit worked collaboratively with the Domestic Violence and Sexual Assault Investigation Unit of An Garda Síochána to provide detailed case data to a 'femicide' research project commissioned by Women's Aid. This project sought to analyse cases of women who were the victims of intimate partner homicide in the past ten years. The research examined the risk factors found to be present for the female victims preceding the homicide (e.g. domestic violence), with a view to pinpointing potential ways to facilitate improved responses for relevant agencies and also to examine the steps that would be needed to introduce a domestic violence homicide review mechanism in Ireland.
- 2.1.9** In the latter quarter of 2009, the Policy Unit was involved in a research project which examined issues surrounding applications to adduce evidence of previous sexual experience in rape trials. The research was carried out at the request of the Dublin Rape Crisis Centre and Senator Ivana Bacik, Trinity College, with a view to establishing the effectiveness of provisions which allow for separate legal representation of a complainant where such applications are made. This Office examined files from 2003 to June 2009 where notice of intention to make such applications was made and the complainant availed of the entitlement to be legally represented. It appeared from the files reviewed that the number of applications has risen in recent years and the majority of applications are being granted. The findings from the file review were presented by Senator Ivana Bacik at a conference in Dublin Castle on 16 January 2010 hosted jointly by the Dublin Rape Crisis Centre and Trinity College, launched by President McAleese. The Director gave the closing address at the conference, his speech covering a range of topics including an

exploration of some of the factors contributing to the high rate of attrition and low rate of convictions in rape cases.

STRATEGIC MANAGEMENT

- 2.1.10** In common with other public sector organisations, the Office of the DPP was subject to the Government's decision to restrict recruitment and promotion during 2009. This presented challenges for the Office to ensure the most effective strategic management of available resources so that the service provided by the Office would not be compromised.
- 2.1.11** The introduction of the incentivised schemes to reduce staff numbers across the public service resulted in 2 staff members applying to avail of the Incentivised Scheme for Early Retirement (ISER) and 1 member of staff availing of the Career Break Scheme.
- 2.1.12** As well as managing the day-to-day running of the prosecution service, the Office also undertook two new additional areas of work during 2009. The first was the implementation of the pilot project, launched by the Director in October 2008, to give reasons for decisions not to prosecute in cases where a death has occurred. The second new area of work was the transfer of responsibility for all Sea Fisheries prosecutions from the Attorney General to the Director in August 2009. Because of the moratorium on recruitment, these new projects had to be undertaken within existing resources.
- 2.1.13** During 2009, the Office also continued to examine ways of re-organising its work so as to minimise any detrimental impact on the provision of a quality prosecution service. This re-organisation focused on the division of function between the two legal divisions of the Office. A pilot scheme was undertaken whereby, in certain circumstances, responsibility for deciding whether prosecutions should be taken was delegated to solicitors in our Solicitors Division in order to decrease the number of files that were forwarded to the Directing Division for decision.

2.1.14 By December 2009 a total of 142 cases were directed on by solicitors in the Solicitors Division under this delegated function. This re-organisation of work is at an early stage of development but it is envisaged that it will be one of the key factors influencing the change and modernisation programme for the Office under the programme for Transforming Public Service. It is hoped that over time this re-organisation will go some way to enable the Office to deal with its increasing workload with less resources.

2.1.15 The Civil Service Performance Management & Development System (PMDS) also played a key role in providing both managers and staff with an opportunity to evaluate performance against agreed targets. This assisted in ensuring that files were dealt with in a timely manner and agreed deadlines were met. The system also promoted staff development through mentoring and structured training programmes.

2.1.16 One of the most significant developments in managing the legal work of the Office during 2009 was the implementation of the new computerised Case, Document Management and File Tracking System. The new system was identified as a key requirement to enable the Office to measure and manage its core business. This is a cornerstone of the Management Information Framework (MIF).

2.1.17 The first phase of the new system was launched in October 2008 while the second phase went live in May 2009. The launch of the second phase involved the integration of the work of Judicial Review, European Arrest Warrant, Court of Criminal Appeal, Asset Seizing, Costs & Counsel Fees sections into the new system.

2.1.18 The new system provides staff in both the Solicitors and Directing Divisions of the Office with a single point of access for all prosecution files. Each file has a single case reference number which can be tracked as

it progresses through the different stages of the prosecution process. All outgoing case-related correspondence is generated directly on the system and stored there for future reference. Certain documents are also scanned onto the system. The system is task based so that upcoming tasks and deadline dates are highlighted to assist legal staff in managing their caseload. This ultimately results in a more efficient, accessible and speedy service for staff and enables managers to more effectively manage legal work across the organisation.



L-R: Claire Loftus, Head of Directing Division; Peter Dye, Platform Management Director, Lexis Nexis; James Hamilton, Director of Public Prosecutions; and Ruth Jackson, Head of Project Delivery, Lexis Nexis - pictured at the formal hand over of the Case, Document Management & File Tracking System on 30 November 2009.

2.1.19 The Fee Capture Module of the new Case, Document Management and File Tracking system went live in May 2009, replacing an existing system that had reached the end of its useful life. The new module has reduced the amount of data entered by personnel in our Finance Unit, while allowing more information to be easily extracted. This system batches fees earned by counsel who represent the DPP at court and creates a payment file. The Office's accounting system feeds payment information back into the Fees Capture Module.

2.1.20 The Case, Document Management and File Tracking System was formally handed over to this Office from our supplier, Lexis Nexis, on 30 November 2009. From that date the Office has been responsible for maintaining and

updating the system on a day-to-day basis and for carrying out workflow development and report writing.

2.1.21 Ongoing development of the case management project is overseen by a high level Case Management Steering Group. The group met on a monthly basis throughout 2009 to define policy in respect of the new system and to discuss requests for new enhancements to the system.

2.1.22 An upgrade of the Office's accounting system during the year has facilitated the sending of remittances via email. Several suppliers had requested this service and the Office was happy to accommodate them while at the same time reducing costs of postage and stationery.

2.1.23 In addition the Office continued to deliver on its commitment to pay suppliers by Electronic Funds Transfer. In 2009 nearly 90% of all payments were made by electronic methods.

GOVERNANCE

2.1.24 One of the factors that underpins the reliability of the information provided by the Office of the DPP is the extent to which we have developed internal control and governance procedures. The Office places great importance on having an Audit Committee with independent members, including its Chairman, to plan and oversee internal audits.



Deputy Commissioner Martin Callinan, An Garda Síochána pictured with Detective Superintendent John McMahon, An Garda Síochána at the 10th Annual National Prosecutors' Conference



L-R: Barry Donoghue, Deputy Director of Public Prosecutions; James Hamilton, Director of Public Prosecutions; John Coyle, Director of District & Circuit Court Operations, Courts Service; and Claire Loftus, Head of Directing Division - pictured at the Annual State Solicitors' Seminar on 24 January 2009.

2.1.25 During 2009 the Audit Committee produced three Internal Audit Reports. These reports covered the Financial Reporting Cycle; the Procurement Cycle; and the Legal Compliance Cycle. All audit reports were submitted to the Comptroller & Auditor General's Office, as were revisions to the Office's Risk Registers made during 2009 and the Audit Committee's Annual Report.

2.1.26 In the interests of greater accountability and transparency the Office of the DPP continues to pro-actively provide information on the work of the Office through publication of Annual Reports, Strategy Statements, Guidelines for Prosecutors and Information Booklets. The Office website also provides a range of information to the public generally.

INTERACTION WITH OTHER AGENCIES

2.1.27 Interaction with other agencies in the criminal justice system is a key element of the work of the Office of the Director of Public Prosecutions. It is considered essential that the Office continues to develop initiatives to improve service to particular stakeholder groups.

2.1.28 The Office has for the last ten years hosted an annual seminar specifically for the 32 State Solicitors who provide a solicitor service to the Director in Circuit Courts and some District Court matters outside the Dublin area. This



Plenary session at the 10th Annual National Prosecutors' Conference in Dublin Castle Conference Centre on Saturday 23 May 2009

seminar provides an opportunity for staff from this Office to meet with colleagues in the State Solicitor Service and to discuss issues of mutual interest. This year the State Solicitors' Seminar facilitated presentations on Recent Legal Developments and on the Preparation of Books of Evidence. Delegates were also addressed by Mr. John Coyle, Director of District & Circuit Court Operations in the Courts Service who spoke about the operation of the Circuit Criminal Courts.

2.1.29 The 10th Annual National Prosecutors Conference took place in May 2009. This conference is hosted by the Office of the Director of Public Prosecutions on an annual basis and brings together those involved in the prosecution of criminal offences from across the criminal justice system. The conference was attended by over 220 delegates, the highest attendance to date. The topics covered included presentations on the Criminal Justice (Surveillance) Bill 2009 (Sean Gillane, BL); Disqualification Orders following certain Criminal Convictions: Section 160(1) Companies Act 1990 (Kevin O'Connell, Legal Advisor, Office of the Director of Corporate Enforcement); Section 16 Statements and the

Judge's Charge (Genevieve Coonan, BL); and Prosecuting Child Sexual Abuse Cases (Úna Ní Raifeartaigh, BL). The Office considers this conference to be of enormous value in terms of bringing together individuals from various criminal justice organisations and agencies, in addition to providing an opportunity to discuss matters of mutual concern.

2.1.30 In association with the Public Prosecution Service for Northern Ireland the Office applied for and was successful in receiving a grant from the European Commission Anti-Fraud Office (OLAF) to host a joint conference in Dublin in March 2009 on Cross Border Fraud,



L-R: Genevieve Coonan BL, Law Library; Sean Gillane BL, Law Library; Úna Ní Raifeartaigh BL, Law Library; and Kevin O'Connell, Office of the Director of Corporate Enforcement - pictured at the 10th Annual National Prosecutors' Conference on 23 May 2009

Corruption and European Union Financial Interests. The conference ran over two days and attracted 130 officers and practitioners from investigative, prosecutorial and asset seizing agencies from over 26 European countries. The conference focused on the issues facing the investigator, prosecutor and Revenue/Customs agencies in dealing with transnational fraud, and facilitated exchanges of information and experience. In addition the conference identified and shared best practice, and enhanced multi-agency co-operation and networking throughout the European Union. It also provided a welcome opportunity to once again work with our colleagues in the Public Prosecution Service for Northern Ireland with whom we have established excellent working relationships down through the years.

2.1.31 The Office supported the hosting of a conference organised by the Academy of European Law (ERA), Trier, Germany and the Irish Centre for European Law (ICEL), Trinity College which took place in Dublin Castle in October 2009. The conference topic was the European Evidence Warrant (EEW) and it focused on the acquisition



L-R: James Hamilton, Director of Public Prosecutions; Sir Alasdair Fraser QC, Director of Public Prosecutions, Northern Ireland; and Ian Walton-George, Director of Investigations & Operations, OLAF - pictured in the Upper Yard of Dublin Castle prior to the OLAF conference in March 2009



L-R: Dr. Maria Gavouneli, University of Athens; James Hamilton, Director of Public Prosecutions; David Levy, Fraud Prosecution Service, England & Wales; and Sir Alasdair Fraser QC, Director of Public Prosecutions, Northern Ireland - pictured at the joint conference on 'Cross Border Fraud, Corruption & EU Financial Interests' in Dublin Castle in March 2009

and admissibility of foreign evidence. The Director, James Hamilton, presented a paper in which he compared the EEW to existing European instruments and reviewed past mutual assistance Conventions, Protocols and Framework Decisions. Leading EU and national experts also gave presentations and facilitated panel discussions on the problems and questions arising under current and future procedures to gather and transfer foreign evidence in the EU.

2.1.32 On a day-to-day basis the Office of the Director of Public Prosecutions works with a number of investigative agencies and in particular members of An Garda Síochána from whom we receive the majority of our prosecution files. This Office and the Garda Síochána therefore collaborate closely in the area of legal developments and during the period under review lawyers from this Office delivered training to members of An Garda Síochána and also to members of staff from the Garda Síochána Ombudsman Commission. Topics covered included file preparation; the role of the DPP; fraud and money laundering; drink driving; and judicial review.

2.1.33 The Office also participates in the training of trainee solicitors and during 2009 staff from this Office delivered training to law students

in the Law Society of Ireland (Dublin and Cork) on topics such as criminal litigation; criminal advocacy; road traffic legislation; judicial review; and updates in criminal law.

2.1.34 In recent years the Office has hosted internships for law students, providing an opportunity for them to experience the law in action and to gain a unique insight into the workings of the Office. In 2009 the Office developed an Internship Programme in association with the National University of Ireland Galway, University College Cork, University College Dublin and Trinity College Dublin, whereby students apply to their Course Director in the respective universities for a place on the programme. The Course Director is responsible for the selection process and successful applicants are given placements in the Office of the DPP working for various periods in our Policy Unit and our Library & Research Unit. During 2009, a total of ten students availed of the programme and made an enormous contribution in the areas of work to which they were assigned.

2.1.35 The Office continues to participate in and contribute to various inter-agency groups including: The Criminal Law Advisory Committee; the DPP/Garda Liaison Group; the Advisory Group on Crime and Criminal Justice Statistics; the Video Interviewing



James Hamilton, Director of Public Prosecutions - pictured during a presentation he gave to a Rape Crisis Network Ireland seminar in December 2009



L-R: Giovanni Salvi; Francesca Nanni; and Silvio Franz - the Italian delegation pictured at the Conference on Cross Border Fraud, Corruption & EU Financial Interests in Dublin Castle in March 2009

Child Witnesses Implementation Group; various Courts Service User Groups; the Interagency Group on Restorative Justice; the Intergovernmental Support for Victims of Crime Project Advisory Group; and the Criminal Justice Steering Group.

2.1.36 During the year under review the Office contributed to the development of criminal law at an international level and participated in a number of initiatives involving international organisations. We also continued to contribute to the work of international bodies and organisations including EUROJUST; GRECO; OLAF; Eurojustice; the International Association of Prosecutors; and the International Bar Association.

PUBLIC EXPECTATIONS OF SERVICE

2.1.37 In October 2008 the Director announced a change in policy on the giving of reasons for prosecutorial decisions not to prosecute. The change in policy was announced subsequent to an in-depth research project culminating in the publication of a discussion paper in January 2008 and thereafter by an extensive public consultation process.

- 2.1.38** The policy was introduced on a pilot basis whereby reasons for a decision not to prosecute in a case involving a death will be given to the family or household of a victim at their request. Prior to the change in policy, reasons for decisions not to prosecute were given to the Garda Síochána or State Solicitor but were not made public.
- 2.1.39** It was anticipated when introducing the new policy that the pilot would operate until 1 January 2010 and a comprehensive evaluation of the operation of the pilot would be undertaken. However, because of the length of time between the occurrence of an incident and the eventual decision not to prosecute, the numbers of requests received to date for reasons for decisions not to prosecute in fatal cases has been quite low. For this reason the pilot phase of the policy has been extended to allow the Office the opportunity to deal with a sufficient number of requests so that it will be in a better position to carry out a more comprehensive evaluation of the policy. This will serve to better inform whether or not the policy can be extended to other categories of crime in the future.
- 2.1.40** During 2009 extensive development work was undertaken on the Office website. The main focus of this development was to collate all information of relevance to victims and witnesses in one place on the site and to make this information as accessible as possible for visitors.
- 2.1.41** The result of this re-development is that we now have a dedicated Victims and Witnesses section on the Office website that includes useful information on the prosecution process as well as information on the Crime Victims Helpline and other useful contacts. The website also has a Brief Guide to the Criminal Justice System which breaks down the various stages of the criminal process in a easy-to-use question and answer format. Information Booklets on *The Role of the DPP* and *Going to Court as a Witness* are available on the website in both Irish and English in

addition to ten foreign languages. The website can be accessed at www.dppireland.ie. The re-development work also included an upgrade of the website's accessibility rating which now conforms to level triple-A of the W3C Web Content Accessibility Guidelines.

- 2.1.42** During the course of 2009 the Office continued to promote the availability of services through the Irish language in fulfilment of its obligations under the Official Languages Act 2003. All publications produced by the Office are bilingual and the Office website is fully bilingual. Any correspondence received in Irish was responded to in Irish and the Office has a dedicated e-mail address for Irish correspondence (gailge@dppireland.ie).
- 2.1.43** The Office complied with the key dates for implementation of the regulations introduced by the Minister for Community, Rural and Gaeltacht Affairs with regard to stationery and signage, and changes were introduced as appropriate.
- 2.1.44** The second Irish Language Scheme for the Office of the Director of Public Prosecutions has now been approved by the Minister. The second scheme builds on progress made by the Office in the provision of services through Irish during the lifetime of the Office's first Irish Language Scheme.



L-R: Cornelia Riehle, Course Director, ERA (Academy of European Law); Francis Cassidy, Legal Officer, Criminal Assets Bureau; James Hamilton, Director of Public Prosecutions; and Andrew Beck BL, ICEL (Irish Centre for European Law), Trinity College - pictured at the joint ERA/ICEL conference entitled 'The European Evidence Warrant' in Dublin Castle on 9 & 10 October 2009

2.2 OFFICE EXPENDITURE

Chart 2.2.1 shows the breakdown of office expenditure for 2009, 2008 & 2007.

Salaries & Wages: This represents the cost of salaries of staff employed in the Office. The total staff complement at 1 January 2009 was 196.6.

Office Expenses: This relates to general office administration costs e.g. purchase and maintenance of office equipment, office supplies, library costs, office premises maintenance, travel and other incidental expenses.

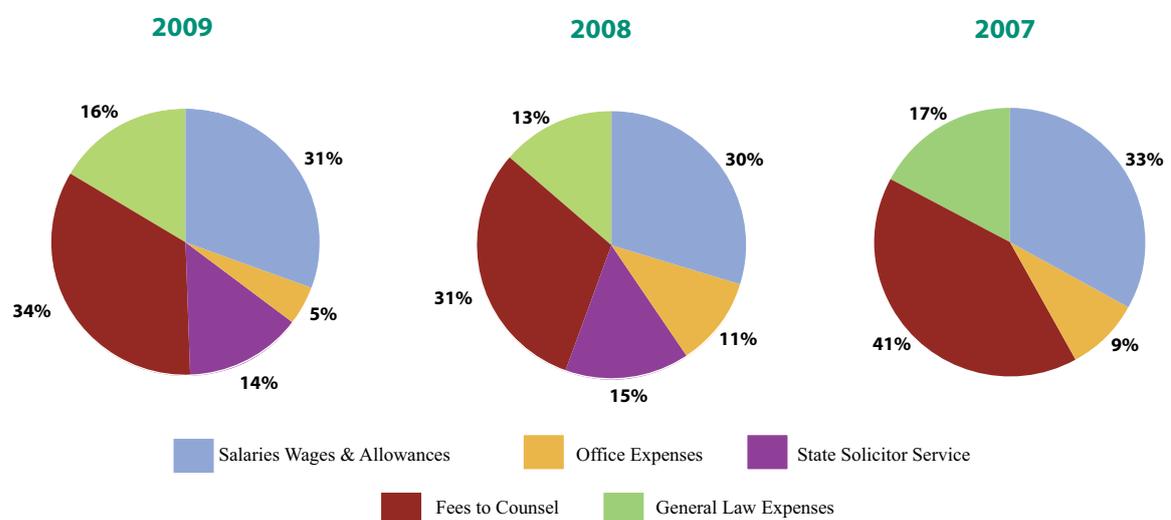
State Solicitor Service: The State Solicitor Service was transferred from the Office of the Attorney General to the Office of the Director of Public Prosecutions in May 2007. However, payment of salaries and expenses for the State Solicitor Service did not become the responsibility of the Office of the DPP until January 2008.

Fees to Counsel: These are fees paid to the barristers who prosecute cases on behalf of the Director in the various criminal courts. Fees are set within the parameters set by the Minister for Finance.

General Law Expenses: This refers to the payment of legal costs awarded by the courts in judicial review matters and other applications connected to legal proceedings against the Director.

Chart 2.2.1 OFFICE EXPENDITURE

	2009	%	2008	%	2007	%
	€		€		€	
Salaries Wages & Allowances	13,685,992	31%	13,165,327	30%	11,558,163	33%
Office Expenses	2,158,818	5%	4,884,785	11%	3,122,343	9%
State Solicitor Service	6,368,245	14%	6,540,967	15%	N/A	-
Fees to Counsel	15,283,338	34%	13,746,326	31%	14,232,484	41%
General Law Expenses	7,289,469	16%	5,908,384	13%	5,930,424	17%
TOTAL	44,785,862		44,245,789		34,843,414	



Charts 2.2.2 & 2.2.3 show a breakdown of expenditure on fees to counsel in the various criminal courts and by region in respect of the Circuit Criminal Court.

Fees paid to counsel in the Circuit, Central & Special Criminal Courts cover advising on proofs, drafting indictments, holding consultations, arraignments, presentation of the case and other necessary appearances e.g. for sentence.

Expenditure on fees in the High Court covers mainly bail applications and the preparatory work and hearings associated with judicial reviews.

Chart 2.2.2 FEES TO COUNSEL PAID BY COURT

	2009	%	2008	%	2007	%
	€		€		€	
Circuit Court	9,109,899	60%	7,612,381	53%	7,424,016	52%
Central Criminal Court	3,843,990	25%	3,338,387	28%	4,271,132	30%
High Court	1,303,317	9%	1,441,755	10%	1,351,359	9%
Supreme Court	208,140	1%	630,350	4%	364,665	3%
Court of Criminal Appeal	532,581	3%	539,944	4%	537,107	4%
Special Criminal Court	276,530	2%	132,820	1%	266,255	2%
District Court	8,881	0%	30,689	0%	17,949	0%
TOTAL	15,283,338		13,726,326		14,232,484	

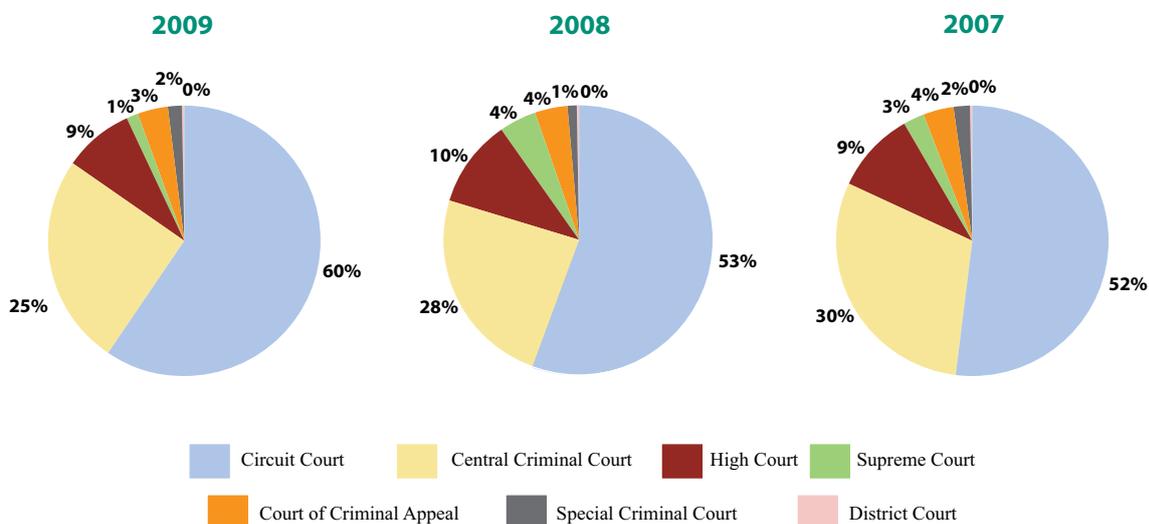
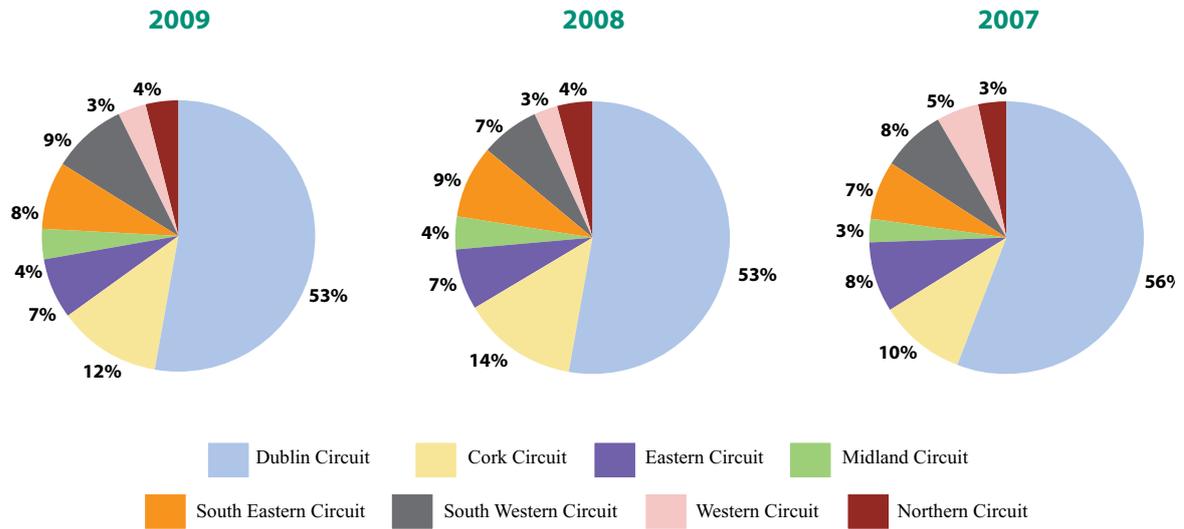


Chart 2.2.3 FEES TO COUNSEL PAID BY CIRCUIT

	2009 €	%	2008 €	%	2007 €	%
Dublin Circuit	4,824,375	53%	4,026,504	53%	4,161,889	56%
Cork Circuit	1,113,821	12%	1,029,230	14%	755,769	10%
Eastern Circuit	661,256	7%	549,840	7%	612,278	8%
Midland Circuit	328,395	4%	296,429	4%	221,811	3%
South Eastern Circuit	738,698	8%	673,856	9%	504,528	7%
South Western Circuit	795,015	9%	509,819	7%	564,974	8%
Western Circuit	305,913	3%	217,764	3%	368,577	5%
Northern Circuit	342,426	4%	308,939	4%	234,190	3%
TOTAL	9,109,899		7,612,381		7,424,016	



2.3 EXTRACT FROM APPROPRIATION ACCOUNT 2008

Account of the sum expended in the year ended 31 December 2008, compared with the sum granted and of the sum which may be applied as appropriations-in-aid in addition thereto, for the salaries and expenses of the Office of the Director of Public Prosecutions.

Service	Estimate Provision €'000	Outturn €'000	Closing Accruals €'000
ADMINISTRATION			
A.1. Salaries, Wages and Allowances	14,406	13,165	-
A.2. Travel and Subsistence	172	148	26
A.3. Incidental Expenses	1,547	1,506	77
A.4. Postal and Telecommunications Services	273	304	48
A.5. Office Machinery and Other Office Supplies	1,507	1,927	18
A.6. Office Premises Expenses	763	1,117	47
A.7. Value for Money & Policy Reviews	32	-	-
A.8. Local State Solicitor Service	6,513	6,541	-
OTHER SERVICES			
B. Fees to Counsel	13,824	13,746	2,978
C. General Law Expenses	5,500	5,908	3,634
Gross Total	44,537	44,362	6,828
<i>Deduct -</i>			
D. Appropriations-in-Aid	15	117	-
Net Total	44,522	44,245	6,828

SURPLUS TO BE SURRENDERED €276,211

2.4 PROMPT PAYMENT OF ACCOUNTS ACT, 1997

Late Payments in Commercial Transactions Regulations 2002

OPERATION OF THE ACT IN THE PERIOD 1 JANUARY 2009 TO 31 DECEMBER 2009

2.4.1 The Office of the Director of Public Prosecutions makes payments to suppliers after the goods or services in question have been provided satisfactorily and within 30 days of the supplier submitting an invoice. In the case of fees to counsel, while invoices are not generated, the practice of the Office is to pay counsels' fees within 30 days of receipt of a case report form in each case.

2.4.2 In the period in question, the Office made 3 late payments in excess of €317.50. The total value of these payments was €4,601.36. The total value of late payments in the year amounted to €4,601.36 out of total payments of €3.198 million and interest thereon came to €66.76.

Statement of the Accounting Officer

2.4.3 The Office of the Director of Public Prosecutions is one of the organisations which is subject to the terms of the Prompt Payment of Accounts Act, 1997 and the Late Payments in Commercial Transactions Regulations 2002. The Act came into force on 2 January 1998, and since that time the Office has complied with the terms of the Act.

2.4.4 All invoices from suppliers are date stamped on receipt. Invoices are approved and submitted for payment in a timely manner to ensure that payment is made within the relevant period. When the invoices are being paid the date of receipt and the date of payment are compared, and if the relevant

time limit has been exceeded, an interest payment is automatically generated. In cases where an interest payment is required, the matter is brought to the attention of management so that any necessary remedial action can be taken.

2.4.5 The procedures which have been put in place can only provide reasonable and not absolute assurance against material non-compliance with the Act.

Barry Donoghue
Accounting Officer
July 2010

2.5 ANNUAL OUTPUT STATEMENT

NOTE: The purpose of the Output Statement is to match key outputs and strategic impacts to financial and staffing inputs for a calendar year. The outputs in the statement are based on the year 2009 and they reflect all work done during 2009 on prosecution files and legal proceedings whether the files were received in 2009 or in previous years. For this reason, statistics quoted in the statement are not directly comparable to statistics quoted in Part 4 of this report which are compiled on the basis of the year the file was received in the Office.

1. SUMMARY STATEMENT - HIGH LEVEL GOAL

The fundamental function of the Office of the Director of Public Prosecutions is the direction and supervision of public prosecutions and related criminal matters. The majority of cases dealt with by the Office are received from the Garda Síochána, the primary national investigating agency. However, some cases are also referred to the Office by specialised investigative agencies including the Revenue Commissioners, Government departments, the Health & Safety Authority, An Post, the Competition Authority, the Director of Corporate Enforcement, the Environmental Protection Agency and local authorities.

High Level Goal

To provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective.

Impact Indicator

The extent to which an independent, effective and fair prosecution service is maintained.

Programme Objectives

The consideration of criminal investigation files submitted to the Office and the timely taking of decisions regarding whether or not a prosecution should be initiated or whether a prosecution already initiated by the Garda Síochána should be maintained.

To ensure that decisions to prosecute are acted upon in a timely manner and in accordance with the published Guidelines for Prosecutors.

2. TOTAL BUDGET BY SOURCE OF FUNDING BY YEAR

The Office is funded by a Vote of the Oireachtas. This Vote provides for the salaries and expenses of the Director and his staff, the salaries and expenses of the State Solicitor Service, fees payable to counsel engaged by the Director to prosecute cases in the various courts and the payment of costs awarded against the State arising out of Judicial Review and other legal proceedings. Expenditure on the last two items is demand led and depends on the volume of criminal work processed through the courts in any given year. The figure for Appropriations in Aid relates principally to the recovery of costs awarded to the State in criminal proceedings. As this varies widely from year to year, a nominal figure is shown.

	BUDGET 2009 € Million	Provisional Outturn 2009 € million	BUDGET 2010 € Million	% Change on Outturn
Net Voted Expenditure	45.11	44.80	43.25	-3%
Appropriations in Aid	0.78	0.89	0.61	-31%
Gross Voted Expenditure	45.89	45.69	43.86	-4%
Non-Voted (State source)	-	-	-	-
Total Gross Expenditure	45.89	45.69	43.86	-4%
Of which Exchequer Pay	14.14	13.69	13.26	-3%
No. of Public Service Employees	197	195	200	

3. PROGRAMME DETAILS

The Office of the Director of Public Prosecutions pursues a single programme, the provision on behalf of the People of Ireland of a prosecution service that is independent, fair and effective.

INPUTS

Prosecution Service	2009 € Million	Outturn 2009 € million	2010 € Million	% Change on Outturn
PROGRAMME EXPENDITURE				
- Current	33.56	33.79	32.13	-5%
- Capital	-	-	-	-
ADMINISTRATION & OTHER SUPPORT				
- Pay	2.87	2.47	2.47	0%
- Non-Pay	9.46	9.43	9.26	-2%
TOTAL GROSS PROGRAMME EXPENDITURE	45.89	45.69	43.86	-4%
NO. OF STAFF EMPLOYED (WHOLE TIME EQUIVALENT) AS AT YEAR END				
- Civil Servants	197	195	200	0%
- Public Servants	-	-	-	-

OUTPUTS

2009 Output Target	2009 Outturn	2010 Output Target
Directions issued in relation to approximately 11,000 suspects on files submitted by investigation agencies.	Directions issued in relation to 12,456 suspects on files submitted by investigation agencies.	Directions issued in relation to approximately 12,000 suspects on files submitted by investigation agencies.
Prosecutorial decisions taken within target timescales: 40% of cases within 2 weeks 50% of cases within 4 weeks 75% of cases within 3 months	42% of cases within 2 weeks 62% of cases within 4 weeks 84% of cases within 3 months	Prosecutorial decisions taken within target timescales: 40% of cases within 2 weeks 50% of cases within 4 weeks 75% of cases within 3 months
Acting through the State Solicitor Service, deal with court proceedings on indictment arising out of directions to prosecute in 2009 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.	Dealt with new court proceedings against 1,998 suspects together with ongoing prosecutions directed in previous years	Acting through the State Solicitor Service, deal with court proceedings on indictment arising out of directions to prosecute in 2010 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.
Deal with court proceedings on indictment arising out of directions to prosecute in 2009 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.	Dealt with new court proceedings against 1,907 suspects together with ongoing prosecutions directed in previous years	Deal with court proceedings on indictment in Dublin arising out of directions to prosecute in 2010 against approximately 1,800 suspects, together with ongoing prosecutions directed in previous years.
Directly deal with approximately 2,300 Dublin District Courts prosecution files.	2,026 files received and dealt with	Directly deal with approximately 2,000 Dublin District Courts prosecution files.
Handle approximately 2,500 District Court appeals, including appeals in cases prosecuted by the Garda Síochána under delegated authority.	2,568 files received and dealt with	Handle approximately 2,500 District Court appeals, including appeals in cases prosecuted by the Garda Síochána under delegated authority.
Deal with approximately 2,200 High Court Bail Applications and approximately 350 Judicial Review cases.	2044 Bail applications and 336 Judicial Review cases received and dealt with	Deal with approximately 2,000 High Court Bail Applications and approximately 350 Judicial Review cases.

2.6 FREEDOM OF INFORMATION

2.6.1 Section 46(1)(b) of the Freedom of Information (FOI) Act, 1997 provides a right of access only with regard to records which relate to the general administration of the Office. This in effect means that records concerning criminal prosecution files are not accessible under the FOI Act.

2.6.2 The Office continues to make FOI information available as readily as possible. Our section 15 and 16 Reference Book is available on our website at www.dppireland.ie. This publication outlines the business of the Office including the types of records kept.

2.6.3 The FOI unit can be contacted by telephone (01-678 9222) or by e-mail at foi@dppireland.ie. This e-mail address can be used for general queries on FOI but cannot be used to submit a request where an application fee is required.

2.6.4 During 2009 a total of twelve requests were submitted to the Office. Seven of the requests were refused under the Act and one request was withdrawn. Four requests were granted / part granted. The reason for the refusals was that the records sought did not relate to the general administration of the Office.

2.6.5 Three of the requests were submitted by journalists, while the other nine requests were made by the general public. Nine of the twelve requests received related (in total or in part) to criminal files.

2.6.6 In the seven cases where requests were refused, only one of the requesters sought an internal review of the original decision. In this case the original decision was upheld. No requester appealed a decision to the Information Commissioner.

Requests Received 2009	
Refused under section 46(1)(b)	7
Withdrawn / dealt with outside of FOI	1
Requests Granted / Part Granted	4
TOTAL REQUESTS	12

Requesters 2009	
Journalists	3
General Public	9

Reviews 2009	
Requests for Internal Review	1
Requests to the Information Commissioner for Review	0

PART 3:

LEGAL DEVELOPMENTS

3.1 LEGAL DEVELOPMENTS 2009

3.1.1 The purpose of this chapter is to give a brief review of the more important or interesting decisions and developments in the area of criminal law in 2009. As in previous years, the cases are chosen to give a flavour of the type of legal issues which arise in the area of criminal law. This chapter is not intended to give a comprehensive review of all developments in criminal law during the year. The five areas of law where sample cases have been chosen are judicial review, road traffic law, habeas corpus applications, Court of Criminal Appeal cases and High Court bail applications.

JUDICIAL REVIEW CASES

Missing video footage

3.1.2 In *Director of Public Prosecutions v. D* [2009] IEHC 132, the applicant was charged with assault. The incident had been recorded on two cameras. The applicant sought an order restraining the Director from pursuing the prosecution claiming that he would not receive a fair trial because video footage from one camera was missing. The footage from the other camera was recovered and was available for trial. The footage from this camera showed the entire incident. The High Court refused the application, ruling that the missing video footage would not have been likely to furnish evidence which would impact on the guilt or innocence of the applicant, or assist in his defence. The absence of the footage would not prejudice a fair trial. The applicant appealed the decision to the Supreme Court but failed in his appeal.

Delay in executing bench warrant

3.1.3 In *Director of Public Prosecutions v. McDonagh* [2009] IEHC 73, the applicant had been charged with a number of charges in 2001. He failed to appear in court and a bench warrant issued for his arrest. He was then located in 2007. He sought an injunction restraining the prosecution from executing the bench warrant and proceeding with the case. He alleged that there was a real and substantial risk that he would not be able to obtain a fair trial because of the delay in executing the bench warrant. He also submitted that he would be unable to locate a particular witness. The High Court refused the relief, ruling that it was only in exceptional circumstances that a trial should be prohibited. The delay in the prosecution of the case had been caused by the applicant who had failed to appear in court.

Changing the charge

3.1.4 In *Director of Public Prosecutions v. Higgins* [2009] IEHC 230, the applicant had been charged with assault causing harm contrary to section 3 of the Non Fatal Offences Against the Person Act 1997. He was sent forward for sentencing to the Circuit Court on a signed plea of guilty. Two months later, following the receipt of a medical report, the DPP charged him with the more serious offence under section 4 of the Act of causing serious harm arising out of the same incident. The Director advised the applicant that he could change his guilty plea if he wished. The applicant declined to change his plea and sought an order from the High Court preventing the Director from proceeding with the section 4 charge. The High Court dismissed the

application ruling that the procedure involved in the sending forward on a signed plea of guilty was not an irreversible process. Furthermore, there was no representation by the Director to the effect that a section 4 prosecution would not be commenced. The Director was entitled to commence a prosecution under section 4 of the Act of 1997, as he did.

Consequence of a *nolle prosequi* (decision to discontinue proceedings)

- 3.1.6** In *Director of Public Prosecutions v. O'Callaghan* [2009] IEHC 310, the applicant had been charged with a number of offences. The Circuit Court had determined that the applicant was not fit to plead to the charges and adjourned the matter for mention. The applicant was examined again and this time he was found fit to plead. The case was adjourned on a number of occasions. The Director then decided to discontinue the prosecution. Four months later the applicant was re-charged with the same charges. The applicant brought a judicial review claiming that the bringing of fresh proceedings against him was unfair and sought a permanent injunction restraining the Director from taking any further steps in the prosecution against him. The High Court refused to grant the relief sought, ruling that the Director was entitled to make the decision to discontinue the case and was also entitled to bring it again.

Cases concerning return for trial orders

- 3.1.7** In *Director of Public Prosecutions v. Murphy* [2009] IEHC 261, the applicant sought an order to overturn the order of the District Court Judge sending him forward for trial to the Circuit Court on five indictable offences and one summary charge. The applicant alleged that the return for trial order was invalid due to the inclusion of the summary charge. The entire return for trial order was alleged to be bad. The Director argued that a summary charge was capable of being separated from the return for trial order. The High Court agreed that it was possible to separate the return for trial order and overturned the part of

the order which returned the applicant for trial on the summary charge. The case was then sent back to the Circuit Court for hearing.

Application to adjourn hearing refused

- 3.1.8** In *Director of Public Prosecutions v. O'Brien* [2009] IEHC 555, the applicant had been charged with an offence of membership of an illegal organisation. During the course of his trial he made an application to the trial court to adjourn his case pending the outcome of another case which was before the courts. The trial court refused to adjourn his case. He then brought a judicial review seeking to overturn that decision. The High Court refused his application for judicial review, ruling that it was settled law that a person could only seek judicial review during the course of a trial in exceptional circumstances. The outcome of the other case which was before the Courts was not relevant to his application for an adjournment, and it was well settled law that the courts have a wide discretion when considering applications to adjourn trials.

ROAD TRAFFIC CASES

Breath tests

- 3.1.9** In *Director of Public Prosecutions v. Gerard Davenport*, unreported, High Court, 19 November 2009, the accused had been breathalysed following a road traffic accident. The Sergeant attending the accident requested the accused to provide a breath sample. The Sergeant then instructed another Garda to administer the alcometer test, which proved positive. The Sergeant then arrested the accused for drink driving. The defence submitted at the trial that section 12 of the Road Traffic Act, 1994, was not complied with, submitting that the same Garda who invoked the detention power under section 12 of the 1994 Act must also administer the test. The District Court Judge asked the High Court to rule if the procedure adopted was in accordance with the above legislation. The High Court held that the procedure was correctly followed and that the courts should

not interpret legislation in a way which would lead to an artificial or absurd result. The Court also ruled that a minor flaw of no significance in complying with a statutory provision is not fatal to the prosecution of an accused where it cannot cause prejudice of itself or work an injustice to the accused.

Provision of sample of blood to the accused

- 3.1.10** In *Director of Public Prosecutions v. Gerard Kennedy* [2009] IEHC 361, the accused had been arrested for drink driving and brought to the Garda station. A doctor was called to take a blood sample from the accused. The relevant legislation requires that it is the prosecuting Garda and not the doctor who is to offer an accused the option of retaining one of the blood samples to have it examined independently. In this case, both samples of blood were in the doctor's hands when the prosecuting Garda gave the accused the option of retaining one of the samples. The defence submitted that the case should be dismissed on the basis that the proper procedures relating to blood samples had not been followed and the District Court agreed. However, the High Court was asked for its opinion and held that the Garda did comply with the legislation. The Court stated that it was not essential that the Garda actually had the containers in his hand at the time that he offered the samples to the accused.

Incorrect details on label containing blood sample

- 3.1.11** In *Director of Public Prosecutions v. David Hopkins* (HC 0707/2009/FL17434), the accused had been arrested for drink driving and brought to the Garda station. A doctor was then called to take a blood sample from the accused. This sample was then divided into two containers. One sample was sent to the Medical Bureau of Road Safety for analysis and the other sample was handed to the accused. On the label of the container which had been given to the accused the doctor put down the date of birth of the accused rather than the date when the sample had been taken, as is required. Section 21(3) of the 1994 Act permits

a certificate from the Medical Bureau of Road Safety certifying that the accused was over the legal limit to be admissible in evidence. The accused argued that the error on the label meant this certificate could not be used since the law had not been correctly followed. The District Court Judge held with the accused but he asked the High Court for its opinion. The High Court held that the breach of procedure was a purely technical breach. This breach did not require a specific explanation from the prosecution on the basis that the error was a mere slip patently evident from the circumstances of the case.

Wording used by Garda when making an arrest

- 3.1.12** In *Director of Public Prosecutions v. Shay O'Rourke* [2009] IEHC 314, the accused had been stopped at a Garda checkpoint and was asked to provide a breath sample. The accused failed the breath test and was then arrested by the Garda for drink driving. When the Garda gave his evidence in court, the wording which he had used to describe the alleged offence which the accused was suspected of committing was in fact different to the wording contained in the legislation which created the offence. The defence had argued that the arrest was therefore unlawful. A case was stated to the High Court for its opinion. The High Court held that the slightly incorrect description provided by the Garda while giving evidence at trial was an error of the utmost triviality. There could be no doubt in the mind of the District Court Judge and the accused which offence the Garda suspected the accused of having committed.

HABEAS CORPUS

Offer of plea of guilty should be accepted

- 3.1.13** In *Olafusi v. The Governor of Cloverhill Prison* [2009] IEHC 558, the applicant was charged with offences under the Immigration Act 2004 relating to his failure to produce identity papers to the Gardaí. The applicant had advised the District Court that he wished to plead guilty, but his plea was not accepted

as the Gardaí had advised the District Court that they had reservations about his identity and needed a further remand in custody to ascertain his identity. The District Court Judge remanded the applicant in custody to allow the Gardaí make their enquiries. The High Court held that the applicant's detention was unlawful and ordered his immediate release. The High Court noted that it may well be the case that difficulties are encountered in the identification of people who were found not to have normal proof of identification but the criminal justice process cannot be used or adapted to facilitate the ascertainment of the identity of such a person. Where such a person offers a plea of guilty, the trial court must, in the absence of appropriate exceptional circumstances, proceed to sentence.

Committal warrant defective

3.1.14 In *Macharia v. The Governor of Cloverhill Prison* [2009] IEHC 42, the applicant sought his release from custody because the committal warrant directing the prison to keep him in custody was defective. The warrant had been signed by a District Court Clerk rather than by a District Court Judge and on the face of the warrant it appeared as though it was the District Court Clerk and not the District Court Judge who had ordered that the applicant was to be lodged in prison. The High Court noted that a District Court Clerk does have jurisdiction to sign a committal warrant on behalf of a District Court Judge, but in this case the particular warrant was defective on the basis that there was no reference on the warrant to the fact that it was the District Court Judge who had remanded the applicant in custody. The applicant was released from custody on the basis that there was a failure to show any jurisdiction on the face of the warrant justifying his lawful detention. The High Court noted that no bad faith could be shown on the part of the District Court Clerk and that what had occurred was that an out-of-date form of committal warrant had been used in this case.

COURT OF CRIMINAL APPEAL

Director's appeal against unduly lenient sentence (assault)

3.1.15 In *Director of Public Prosecutions v. Foley* [2009] IEHC 47, the respondent had pleaded guilty to assault causing harm. The assault involved the respondent biting off part of the victim's ear. It had not been possible to re-attach that portion of the ear. The respondent had pleaded guilty on the morning of the trial, had apologised to the victim and had paid €1,500 in compensation. The trial court imposed a three-year sentence, suspended for five years. The Director appealed this sentence on the basis of undue leniency. The Court of Criminal Appeal altered the original sentence, noting that there was very little to be said by way of mitigation on behalf of the respondent. The Court noted that the guilty plea was not offered until the morning of the trial. An apology through counsel some three years after the assault was also of limited value. The Court held that the appropriate sentence should be two years imprisonment, with 18 months of that sentence suspended for five years.

Unduly lenient sentence review (controlled drugs)

3.1.16 In *Director of Public Prosecutions v. O'Donoghue*, 2 CJA/09, the Director appealed a sentence of five years imposed on the respondent who was found guilty of possession of cocaine for sale contrary to section 15A of the Misuse of Drugs Act, 1977, as amended. The drugs had an approximate street value of €43,000. The trial judge sentenced the respondent to a suspended sentence of five years. The Director sought a review of the sentence on the grounds of undue leniency. The Court of Criminal Appeal noted that the maximum sentence for such an offence was life imprisonment and that, subject to special circumstances, a minimum ten year sentence was normally imposed in cases of this nature. The Court considered that suspending the full sentence was unduly lenient in that the trial judge had misdirected himself in law in suspending the full five years. The original

suspended sentence was substituted by a three-year sentence of imprisonment, with the last eighteen months of the sentence being suspended.

Use of court transcripts

- 3.1.17** In *Director of Public Prosecutions v. Farrell* [2009] IECCA 92, the use of transcripts by the Court of Criminal Appeal rather than hearing direct evidence was discussed. The Director had served a notice of review on the basis of undue leniency. The procedure adopted by the Court in hearing appeals is for the Registrar to request transcripts of the evidence adduced at the original trial and the Court considers these transcripts. There were significant gaps in the transcripts placed before the Court. The respondent objected to the use of the transcripts, pointing out that section 2 of the Criminal Justice Act, 1993, did not specifically provide details on how the Court of Criminal Appeal was to hear and determine undue leniency applications. The respondent submitted that there was no statutory provision or rules providing for the use of transcripts. The Court of Criminal Appeal held that it was entitled to hear undue leniency applications by using the same material provided in appeals concerning severity of sentence pursuant to section 33 of The Courts of Justice Act, 1924.

Judge's charge to jury

- 3.1.18** In *Director of Public Prosecutions v. Cleary* [2009] IECCA 142, the applicant had been convicted of an offence of dangerous driving causing death. He sought leave to appeal his conviction on the ground that the trial judge had erred in law by failing to discharge the jury following comments made by an expert witness during cross-examination by the prosecution. The Court of Criminal Appeal refused leave to appeal, ruling that the decision as to whether to discharge a jury was a matter within the discretion of the trial judge and that the exercise of that discretion would only be interfered with on appeal where there was a real and substantial risk of

an unfair trial. The Court noted that the trial judge had been in a good position to evaluate the significance of what had occurred during the cross-examination in the context of the trial as a whole. The question of having a jury discharged on the basis that something was said during the opening of a case, or on the basis that some inadmissible evidence was placed before the jury, should be a remedy of last resort only to be used in the most extreme circumstances.

APPLICATIONS FOR BAIL

Admissibility of hearsay evidence

- 3.1.19** In *Director of Public Prosecutions v. Vickers* [2009] IESC 58, the applicant was charged with the murder of his wife. The High Court refused to grant him bail on the basis that further serious offences might be committed by him whilst on bail. The applicant appealed that decision to the Supreme Court on the ground that the High Court had erred in admitting hearsay evidence from a witness who said that she was told by the deceased that the applicant had previously threatened to harm his children. The Supreme Court dismissed the appeal ruling that hearsay evidence was admissible in bail applications, particularly where the person who made the statement was the deceased. The Supreme Court stated that the trial judge had to assess the credibility of the evidence and take into account the nature of the actual risk demonstrated to exist by that evidence. Section 2 of the Bail Act, 1997, was intended to confer a wide discretion on the Court determining a bail application.

Test for granting bail to convicted persons

- 3.1.20** In *Director of Public Prosecutions v. Dunne* [2009] IECCA 3, the applicant sought to be released on bail pending the hearing of his appeal to the Court of Criminal Appeal against his conviction. He submitted that his conviction should be overturned on the basis of the Judge's charge to the jury. The Court of Criminal Appeal ruled that when the Court considers granting bail pending the hearing

of an appeal, the Court must be satisfied that there is a strong chance of a successful appeal. The Court stated that bail could only be granted where some definite ground of appeal could be identified and there was a strong chance that the appeal would succeed. In this case the applicant had been charged with possession of a controlled drug and with intention to supply a controlled drug. The Court noted that there was supporting surveillance of the applicant's involvement in the offences. The Court was not satisfied that the applicant had made out a case to warrant granting the application for bail.

PART 4:

STATISTICS

STATISTICS

Explanatory Note in Relation to Statistics

- 4.1** The statistics outlined in this report have been compiled from the Office's new electronic Case, Document Management and File Tracking system which went live in the Office at the end of October 2008.
- 4.2** The new system operates on an integrated basis where all elements of a case, from the initial direction process to an appeal in the Court of Criminal Appeal, have the same case reference, providing a snapshot picture of all the different elements of a case at one glance.
- 4.3** As part of the implementation process data from the previous IT systems was migrated onto the new system. The previous systems consisted of numerous non-compatible databases, and the data migration processes involved a significant level of data matching and data cleansing. Because of this, there may be some slight discrepancies between statistics produced from the new system and data outlined in previous reports.
- 4.4** Part 4 is broken down into three distinct sections:
- Charts 1 to 5 (Part 4.1) relate to the receipt of files in the Office and include details on the types of directions made;
 - Charts 6 to 10 (Part 4.2) provide details of the results of cases prosecuted on indictment by the Director in respect of files received in the Office between 2006 and 2008
 - Charts 11 to 13 (Part 4.3) relate to applications to the Courts for review of sentence on grounds of undue leniency; confiscation and forfeiture of criminal assets; and European Arrest Warrants.
- 4.5** All the yearly demarcations in the statistical tables refer to the year the file was received in the Office. The reason for going back so far in charts 6 to 10 is to take account of the time difference between a decision to prosecute being made and a trial verdict being recorded. If statistics were to be provided in respect of 2009 case outcomes, a large proportion of the cases would still be classified as 'for hearing' and the statistics would have little value. Cases heard within a short period of being brought are not necessarily representative.
- 4.6** In this report we have attempted in most instances to include updated versions of the data set out in previous Annual Reports in order to give a fuller account of the progress made since that data was previously published. Because of the continuous change in the status of cases - for example, a case which was pending at the time of a previous report may now have concluded - information given in this report will differ from that for the same cohort of cases in previous reports. In addition, data from two different years may not be strictly comparable because as time goes on more cases are completed so that information from earlier years is necessarily more complete than that from later years. Unless otherwise stated, data included in these statistics was updated in August 2010.
- 4.7** Caution should be exercised when considering these statistics in the light of statistics published by other organisations such as the Courts Service or An Garda Síochána. The statistics published here are based on our own classification and categorisation systems and may in some cases not be in line with the classification systems of other organisations.

4.1 PROSECUTION FILES RECEIVED

Chart 1 shows the total number of files received by the Office of the Director of Public Prosecutions from 1976 to 2009.

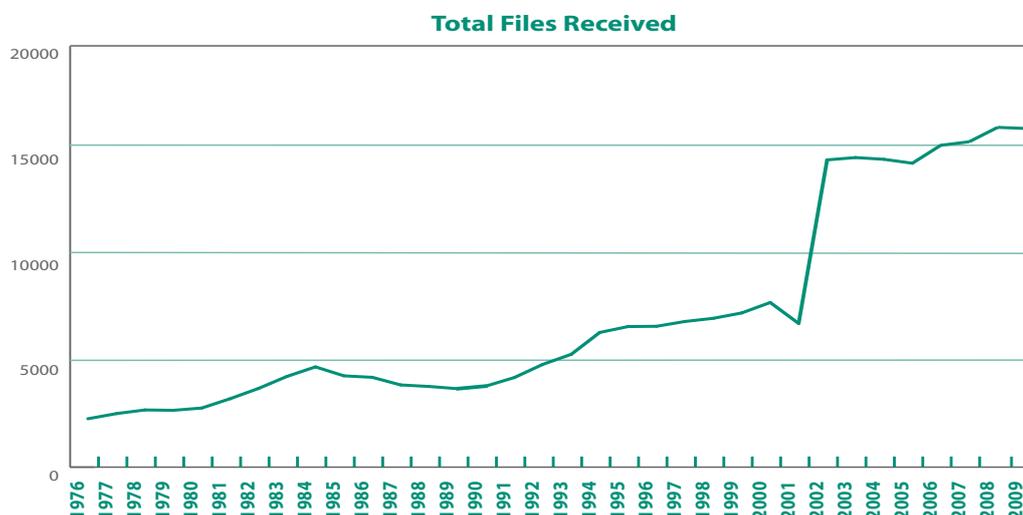
The vast majority of files received in the Office relate to the prosecution of criminal cases. The remainder deal with general queries, applications for judicial review or requests for legal advice from the Garda Síochána or local state solicitors. The number of files received, and the complexity of the issues that have to be addressed, has increased generally since the establishment of the Office.

The significant drop of over 1,000 files from 2000 to 2001 was the result of a change in administrative arrangements authorising the prosecution of certain offences by the Garda Síochána without the necessity for the prior submission of files to this Office for directions. The sharp increase in figures from 2001 to 2002 is due to the transfer of the Criminal Division of the Chief State Solicitor's Office to the Office of the Director of Public Prosecutions in December 2001 to form the Solicitors Division of the Office.

* **NOTE:** The figures for 2006 onwards do not include the number of other legal files received in the Office. These are files which relate to legal issues such as requests for legal advice from the Garda Síochána and local state solicitors. Because they do not relate to individual criminal prosecution files, it was considered more appropriate not to include them for statistical purposes.

Chart 1 **TOTAL FILES RECEIVED**

Year	Files	Year	Files	Year	Files
1976	2,298	1988	3,829	2000	7,815
1977	2,542	1989	3,724	2001	6,821
1978	2,715	1990	3,849	2002	14,586
1979	2,698	1991	4,255	2003	14,696
1980	2,806	1992	4,880	2004	14,613
1981	3,249	1993	5,356	2005	14,427
1982	3,738	1994	6,393	2006	* 15,279
1983	4,309	1995	6,674	2007	* 15,446
1984	4,759	1996	6,687	2008	* 16,130
1985	4,335	1997	6,915	2009	* 16,076
1986	4,263	1998	7,066		
1987	3,902	1999	7,321		



The Solicitors Division of the Office of the Director of Public Prosecutions provides a solicitor service to the Director and acts on his behalf. The division also deals with cases which do not require to be referred to the Directing Division for direction.

Chart 2 represents the number of cases dealt with solely within the Solicitors Division and includes District Court prosecution files, appeals from the District Court to the Circuit Court and High Court bail applications. The figure for District Court Appeals represents the number of files held, not the number of individual charges appealed. One defendant may have a multiplicity of charges under appeal.

The Solicitors Division also deals with judicial review applications. While some of these applications are dealt with solely within the Solicitors Division, others require to be forwarded to the Directing Division for direction. However, because the dedicated Judicial Review Section is based in the Solicitors Division the total number of judicial review applications dealt with are included in this chart. Judicial reviews may be taken by the Director or be taken against him.

Chart 2 FILES DEALT WITH BY SOLICITORS DIVISION

	2009	%	2008	%	2007	%
District Court Prosecution Files	1968	28%	2105	27%	2160	28%
Appeals from District Court to Circuit Court	2573	37%	2649	34%	2669	35%
High Court Bail Applications	2037	30%	2592	34%	2443	32%
Judicial Review Applications	328	5%	351	5%	435	6%
TOTAL	6906		7697		7707	

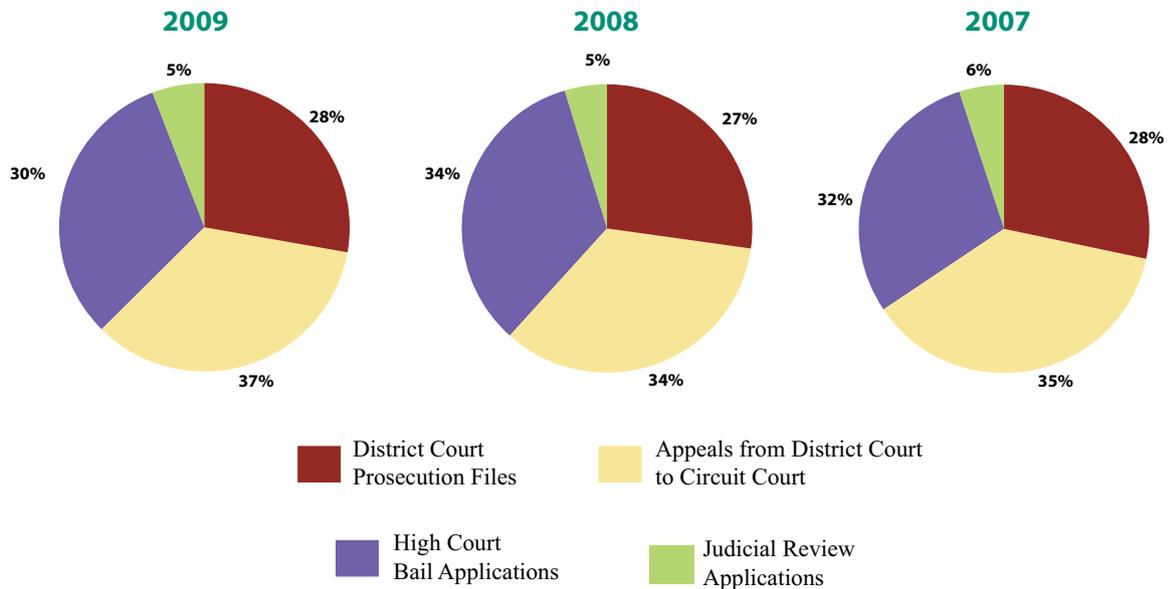
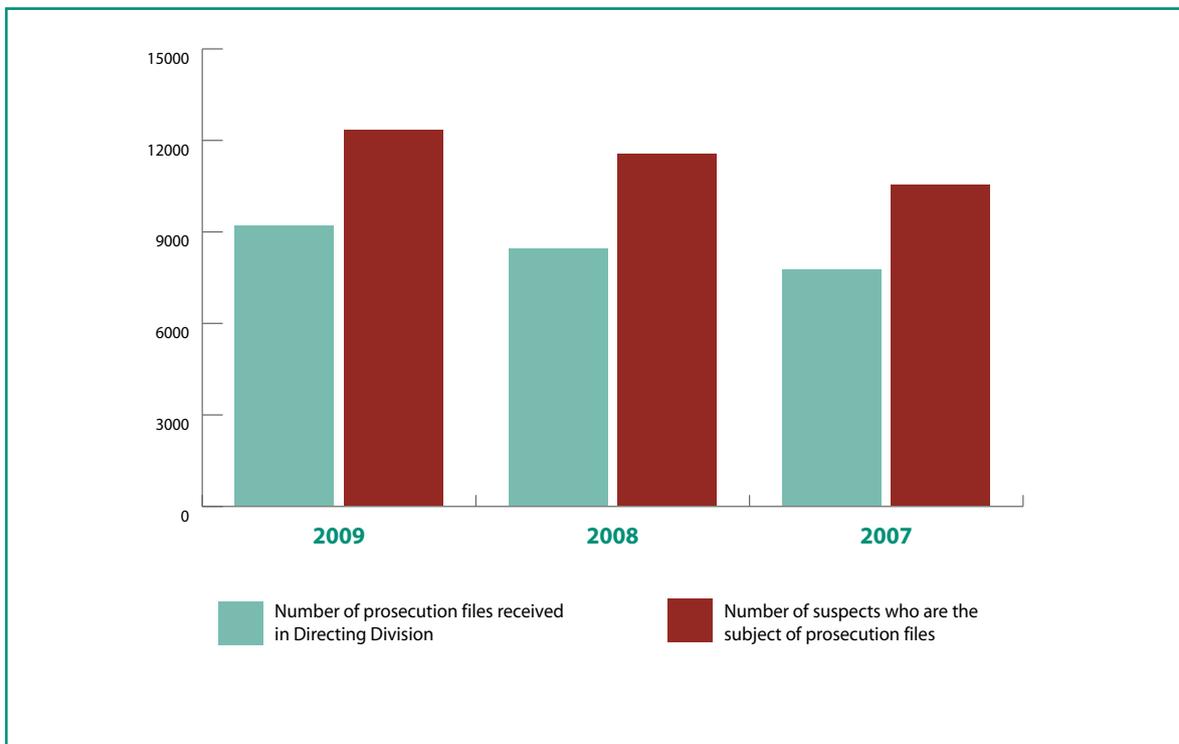


Chart 3 compares the number of files received in the Directing Division to the number of suspects who are the subject of those files. Many files relate to more than one suspect and to treat such a file as a single case can give a misleading impression of the workload of the Office. It is important, therefore, to look at the total number of suspects as well as the total number of files.

Chart 3 BREAKDOWN OF FILES RECEIVED IN DIRECTING DIVISION

	2009	2008	2007
Number of prosecution files received in Directing Division	9170	8433	7739
Number of suspects who are the subject of prosecution files	12299	11529	10502



The following chart shows a breakdown of the disposal of files received in the Directing Division in 2007, 2008 and 2009 (as of August 2010). The Garda Síochána and specialised investigating agencies submit files either directly to our Solicitors Division or to the local state solicitor for a direction whether or not to prosecute. Depending on the seriousness of the offence and the evidence disclosed in the file, a decision will be taken as follows:

No Prosecution: A decision not to prosecute is made. The most common reason not to prosecute is because the evidence contained in the file is not sufficient to support a prosecution. The figures however list all decisions not to prosecute.

Prosecute on Indictment: It is decided to prosecute in the Circuit, Central or Special Criminal Courts.

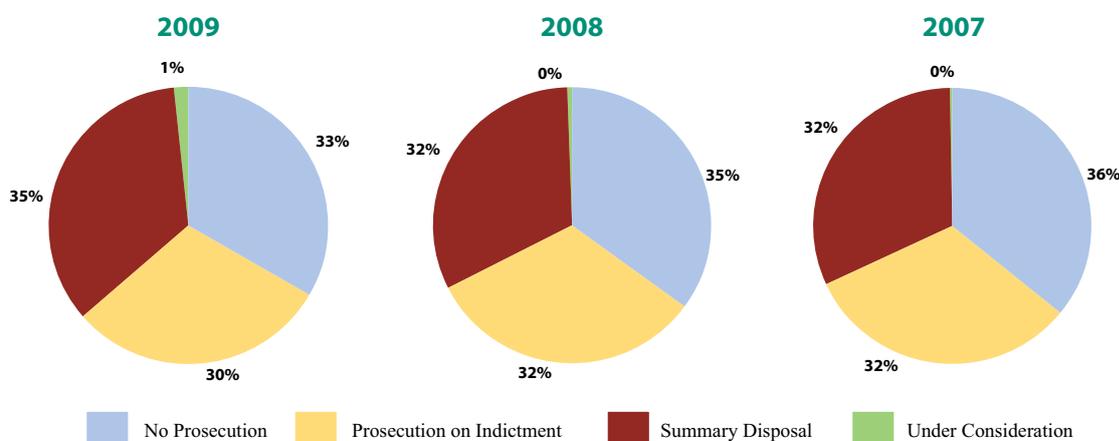
Summary Disposal: The offence is to be prosecuted in the District Court.

Under Consideration: Files in which a decision has not been made. This figure includes those files in which further information or investigation was required before a decision could be made. Further information is sought more often than not to strengthen the case rather than because of any deficiency in the investigation.

NOTE: The figures for 2007 and 2008 have been updated since the publication of previous Annual Reports. The reduction in the files 'Under Consideration' figures compared with those given in previous years reflect developments on those files since then. 'Prosecutions on Indictment' include those cases in which defendants elected for trial by jury and cases where the judge of the District Court refused jurisdiction, even though the Director initially elected for summary disposal.

Chart 4 **DISPOSAL OF DIRECTING DIVISION FILES BY NUMBER OF SUSPECTS SUBJECT OF FILES RECEIVED**

Direction Made	2009	%	2008	%	2007	%
No Prosecution Directed	4114	33%	4041	35%	3765	36%
Prosecution on Indictment Directed	3732	30%	3743	32%	3404	32%
Summary Disposal Directed	4269	35%	3709	32%	3314	32%
TOTAL OF FILES DISPOSED	12115	99%	11493	100%	10483	100%
Under Consideration	184	1%	36	0%	19	0%
TOTAL	12299		11529		10502	



A decision may be made not to prosecute in relation to a particular file for a variety of reasons other than the main reasons set out in this chart (referred to as 'other' below). The death or disappearance of the suspect, the death or disappearance of the complainant or the refusal of a complainant to give evidence are some examples.

Chart 4a BREAKDOWN OF MAIN REASONS FOR A DIRECTION NOT TO PROSECUTE

Main Reasons for No Prosecution	2009	%	2008	%	2007	%
Insufficient Evidence	2897	70%	3085	77%	3090	82%
Juvenile Diversion Programme	97	2%	92	2%	67	2%
Public Interest	228	6%	288	7%	240	6%
Sympathetic Grounds	29	1%	25	1%	25	1%
Time Limit Expired	93	2%	49	1%	69	2%
Undue Delay	52	1%	46	1%	48	1%
Injured Party Withdraws Complaint *	185	5%	N/A	-	N/A	-
Other	533	13%	456	11%	226	6%
TOTAL	4114		4041		3765	

* Statistics in this category were extracted from the new Case, Document Management and File Tracking System and are therefore available for the year 2009 only. In previous years this category was included in the 'Other' category.

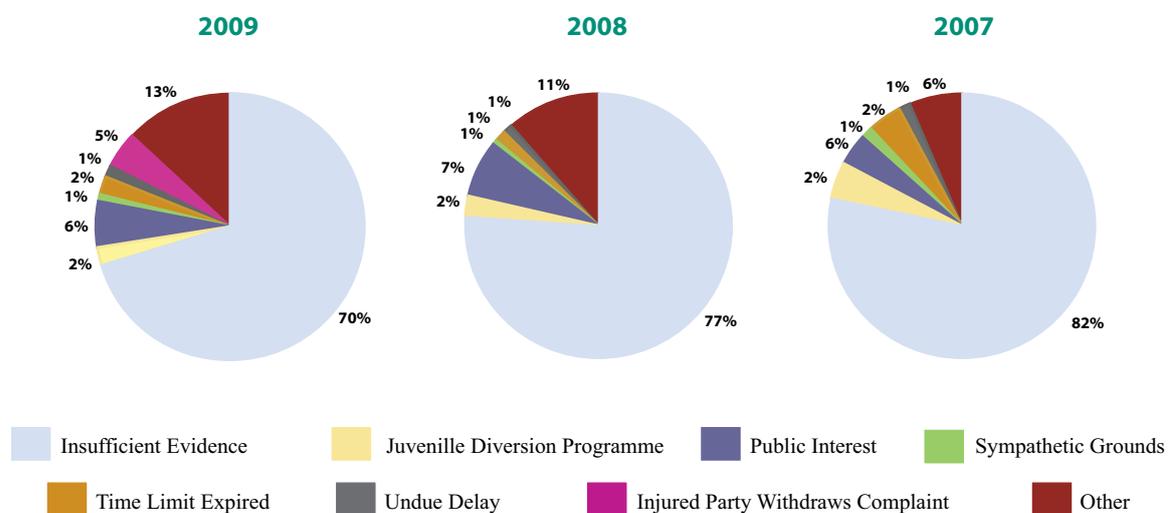


Chart 4b is a breakdown of directions to prosecute on indictment, by the county in which the offence was committed. It includes cases directed to be heard in the Circuit Criminal, Central Criminal and Special Criminal Courts. Please note that a number of cases are still 'Under Consideration' (see Chart 4). These include cases where a file was received but further information was required. It is not possible to determine how many of these cases may eventually result in a direction to prosecute on indictment.

Chart 4b BREAKDOWN OF NUMBER OF PROSECUTIONS ON INDICTMENT DIRECTED PER COUNTY OF OFFENCE

	Population					Number of Prosecutions on Indictment Directed per County					Cases per 1,000 Persons					3 Year Rolling Average		
	2009 *	2008 *	2007 *	2006 *	2005 *	2009	2008	2007	2006	2005	2009	2008	2007	2006	2005	2007-2009	2006-2008	2005-2007
	Population	Population	Population	Population	Population													
Carlow	54,245	53,295	51,820	50,349	49,235	37	37	15	33	42	0.68	0.69	0.29	0.66	0.85	0.56	0.55	0.60
Cavan	68,598	67,300	65,769	64,003	60,936	39	44	29	39	29	0.57	0.65	0.44	0.61	0.48	0.55	0.57	0.51
Clare	114,937	114,291	112,109	110,950	107,722	105	77	72	74	70	0.91	0.67	0.64	0.67	0.65	0.74	0.66	0.65
Cork	502,116	499,481	489,950	481,295	471,489	423	377	372	332	322	0.84	0.75	0.76	0.69	0.68	0.79	0.73	0.71
Donegal	157,836	154,849	151,328	147,264	143,983	68	87	117	59	56	0.43	0.56	0.77	0.40	0.39	0.59	0.58	0.52
Dublin	1,211,500	1,217,801	1,210,300	1,187,176	1,160,101	1,646	1,730	1,603	1,790	1,568	1.36	1.42	1.32	1.51	1.35	1.37	1.42	1.39
Galway	241,245	238,282	234,535	231,670	225,207	101	89	76	104	55	0.42	0.37	0.32	0.45	0.24	0.37	0.38	0.34
Kerry	145,884	145,119	142,350	139,835	138,211	107	64	69	62	63	0.73	0.44	0.48	0.44	0.46	0.55	0.46	0.46
Kildare	205,989	201,677	194,622	186,335	178,456	120	90	80	93	69	0.58	0.45	0.41	0.50	0.39	0.48	0.45	0.43
Kilkenny	94,334	92,681	90,116	87,558	85,785	56	45	44	67	33	0.59	0.49	0.49	0.77	0.38	0.52	0.58	0.55
Laois	72,105	71,092	69,334	67,059	64,074	35	29	33	22	26	0.49	0.41	0.48	0.33	0.41	0.46	0.40	0.40
Leitrim	31,028	30,441	29,749	28,950	27,675	27	17	13	11	12	0.87	0.56	0.44	0.38	0.43	0.62	0.46	0.42
Limerick	190,668	189,598	185,978	184,055	180,700	161	155	152	142	134	0.84	0.82	0.82	0.77	0.74	0.83	0.80	0.78
Longford	36,979	36,459	35,557	34,391	33,331	26	27	24	20	9	0.70	0.74	0.67	0.58	0.27	0.71	0.67	0.51
Louth	119,255	116,998	114,337	111,267	107,714	73	100	97	69	39	0.61	0.85	0.85	0.62	0.36	0.77	0.77	0.61
Mayo	128,958	127,373	125,370	123,839	123,288	81	68	60	53	46	0.63	0.53	0.48	0.43	0.37	0.55	0.48	0.43
Meath	180,006	176,238	170,072	162,831	151,228	60	69	68	76	70	0.33	0.39	0.40	0.47	0.46	0.37	0.42	0.44
Monaghan	60,017	58,881	57,542	55,997	54,891	31	38	37	29	41	0.52	0.65	0.64	0.52	0.75	0.60	0.60	0.64
Offaly	76,200	75,130	73,272	70,868	68,503	33	28	21	21	20	0.43	0.37	0.29	0.30	0.29	0.36	0.32	0.29
Roscommon	61,197	60,445	59,495	58,768	57,505	18	26	26	15	17	0.29	0.43	0.44	0.26	0.30	0.39	0.37	0.33
Sligo	65,266	64,031	62,574	60,894	60,201	22	29	21	50	48	0.34	0.45	0.34	0.82	0.80	0.38	0.54	0.65
Tipperary	158,056	156,101	152,365	149,244	146,823	122	99	90	64	60	0.77	0.63	0.59	0.43	0.41	0.67	0.55	0.48
Waterford	116,316	114,227	111,115	107,961	107,045	112	156	101	79	65	0.96	1.37	0.91	0.73	0.61	1.08	1.00	0.75
Westmeath	85,316	84,118	82,037	79,346	76,992	68	140	56	60	42	0.80	1.66	0.68	0.76	0.55	1.05	1.03	0.66
Wexford	141,944	139,457	135,598	131,749	126,889	84	49	53	59	46	0.59	0.35	0.39	0.45	0.36	0.44	0.40	0.40
Wicklow	139,505	136,585	131,806	126,194	122,716	77	72	75	80	60	0.55	0.53	0.57	0.63	0.49	0.55	0.58	0.56
TOTAL	4,459,500	4,422,000	4,339,100	4,239,848	4,130,700	3732	3742	3404	3503	3042								

*Population figures for 2006 are taken from the census figures for that year. Population figures for years preceding 2006 are calculated based on the proration of the Population & Migration Estimates for the Regional Authority Areas as published by the Central Statistics Office in April 2006 which includes revised yearly figures for the years between 2003 and 2005. The 2007, 2008 and 2009 figures are based on a proration of the estimated population figures as published in the Population and Migration Estimates issued in 2007, 2008 and 2009.

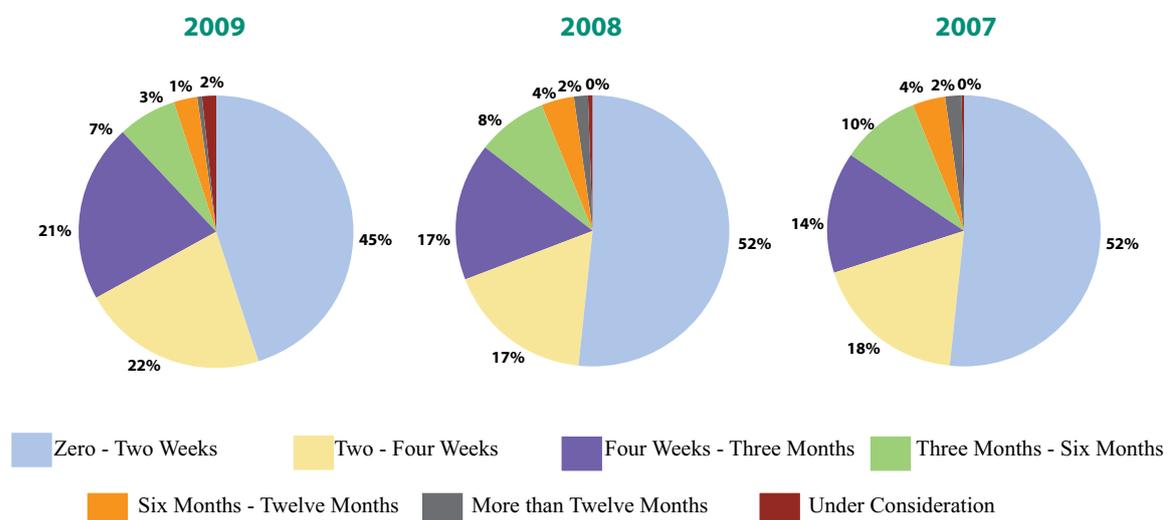
Chart 5 shows the time between the receipt of a completed prosecution file in the Office and the issuing of a direction as to whether a prosecution of a suspect should be taken or not. It has been decided to show this information by suspect rather than by file since in the case of files containing multiple suspects, decisions in respect of all suspects may not be made at the same time.

Files vary in size and complexity. Also, in some cases, further information or investigation was required before a decision could be made. Further information may be sought to enhance the proofs in a case and does not necessarily imply any deficiency in the investigation.

The time taken to issue directions is calculated on the basis of only those files which have been disposed of. Files still under consideration are therefore shown as a separate category in the table below.

Chart 5 TIME TAKEN TO ISSUE DIRECTIONS

Time Taken	2009	%	2008	%	2007	%
Zero - Two Weeks	5556	45%	5976	52%	5434	52%
Two - Four Weeks	2685	22%	2004	17%	1924	18%
Four Weeks - Three Months	2600	21%	1905	17%	1513	14%
Three Months - Six Months	854	7%	946	8%	995	10%
Six Months - Twelve Months	351	3%	472	4%	412	4%
More than Twelve Months	64	1%	191	2%	205	2%
TOTAL FILES DISPOSED	12110	98%	11494	99%	10483	100%
Under Consideration	189	2%	35	0%	19	0%
TOTAL	12299	100%	11529	100%	10502	100%



4.2 RESULTS OF CASES PROSECUTED ON INDICTMENT

Charts 6 to 10 provide information for prosecutions on indictment taken by the Director in respect of files received in the Office between 2006 and 2008. As referred to in the initial explanatory note, care should be taken before a comparison is made with figures provided by any other organisation, as they may be compiled on a different basis.

The figures in these charts relate to individual suspects against whom a direction has been made to prosecute on indictment. Statistics are provided on a suspect-by-suspect basis rather than on the basis of files received. This is because directions are made in respect of each suspect included within a file rather than against the complete file as an entity in itself. Depending on the evidence provided, different directions are often made in respect of the individual suspects received as part of the same file. References in these charts to 'cases' refer to such prosecutions taken against individual suspects. Although individual suspects on a file may be tried together where a direction is made to prosecute them in courts of equal jurisdiction, each suspect's verdict will be collated separately for the purpose of these statistics.

Statistics are provided on the basis of one outcome per suspect; this is irrespective of the number of charges and offences listed on the indictment. Convictions are broken down into: conviction by jury, conviction on plea, and conviction on a lesser charge. A conviction on a lesser charge indicates that the suspect was not convicted for the primary or most serious offence on the indictment. The offence categorisation used in the main charts is by the primary or most serious offence on the indictment. Therefore, if a defendant is convicted of a lesser offence, the offence or offences they are convicted for may be different from that under which they are categorised in the charts. For example, a suspect may be charged with murder but ultimately convicted for the lesser offence of manslaughter or charged with aggravated burglary but convicted of the lesser offence of burglary. A breakdown of convictions

on a lesser charge is given in respect of cases heard in the Special and Central Criminal Courts in charts 8a and 9a. Where a suspect is categorised as 'acquitted', this means that the suspect has been acquitted of all charges.

It should also be noted that statistics set out in these charts relate to what happened in the trial court only and not in a subsequent appeal court. In other words where a person is convicted and the conviction is subsequently overturned on appeal, the outcome of the trial is still shown in these statistics as a conviction.

Care should be taken in relation to interpreting the rates of conviction and acquittal in respect of recent years, as a higher number of cases will not have reached a conclusion. The picture furnished by these statistics will be less complete and therefore less representative than those in respect of earlier years. Cases heard relatively early may not necessarily be a representative sample of the whole.

Chart 6 shows the results of prosecutions on indictment taken in relation to defendants in respect of whom prosecutions were commenced in the years 2006 to 2008 (as of August 2010). The figures relate to:

Conviction: A conviction was obtained in respect of at least one of the charges brought in the case.

Acquittal: The defendant was acquitted on all charges.

Not Yet Heard: These are cases in which a decision to prosecute has been taken and the matter is before the courts.

NOTE: Figures have not been included for 2009 as the great majority of these cases have yet to be dealt with by the courts and the outcomes for the few cases where results are available may not be representative of the final picture covering all the cases.

Chart 6 CASE RESULTS - PROSECUTIONS ON INDICTMENT

Outcome	2008	%	2007	%	2006	%
Conviction	2622	70%	2498	73%	2599	74%
Acquittal	91	2%	131	4%	177	5%
Not Yet Heard	941	25%	683	20%	599	17%
Struck Out/Discontinued	89	2%	92	3%	128	4%
TOTAL	3743		3404		3503	

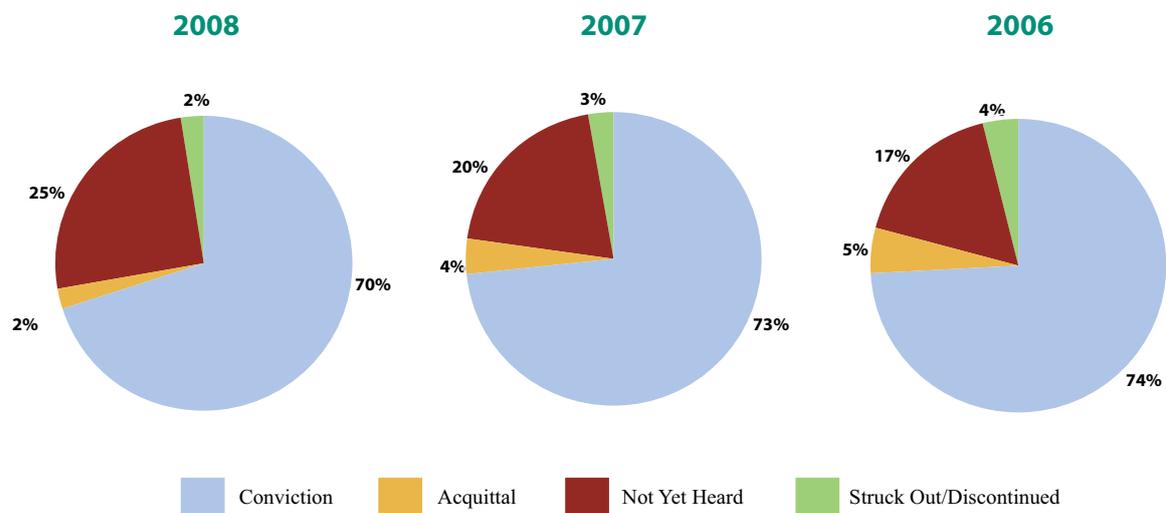


Chart 6a **BREAKDOWN OF CONVICTIONS AND ACQUITTALS (EXCLUDING CASES STILL TO BE HEARD)**

	2008	%	2007	%	2006	%
Conviction by Jury	90	3%	136	5%	149	6%
Conviction Following Plea of Guilty	2532	93%	2362	90%	2450	88%
TOTAL CONVICTIONS	2622	96%	2498	95%	2599	94%
Acquittal by Jury	50	2%	98	4%	110	4%
Acquittal on Direction of Judge	41	2%	33	1%	67	2%
TOTAL ACQUITTALS	91	3%	131	5%	177	6%
TOTAL	2713		2629		2776	

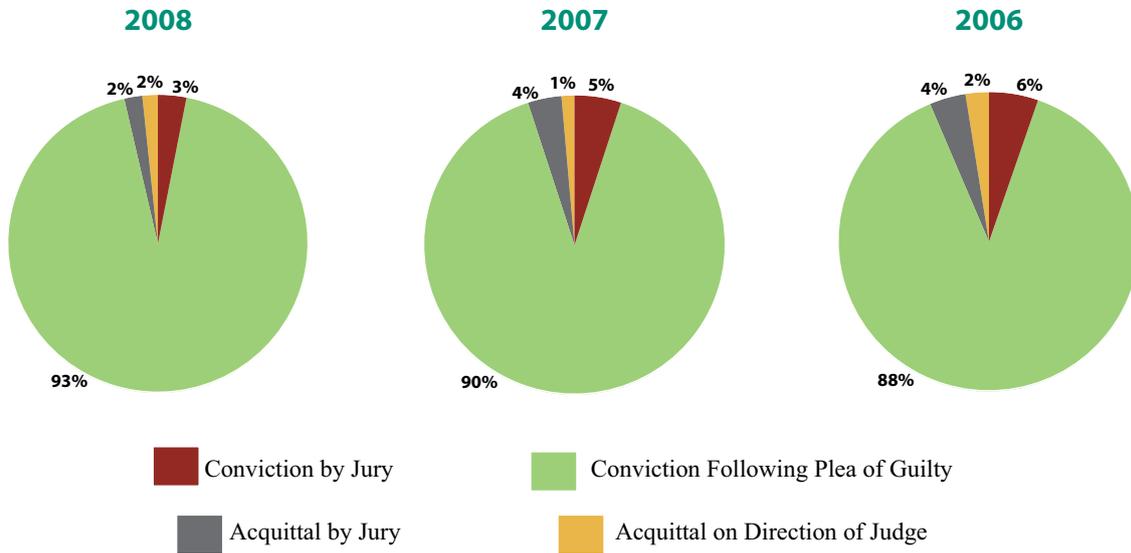


Chart 7 breaks down the prosecutions directed on indictment to be heard in the Circuit Court. The cases categorised as 'For Hearing' are those for which a verdict has not yet been recorded. In some of these cases, a trial may have begun but proceedings have been halted by a Judicial Review application. In other cases the defendant may have absconded before the trial and a bench warrant and/or extradition proceedings may be in process. Other cases, especially those of a complex nature, may not yet have come to trial. The greater proportion of cases 'For Hearing' makes the figures in more recent years less representative. This provision is also applicable to Charts 8 and 9. Where a trial results in a disagreement the case is treated as still being 'For Hearing' unless a *nolle prosequi* is entered.

Chart 7 OUTCOMES OF CASES PROSECUTED IN THE CIRCUIT CRIMINAL COURT

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge			For Hearing			Other Disposals		
	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006
Fatal Accident at Work	13	8	10	1	0	0	4	5	7	0	0	0	0	0	0	0	0	0	8	3	1	0	0	2
Manslaughter	7	7	20	0	1	3	4	2	9	0	0	0	0	0	1	0	0	0	3	3	6	0	0	1
Other Fatal Offences	0	1	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
TOTAL - FATAL OFFENCES	20	16	31	1	1	3	8	8	16	0	0	0	0	0	1	0	1	0	11	6	7	0	0	4
Burglary	457	306	366	10	1	9	340	240	280	8	3	3	1	4	6	3	4	6	92	45	52	3	9	10
Fraud	44	41	68	0	0	3	30	19	40	0	0	0	0	1	0	0	1	3	14	20	22	0	0	0
Robbery	518	478	563	5	5	10	400	392	468	2	3	5	1	2	3	4	1	6	96	65	61	10	10	10
Theft	125	129	134	4	3	2	83	80	80	1	0	0	0	5	1	3	0	3	32	38	42	2	3	6
Other Offences Against Property	203	172	177	3	5	9	139	115	110	2	0	1	1	4	5	2	0	2	53	41	42	3	7	8
TOTAL - OFFENCES AGAINST PROPERTY	1347	1126	1308	22	14	33	992	846	978	13	6	9	3	16	15	12	6	20	287	209	219	18	29	34
Buggery	3	3	5	1	0	0	1	0	3	0	0	0	0	0	0	0	0	0	1	2	2	0	1	0
Child Pornography	12	19	9	0	0	0	8	15	7	1	0	0	0	0	0	0	0	0	3	4	2	0	0	0
Sexual Assault	97	83	116	5	6	9	40	42	54	1	1	1	3	7	9	3	2	4	41	21	35	4	4	4
Sex with an Underage Girl	11	16	1	0	0	0	5	9	1	0	1	0	1	1	0	0	0	0	4	4	0	1	1	0
Other Sexual Offences	21	25	19	0	0	2	6	11	12	0	1	1	0	0	1	0	0	0	14	13	3	1	0	0
TOTAL - SEXUAL OFFENCES	144	146	150	6	6	11	60	77	77	2	3	2	4	8	10	3	2	4	63	44	42	6	6	4
Dangerous Driving Causing Death	43	49	59	0	5	7	23	28	39	1	2	4	4	3	3	3	1	1	12	10	3	0	0	2
Unauthorised Taking of Motor Vehicles	104	75	115	1	3	4	78	61	84	2	0	0	1	1	1	0	0	0	21	9	17	1	1	9
Other Road Traffic Offences	37	30	26	1	2	1	25	22	20	1	1	1	1	0	0	0	1	0	9	4	3	0	0	1
TOTAL - ROAD TRAFFIC OFFENCES	184	154	200	2	10	12	126	111	143	4	3	5	6	4	4	3	2	1	42	23	23	1	1	12
Drug Offences	767	688	583	12	13	14	560	538	469	30	4	7	2	3	2	9	2	6	147	123	79	7	5	6
Firearms and Explosives Offences	147	155	108	2	4	4	108	105	81	4	3	4	4	4	2	0	1	0	24	35	15	5	3	2
Non Fatal Offences Against the Person	756	826	802	17	27	26	436	530	489	6	8	17	24	37	60	12	14	24	216	166	138	45	44	48
Public Order Offences	187	79	134	2	0	10	115	52	75	2	7	0	0	4	2	0	0	8	67	14	32	1	2	7
Revenue Offences	15	21	25	0	0	0	1	4	5	0	1	0	0	0	0	0	0	0	14	16	18	0	0	2
Other Offences	65	40	39	0	0	1	30	16	27	1	1	0	1	1	1	2	2	3	29	20	6	2	0	1
GRAND TOTAL	3632	3251	3380	64	75	114	2436	2287	2360	62	36	44	44	77	97	41	30	66	900	656	579	85	90	120

Chart 7a **BREAKDOWN OF 'OTHER DISPOSALS' FROM CHART 7**

	2008	2007	2006
<i>Nolle Prosequi</i> Entered	72	85	113
Struck Out	3	2	6
Taken Into Consideration	1	0	0
Guilty but Insane	2	0	1
Not Guilty by Reason of Insanity	7	3	0
TOTAL	85	90	120

Chart 7b **TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Conviction		
	2008	2007	2006	2008	2007	2006
Fatal Accident at Work	5	5	7	100%	100%	100%
Manslaughter	4	4	13	100%	75%	92%
Other Fatal Offences	0	1	0	N/A	100%	N/A
TOTAL - FATAL OFFENCES	9	10	20	100%	90%	95%
Burglary	362	252	304	99%	97%	96%
Fraud	30	21	46	100%	90%	93%
Robbery	412	403	492	99%	99%	98%
Theft	91	88	86	97%	94%	95%
Other Offences Against Property	147	124	127	98%	97%	94%
TOTAL - OFFENCES AGAINST PROPERTY	1042	888	1055	99%	98%	97%
Buggery	2	0	3	100%	N/A	100%
Child Pornography	9	15	7	100%	100%	100%
Sexual Assault	52	58	77	88%	84%	83%
Sex with an Underage Girl	6	11	1	83%	91%	100%
Other Sexual Offences	6	12	16	100%	100%	94%
TOTAL - SEXUAL OFFENCES	75	96	104	91%	90%	87%
Dangerous Driving Causing Death	31	39	54	77%	90%	93%
Unauthorised Taking of Motor Vehicles	82	65	89	99%	98%	99%
Other Road Traffic Offences	28	26	22	96%	96%	100%
TOTAL - ROAD TRAFFIC OFFENCES	141	130	165	94%	95%	97%
Drug Offences	613	560	498	98%	99%	98%
Firearms and Explosives Offences	118	117	91	97%	96%	98%
Non Fatal Offences Against the Person	495	616	616	93%	92%	86%
Public Order Offences	119	63	95	100%	94%	89%
Revenue Offences	1	5	5	N/A	100%	100%
Other Offences	34	20	32	91%	85%	88%
GRAND TOTAL	2647	2505	2681	97%	96%	94%

Chart 8 outlines the result of cases directed for prosecution in the Special Criminal Court.

Chart 8 OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE SPECIAL CRIMINAL COURT

	TOTAL		Conviction by Judges		Conviction on Plea		Conviction on Lesser Charge		Acquittal by Judges		Other Disposals		For Hearing		
	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2006
Firearms and Explosives Offences	12	1	2	0	0	9	1	0	0	0	0	0	0	1	0
Murder	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0
Membership of Unlawful Organisation & Related Offences	3	9	0	5	0	2	1	6	0	1	1	1	0	0	2
TOTAL	15	11	2	6	0	11	2	7	0	1	1	1	0	1	2

Chart 8a BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE' FOR PERSONS CHARGED WITH MEMBERSHIP OF UNLAWFUL ORGANISATION AND RELATED OFFENCES

Primary Charge	Lesser Charge Convicted of		TOTAL		Conviction by Judges		Conviction on Plea	
	2008	2007	2008	2007	2008	2007	2008	2007
Membership of Unlawful Organisation & Related Offences	0	2	0	2	0	0	0	2
TOTAL	0	2	0	2	0	0	0	2

Chart 8b BREAKDOWN OF 'OTHER DISPOSALS' FROM CHART 8

	2008	2007	2006
Nolle Prosequi Entered	1	0	0
TOTAL	1	0	0

Chart 8c TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS

	TOTAL			Conviction		
	2008	2007	2006	2008	2007	2006
Firearms and Explosives Offences	11	1	1	100%	100%	100%
Membership of Unlawful Organisation & Related Offences	2	9	7	100%	89%	86%
TOTAL	13	10	8	100%	100%	88%

Chart 9 outlines the result of cases directed for prosecution in the Central Criminal Court and breaks down all cases by the most serious charge directed against the defendant. Supplementary charts break down the 'convictions on a lesser charge' and the 'other disposals' outcomes.

Chart 9 OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE CENTRAL CRIMINAL COURT

	TOTAL		Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge			Other Disposals			For Hearing				
	2008	2007	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006		
Murder	40	54	33	9	26	10	4	11	6	6	8	12	0	1	3	0	0	0	0	3	2	1	18	6	1
Attempted Murder	3	1	0	1	0	0	2	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Conspiracy to Murder	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	51	67	64	7	11	12	17	25	17	2	4	2	6	10	9	0	3	0	0	0	0	7	19	14	17
Attempted Rape	0	2	4	0	0	1	0	1	2	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Aggravated Sexual Assault	1	1	3	0	0	0	0	1	2	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0
Assisting an Offender	1	4	0	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Competition Law	0	11	9	0	0	0	0	0	9	0	0	0	0	0	8	0	0	0	0	0	0	0	0	0	3
TOTAL CASES	96	142	113	17	41	23	23	40	36	8	12	15	6	20	13	0	3	0	3	2	8	39	24	18	

Chart 9a BREAKDOWN OF 'CONVICTIONS ON LESSER CHARGE'

Primary Charge	Lesser Charge Convicted of			TOTAL			Conviction by Jury			Conviction on Plea		
	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006
Aggravated Sexual Assault	0	0	1	0	0	1	0	0	0	0	0	1
Murder	6	8	12	3	6	4	3	2	8	0	0	0
Rape	1	0	0	1	0	0	0	0	0	0	0	0
Rape	0	0	1	0	0	0	0	0	1	0	0	1
Rape	0	2	0	0	1	0	0	1	0	0	1	0
Rape	1	2	1	0	2	1	0	2	1	0	0	0
TOTAL	8	12	15	4	9	5	4	3	10	0	3	3

Chart 9b **BREAKDOWN OF 'OTHER DISPOSALS'**

	2008	2007	2006
<i>Nolle Prosequi</i> Entered	2	0	7
Guilty but Insane	0	1	0
Not Guilty by Reason of Insanity	1	1	1
TOTAL	3	2	8

Chart 9c **TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS
(INCLUDING CONVICTIONS ON A LESSER CHARGE)**

	TOTAL			Conviction		
	2008	2007	2006	2008	2007	2006
Murder	19	46	31	100%	98%	90%
Attempted Murder	3	1	0	100%	0%	N/A
Conspiracy to Murder	0	2	0	N/A	100%	N/A
Rape	32	53	40	81%	75%	78%
Attempted Rape	0	1	4	N/A	100%	75%
Aggravated Sexual Assault	0	1	3	N/A	100%	100%
Assisting an Offender	0	4	0	N/A	100%	N/A
Competition Law	0	8	9	N/A	0%	100%
TOTAL	54	116	87	89%	80%	85%

Chart 10 breaks down the case verdicts for each circuit criminal court. Unlike Chart 7, it does not include cases 'for hearing' or cases where the outcome is other than conviction or acquittal. Please note that in some cases, a trial may be held in a circuit court for a county other than that in which the offence was committed.

Chart 10 **OUTCOMES OF CASES PROSECUTED ON INDICTMENT IN THE CIRCUIT CRIMINAL COURT BY COUNTY**

	TOTAL			Conviction by Jury			Conviction on Plea			Conviction on Lesser Charge			Acquittal by Jury			Acquittal by Direction of Judge		
	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006	2008	2007	2006
Carlow	32	8	25	0	0	0	30	8	22	1	0	1	1	0	1	0	0	1
Cavan	31	24	27	0	0	0	31	21	21	0	0	0	0	1	4	0	2	2
Clare	60	48	54	1	5	3	51	39	47	0	1	0	5	1	3	3	2	1
Cork	320	307	263	14	11	13	284	280	225	4	2	0	5	8	13	13	6	12
Donegal	55	80	42	2	5	2	48	67	38	0	1	0	2	6	0	3	1	2
Dublin	1225	1214	1401	20	20	39	1157	1158	1282	39	9	26	2	21	29	7	6	25
Galway	63	59	77	4	2	3	50	47	65	4	4	2	2	5	5	3	1	2
Kerry	53	48	49	1	2	3	46	43	45	0	0	0	6	3	1	0	0	0
Kildare	60	65	73	1	5	5	56	55	58	2	0	3	1	5	4	0	0	3
Kilkenny	33	33	47	0	1	4	31	31	39	1	0	2	1	1	1	0	0	1
Laois	21	28	17	2	2	1	19	25	14	0	1	1	0	0	0	0	0	1
Leitrim	10	13	9	0	0	1	10	12	8	0	0	0	0	1	0	0	0	0
Limerick	92	91	101	2	3	4	85	81	93	2	2	0	3	5	2	0	0	2
Longford	20	17	14	0	1	3	18	14	6	1	0	0	1	2	2	0	0	3
Louth	50	55	49	1	1	5	47	52	33	1	0	0	0	1	2	1	1	9
Mayo	57	39	31	5	1	0	46	35	23	1	0	5	3	2	3	2	1	0
Meath	45	50	59	3	1	2	39	45	56	0	0	1	2	2	0	1	2	0
Monaghan	21	26	25	0	2	1	20	18	22	1	4	0	0	0	2	0	2	0
Offaly	19	11	11	1	0	0	16	11	10	0	0	0	2	0	1	0	0	0
Roscommon	22	20	10	0	0	1	21	18	9	1	1	0	0	1	0	0	0	0
Sligo	19	19	45	0	1	1	19	14	42	0	1	0	0	1	1	0	2	1
Tipperary	52	51	49	1	2	1	47	38	40	2	8	1	1	0	7	1	3	0
Waterford	100	63	58	1	3	4	91	57	44	0	1	1	4	2	9	4	0	0
Westmeath	113	44	46	2	2	9	108	38	32	1	1	1	1	3	4	1	0	0
Wexford	27	32	40	1	0	5	26	31	34	0	0	0	0	1	1	0	0	0
Wicklow	47	60	59	2	5	4	40	49	52	1	0	0	2	5	2	2	1	1
TOTAL	2647	2505	2681	64	75	114	2436	2287	2360	62	36	44	44	77	97	41	30	66

Chart 10a **TOTAL CASES FINALISED AND PERCENTAGE OF CONVICTIONS**

	TOTAL			Conviction		
	2008	2007	2006	2008	2007	2006
Carlow	32	8	25	97%	100%	92%
Cavan	31	24	27	100%	88%	78%
Clare	60	48	54	87%	94%	93%
Cork	320	307	263	94%	95%	90%
Donegal	55	80	42	91%	91%	95%
Dublin	1225	1214	1401	99%	98%	96%
Galway	63	59	77	92%	90%	91%
Kerry	53	48	49	89%	94%	98%
Kildare	60	65	73	98%	92%	90%
Kilkenny	33	33	47	97%	97%	96%
Laois	21	28	17	100%	100%	94%
Leitrim	10	13	9	100%	92%	100%
Limerick	92	91	101	97%	95%	96%
Longford	20	17	14	95%	88%	64%
Louth	50	55	49	98%	96%	78%
Mayo	57	39	31	91%	92%	90%
Meath	45	50	59	93%	92%	100%
Monaghan	21	26	25	100%	92%	92%
Offaly	19	11	11	89%	100%	91%
Roscommon	22	20	10	100%	95%	100%
Sligo	19	19	45	100%	84%	96%
Tipperary	52	51	49	96%	94%	86%
Waterford	100	63	58	92%	97%	84%
Westmeath	113	44	46	98%	93%	91%
Wexford	27	32	40	100%	97%	98%
Wicklow	47	60	59	91%	90%	95%
TOTAL	2647	2505	2681	97%	96%	94%

4.3 APPLICATIONS TO THE COURTS

Outcomes of Applications made to the Courts

Charts 11 to 13 provide details of applications made to the Courts in relation to reviews of sentence on grounds of undue leniency, confiscation and forfeiture of criminal assets, and European Arrest Warrants.

Section 2 of the Criminal Justice Act, 1993 provides that the Director of Public Prosecutions may apply to the Court of Criminal Appeal to have a sentence imposed by the trial court reviewed, if it appears that the sentence imposed was in law unduly lenient.

Chart 11 below details the number of applications made since the introduction of the Act.

In Annual Reports prior to 2004 the results of applications made were set out according to the year in which they were lodged. However not all applications lodged in the year for which the Annual Report was reporting were heard by the date of publication of the Annual Report and the results for such applications were listed as pending. It was therefore decided, from the year 2003 onwards, to set out the results of applications according to the year in which they were heard.

Chart 11a below outlines the results of applications, from the years 1994 to 2002, by the year in which the application was lodged (as appeared in previous Annual Reports).

Chart 11b outlines the results of applications, from the year 2003 onwards, by the year in which the application was heard.

Chart 11 APPLICATIONS FOR REVIEW OF SENTENCE ON GROUNDS OF UNDUE LENIENCY

Year of Application	Number of Applications Lodged	Year of Application	Number of Applications Lodged
1994	2	2002	23
1995	2	2003	26
1996	3	2004	21
1997	4	2005	37
1998	12	2006	41
1999	34	2007	42
2000	31	2008	58
2001	23	2009	57

Number of Applications Lodged

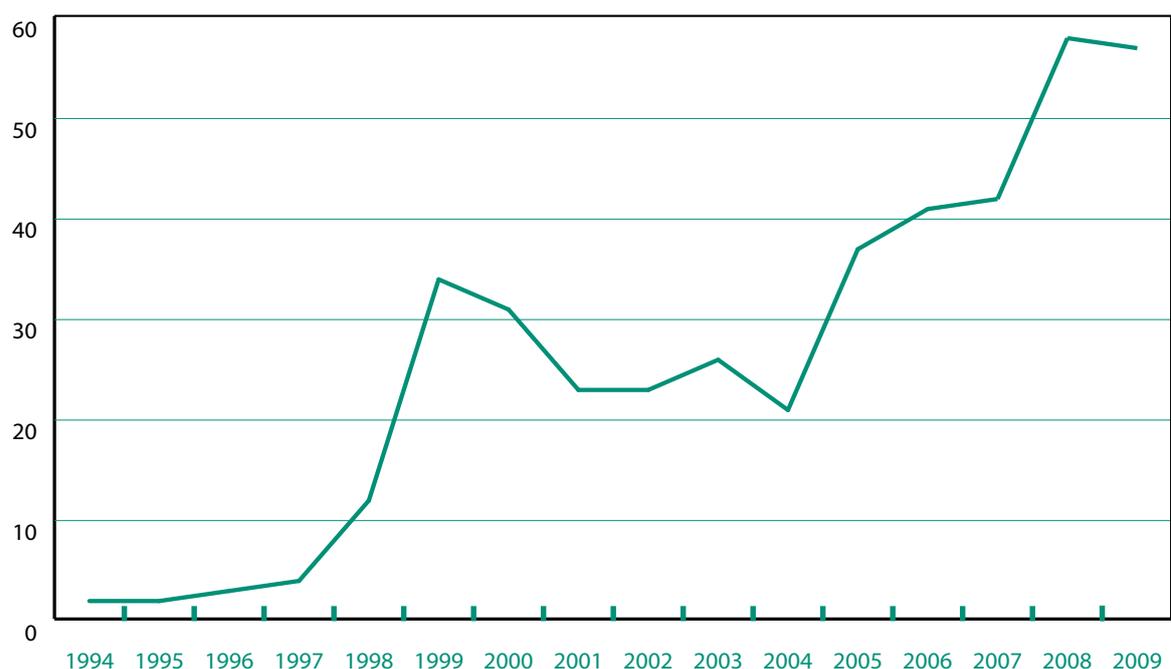


Chart 11a RESULTS OF APPLICATIONS BY YEAR LODGED

Year of Application Lodged	Successful	Refused	Applications Struck Out or Withdrawn	TOTAL
1994	-	1	1	2
1995	-	1	1	2
1996	1	1	1	3
1997	2	2	-	4
1998	6	3	3	12
1999	17	16	1	34
2000	15	13	3	31
2001	17	3	3	23
2002	14	9	-	23

Chart 11b RESULTS OF APPLICATIONS BY YEAR HEARD

Year of Application Heard	Successful	Refused	Applications Struck Out or Withdrawn	TOTAL
2003	11	8	1	20
2004	13	8	1	22
2005	18	9	2	29
2006	33	15	2	50
2007	30	6	3	39
2008	30	14	3	47
2009	15	13	3	31

Taking away the assets of convicted criminals, as provided for under the provisions of the Criminal Justice Act 1994 (as amended), has proved to be an effective deterrent to the commission of further criminal offences. The Office of the Director of Public Prosecutions established a dedicated Assets Seizing Section in 2007 which co-ordinates and monitors all applications brought under the Act. The section liaises on an ongoing basis with An Garda Síochána, State Solicitors and the Office of the Revenue Commissioner to ensure best practice in the area of confiscation and forfeiture of criminal assets.

The total number of asset seizing files opened in the Office for 2009 was 66. A breakdown of those files is outlined in Chart 12 below.

Chart 12 ASSET SEIZING FILES OPENED IN 2009

Asset Seizing Files Opened 2009	Number
Section 39 Applications	14
Section 4 Applications	17
Section 9 Applications	3
Section 61 Applications	26
Section 62 Applications	1
Section 24 Applications	3
No Action Required	2
TOTAL	66

Section 39 Forfeiture Orders: Under section 39 of the Act a Judge of the Circuit Court may order the forfeiture of any cash which has been seized under section 38* of the Act if satisfied that the cash directly or indirectly represents the proceeds of crime or is intended to be used by any person for use in drug trafficking.

* [Section 38 of the Act authorises the seizure of cash where a member of An Garda Síochána or an officer of Customs and Excise has reasonable grounds for suspecting that the cash (including cash found during a search) represents any person's proceeds from criminal conduct. The cash seized by a Garda or an officer of Customs and Excise may not be detained for more than 48 hours unless the further detention of the cash is authorized by a Judge of the District Court. Applications can be made to Court to continue to detain the cash for periods of up to two years.]

Section 4 Confiscation Orders: Under the provisions of section 4 of the Criminal Justice Act 1994 (as amended) once a person has been convicted on indictment of a drug trafficking offence and sentenced, the Court of trial must determine whether the convicted person has benefited from the offence, the extent to which he has benefited and the amount that is realisable to discharge a Confiscation Order. The Court then makes a Confiscation Order for that figure.

Section 9 Confiscation Orders: Section 9 of the Act allows the confiscation, on conviction, of the benefit an Accused person has gained from any indictable offence other than drug trafficking offences. An inquiry may be held by the Circuit Court into the benefit gained after the person is sentenced. The Prosecution must prove that benefit generated is directly related to the offence with which the accused is charged.

Section 61 Forfeiture Orders: Section 61 of the Act allows for forfeiture of any property used to commit, or to facilitate any offence, in either the District Court or Circuit Court. This Office brings applications under the section in relation to a wide variety of assets, such as cars used to transport criminals to and from crime scenes, as well as money and instruments of crime such as drug preparation equipment found at the crime scene, or near to it.

Section 62 Confiscation Orders: Section 62 of the Act allows for the confiscation of property associated with a drug crime. The application can be made in either the District Court or Circuit Court.

Section 24 Freezing Orders: Section 24 of the Act provides for applications to the High Court by the DPP for freezing orders where a person is charged, or a decision has been taken to charge that person, with an indictable offence. The freezing order can cover all property identified both in Ireland or abroad belonging to the Accused person. Freezing orders are designed to prevent the dissipation of assets prior to a confiscation inquiry being conducted by the Circuit or Central Criminal Court if the Accused is convicted of the offence charged.

Details of Confiscation and Forfeiture Orders granted by the courts in 2009, to a total value of €1,637,857 are outlined in the chart below.

Chart 12a **CONFISCATION OF CRIMINAL ASSETS**

Orders	Number	Amount
Forfeiture Orders	32	€168,209
Confiscation Orders	19	€495,552
Section 39 Forfeiture Orders	14	€562,021
Section 39 Forfeiture Orders (Revenue Solicitor Applications)	7	€412,075
TOTAL	72	€1,637,857

EUROPEAN ARREST WARRANTS

The European Arrest Warrant Act, 2003 came into operation on 1 January 2004. Section 2 of the Act defines the European Arrest Warrant (EAW) as a Court decision in one member state of the EU addressed to a Court in another member state of the EU for the purpose of “conducting a criminal prosecution or the execution of a custodial sentence in the issuing member state”.

Requests for the preparation of EAWs are submitted to the Office of the Director of Public Prosecutions by the extradition unit of the Garda Síochána. Applications for EAWs are normally made to a Judge of the High Court sitting in Dublin by a Solicitor from the Office and when issued by the High Court, the EAW is dispatched to the Department of Justice & Law Reform for transmission to the country where it is believed the requested person is residing. Section 33 of the European Arrest Warrant Act, 2003 permits an EAW to be issued only if the offence carries on conviction a term of imprisonment of at least 12 months or, where the requested person is a convicted person, a term of 4 months imprisonment has been imposed. The offences for which EAWs have been sought covered a wide range of serious offences including murder, sexual offences, drugs offences, thefts and serious assaults.

The chart below outlines the position since the European Arrest Warrant Act came into force. It should be noted that the issue of the EAW and the surrender of the person will not necessarily correspond to the year the file is received. The total files received include 48 files where an application is pending or where either no application for an EAW was made, or the issued EAW was withdrawn because the requested person was arrested in Ireland, the requested person or complainant had died, or the DPP had so directed.

Chart 13 EUROPEAN ARREST WARRANT

Year	EAW Files Received from Gardaí	EAWs Issued	Persons Surrendered
2004	40	17	4
2005	36	25	13
2006	38	45	23
2007	41	35	26
2008	48	42	25
2009	40	31	27
TOTAL	243	195	118

