

Speech conference 12th November 2016

Members of the Judiciary and An Garda Síochána, prosecutors, ladies and gentlemen. It gives me great pleasure to welcome you to the 17th Annual National Prosecutors' conference.

My remarks this morning broadly focus on two aspects of our role as prosecutors: the evolving nature of our responsibilities, and the importance of the independent context within which we fulfil those responsibilities.

In this jurisdiction where we have a very high regard for the rule of law, the standards required of prosecutors are also high. In ongoing support of those standards last month we launched the fourth edition of the Guidelines for Prosecutors. These were first published by my predecessor in 2001. The guidelines are intended to give general guidance to all prosecutors so that a fair, reasoned and consistent policy underlies the prosecution process. Underpinning the prosecutorial function and these guidelines is the principle of independence. This statutory and functional independence reinforces the impartiality of prosecutorial decisions in Ireland and freedom from outside influence whether political, or from special interests.

The guidelines have been circulated quite widely, including to all of you as prosecutors, and to An Garda Síochána who prosecute on my behalf under delegated authority. They are available on our website.

The guidelines also serve another very important purpose. Article 30.3 of the Constitution provides that all indictable crime shall be prosecuted in the name of the People. These guidelines are intended to contribute to an increased understanding of the prosecution process by the citizens on whose behalf prosecutions are brought. The individuals involved in a crime – the victim, the accused or suspect and the witnesses- as well as society as a whole, have an interest in the decision whether to prosecute and for what offence and the outcome of the prosecution. The publication of these guidelines will I hope continue to foster public understanding of, and thereby public confidence in, the prosecutorial process.

I want to acknowledge the extensive work of staff in my Office in the preparation and publication of this most recent edition. The guidelines have been quite significantly revised in some areas, for example to reflect changes in case law and procedure,

such as the role of the prosecutor in the sentencing process, and to reflect additional avenues of appeal now available to the prosecutor by virtue of legislation.

These guidelines reflect the rights contained in Bunreacht na hEireann which guarantees the right to a fair trial. They are also informed by domestic legislation and our international obligations in particular concerning human rights. These combine to 'regulate' the operation of the prosecution service in accordance with law.

It is right and proper that these guidelines have been revised four times over the last 15 years. It is essential that they remain under ongoing review so the Office ensures that the principles upon which prosecutions are taken and conducted are in accordance with law and fully reflect our professional and ethical duty to vindicate the rights of accused persons and victims.

However it should be emphasised that they are general guidelines and don't purport to deal with every question that can arise. Furthermore every case is unique and must be considered on its own merits. There is no simple formula which can be applied to give a simple answer to the questions that a prosecutor has to face at every stage of a case. That is why the prosecutor will have to use their judgement and discretion in the application of these guidelines.

The chapter on victims' rights has also been extensively revised in light of the EU Victims' Directive which took effect almost exactly a year ago on the 16th November 2015. While domestic legislation is still awaited, my Office has been actively engaged since then in ensuring that the rights of victims under the Directive are upheld. Prosecutors, and the Communications and Victim Liaison Unit of the Office in particular, have worked very hard over the last year to achieve this.

The Victims' Directive sets out that my Office will provide services to victims of crime both when my Office decides not to prosecute and when a prosecution is directed.

When a decision is made not to prosecute, the most significant of the rights now available to victims is upon request to receive the reasons for not prosecuting in all cases subject to some limited exceptions. In the past year my Office has received 554 requests for reasons. In broad terms, the largest number of requests for reasons is in relation to sexual offences, followed by offences of violence. The third largest category is for theft and fraud offences.

This is a very important process. I am pleased that this right is being exercised by so many victims. In a system where the independence of the prosecutor is, as I have said, enshrined in statute and referred to in the Constitution, it promotes greater understanding of sometimes very significant decisions affecting victims.

The EU directive also formalises the right of a victim, which they already had in practice in Ireland, to seek a review of that decision not to prosecute. Approximately one third of the applications for reasons result in subsequent applications for review. 192 applications for reviews have been received in the last year.

The second set of rights contained in the Directive concern the services that we provide to victims when the decision is made to prosecute and the case is presented in court. We work closely with our colleagues in An Garda Síochána and other investigative agencies to ensure that victims are kept well informed and up to date with the progress of cases throughout the court process.

We are very conscious that while this Office prosecutes on behalf of all of the people of Ireland, the victim is a vital part of that process. We regularly consult with and obtain the views of victims in relation to certain steps being contemplated in a case. It is always made clear that while their views will be taken into account, the decision on what will be done is ultimately the prosecutor's. However, even with excellent communication, the victim or the family is not always going to be happy with the outcome. There are very occasionally times when despite extensive time spent explaining the legal process and situation, a victim or family will not accept that certain steps or decisions have to be taken in a case, whether that is the decision not to prosecute, or decisions taken during the course of a prosecution.

I want to pay tribute to the prosecutors who regularly meet victims and their families and deal sensitively with their concerns. From time to time I receive letters from victims and families thanking the prosecution team in a particular case and these letters and other positive feedback are very much appreciated.

The Victims' Directive has also prompted a number of further innovations. My Office, with the co-operation of the Judiciary and the defence, has in accordance with the Directive, given effect to the right of victims to tell the court, at sentencing, of the effect of the crime on them. Previously this applied only to certain categories of victim, under section 5 of the Criminal Justice Act 1993. The exercise of this right

has not resulted in discernible additional delays, or administrative burdens upon the courts and of course gives the victim an important opportunity to explain how the crime has affected them.

We are also working to provide training and assistance to An Garda Síochána, and to our own prosecutors and support staff, including specialist training for our staff on dealing with vulnerable witnesses. In addition we have provided information sessions about victims' rights and the services provided by the Office under the Directive to victim organisations.

There is a very significant emphasis in the directive on the protection of victims and the recognition of victims with specific protection needs including during criminal proceedings. I am delighted that Caroline Biggs SC has agreed to address us this morning and share her extensive experience of prosecutorial challenges in dealing with vulnerable victims and witnesses.

I want to briefly mention the annual conference of the International Association of Prosecutors which was hosted by this Office in the Convention Centre here in Dublin in September. 543 delegates attended from about 90 countries, one of the largest attendances ever. This included many colleagues here today, whose support for the event I very much appreciated. The theme of the conference was the relationship between the prosecutor and the investigator. In the extensive programme prosecutors discussed, among many other things, our ethical obligations in advising investigators, in maintaining prosecutorial independence and in ensuring a fair trial and respect for human rights. The feedback from attendees was excellent and I want to thank everyone involved from my Office who contributed in so many different ways to make such a large event run so smoothly and successfully.

The mandate of the IAP is very important. Its vision is to raise standards for prosecutors worldwide; promoting the rule of law, fairness, impartiality and respect for human rights. Indeed our own guidelines which I have mentioned are also informed by the IAP standards for prosecutors. I believe Ireland with its strong tradition of upholding all those principles has a lot to contribute in leading by example.

The IAP's mandate is also to improve international cooperation to combat crime. Never has the need been greater. The huge advances in the digital age and

globalisation present new challenges. A lot of crime is transnational sometimes spanning a number of jurisdictions.

One tangible consequence of the globalisation of crime has been a significant increase in work, not only arising from European legislation, but also from the international co-operation required in areas such as European Arrest Warrants, extradition requests and mutual legal assistance requests. This upward trend is likely to continue.

Turning to our programme I want to thank all the speakers who have given up their time to prepare papers and to speak to us this morning. I want to particularly welcome Judge Morrison of the International Criminal Court who has travelled from The Hague to be with us. He will address us on international criminal courts and tribunals from a common law perspective and I look forward to hearing what he has to say.

I have already mentioned Caroline Biggs SC. The remaining presentations come from Professor Harry Kennedy, Director of the Central Mental Hospital, who needs no introduction, and our colleague Sean Guerin SC who will deal with jurisdiction and enforcement in computer crime. I think you will agree that it is a good range of topics and one which I am confident will keep you stimulated throughout the morning.

Before I conclude I want to mention a number of our colleagues and former colleagues who provided great service to the prosecution in this country but who unfortunately are no longer with us. These include Eileen Finn BL and Colm O'Briain SC both of whom regularly appeared on behalf of the prosecution prior to their untimely deaths this year. Eileen was a regular attendee at this conference and of course Colm addressed us here on the important topic of the DNA Act only two years ago. Many tributes have been paid to them since their passing and the prosecution will be the poorer for the loss of their services. I also want to note the passing earlier this year of Michael Buckley who, for the duration of his tenure as Chief State Solicitor, was also solicitor to the Director of Public Prosecutions and provided great support to this Office in that role.

Finally I want to mention Maurice Gaffney SC who died just last week in his 101st year. Maurice prosecuted on behalf of this Office for many years and in some very high profile and landmark cases. I myself first briefed Maurice on behalf of the DPP

in a prosecution when he was a mere 82 years of age. Many tributes have been paid to Maurice since his passing, recalling his brilliance as a lawyer and the longevity of his career at the Bar, but most of all recalling what an exceptionally gracious and kind person he was to all who knew and worked with him.

May they all rest in peace.

I also want to note the retirement of our prosecutor for Co. Clare, Stephen Coughlan BL after many years of service for which I thank him. A new prosecutor for Co. Clare will be selected shortly. I want to welcome Geraldine Silke BL, our newest prosecutor for East Galway to the conference today. I thank all our many counsel prosecuting in Dublin and around the country in various courts for the excellent service that you provide. The briefing of independent counsel, who often have both defence and prosecution experience, is a key feature of our system and one that I believe serves us and the people of Ireland very well.

I also want to thank the very dedicated staff in my own Office who carry out their work in a most professional manner. Last but not least are the very committed State Solicitors around the country with whom we have good working relationships and who also deliver a high level of service in their local areas.

I hope you find the morning's proceedings useful.

Thank you for your attention.