

Good morning, everyone. It is a pleasure to welcome you all here this morning for our Annual Prosecutors’ Conference. I know we are competing this morning with interesting commentary about the general election so thank you all for coming in such numbers.

Level of Activity in the Criminal Courts

I would like to start this morning by speaking about the current level of activity in the criminal courts.

From 2019 to 2023, there has been a 149% increase in the number of court dates in the Central Criminal Court. This has coincided with the more than doubling of judges, from 5 to 12, assigned to the Court. There has also been a significant increase in Circuit Court activity in most parts of the country. For example, sitting dates in the Dublin Circuit Criminal Court increased by 24% over the same period 2019 to 23.

I think it is important to acknowledge that this increased activity has been underpinned by additional government investment in the criminal justice system – in addition to judicial appointments, there has been a significant increase in budgets to fund counsel fees and legal aid fees, and a welcome increase in the funding for staff numbers in our Office.

The increased activity has also been underpinned by huge levels of work and commitment by our staff, our prosecution counsel and State Solicitors, but also the effort of others working across the system including judges, court staff, probation and prison staff, defence solicitors Gardaí and other investigators.

The level of Central Criminal cases outside of Dublin presents a particular challenge in circumstances, where, historically, this Court only sat in Dublin and so those who support this court are based in Dublin. In 2019, 127 court dates in the Central Criminal Court were held outside Dublin. At the end of 2023, this figure had risen to 517, equating to a 407% increase over the 2019-2023 period. I want to acknowledge this morning the commitment demonstrated by my staff and barristers who have travelled around the country to support those trials.

Progress During the Past 10 Years and Reform Challenges Ahead

Much progress has been achieved in the criminal justice system over the past 10 years. For example, victims of crime have additional rights to information and support since the Criminal Justice (Victims of Crime) Act 2017. Some progress has also been made in adapting to a digital age with the adoption of a secure file transfer system. Mostly, I think it is an achievement that the participants in the criminal justice system – prosecutors, defence and judicial colleagues and the so many other agencies involved – have managed to keep pace with the increased levels of activity and volume of digital material involved in every case.

It is important however for us to be conscious of the reform challenges that lie ahead – to make the system more efficient and improve the overall experience of users of our services.

Everyone in this room will be keenly conscious of how difficult victims, witnesses and accused persons find the whole criminal justice process and the impact on the administration of justice when there are excessive delays in progressing cases from complaint to finalisation.

In June of this year the Department of Justice published research it had commissioned from Dr Marie Keenan and others in UCD about the Processing of Sexual Offences in Ireland. The researchers spoke to a broad

range of stakeholders – including defence practitioners, judges, barristers, prosecutors, Gardaí and others. Some of the lessons from that report have broader application to other areas of practice outside of sexual offences. It identified a range of possible reasons for delays in parts of the system. These include the need for greater investment in the criminal justice system; challenges in managing large volumes of disclosure; a culture of ‘last minute-ism’ by overstretched legal practitioners; difficulties in inter-agency communication and gaps in stakeholders’ understanding of each other’s work practices; as well as a lack of interaction between datasets across different parts of the system.

The report highlights comments made by some participants about the inefficiencies of preparing for a trial that is unlikely to go ahead; as well as the lack of clarity around sentencing and specifically, the credit to be gained by pleading guilty at an early stage. It also recommended reforms to the legal aid payment structures to improve operational efficiencies and incentivise early engagement with a case.

Understanding the causes and factors that contribute to delay will be important to support informed decisions on how best to tackle these issues. I think however it is important to underline that activity in of itself is not the only measure of value. In order to translate all of the increased activity into meaningful progress in relation to tackling delays, there needs to be effective collaboration so that we use our scarce resources strategically.

In particular, it is important to be conscious of the enormous amount of work and resources that go into preparing a case for trial. As a result, we need to organise ourselves as a system so that we can ensure that these cases are in a position to actually get on when they are listed for trial. This requires good collaboration and communication between prosecutors, defence and judges as well as other actors in the system.

This morning, we have a panel discussion about the new Juvenile Protocol aimed at reducing the delays in bringing serious rape and murder cases involving children from complaint to finalisation. This is a good example I think of the the value of collaboration, and I want to acknowledge the leadership of Ms Justice Biggs in this regard and thank her for coming this morning to speak on this topic, as well as to Chief Superintendent Colm Noonan, Aoife O Leary on behalf of the Bar Council and Noreen Landers on behalf of ODPP.

This project arose from a Central Criminal Court users group established by Mr Justice Paul McDermott. I think it demonstrates the value of court users’ groups, and I hope that these groups continue to give rise to opportunities for the various stakeholders to have good discussions about how to most effectively progress cases through the court system. We have engaged also with the President of the Circuit Court, Ms Justice Patricia Ryan, and we are equally grateful to her for facilitating the establishment of such a group for the Circuit Court.

It should be noted that the Irish Criminal Justice system has been served well by a system whereby we have a highly skilled and expert independent Bar acting for both prosecution and defence. My Office has engaged extensively in relation to the issue of counsel fee restoration and while I welcome the decision by Government to restore an additional 8% from 1 January 2025, I want to underline again the importance of ensuring that current rates of payment are sufficient to attract and retain people to work in criminal law. My Office has engaged extensively in relation to the issue of counsel fee restoration. I welcome the decision by Government to restore an additional 8% from 1 January 2025. I do want to emphasise again the importance of ensuring that current rates of payment are sufficient to attract and retain people to work in

criminal law. However, there is also a need to look at the way counsel fees are structured for example so that early engagement with a case is incentivised and rewarded.

There is work to be done also to ensure that it is clear to a defendant the advantages of pleading early and that a clear distinction is made between the discount to be applied if a defendant pleads on a date of trial rather than at an earlier date. There are now a number of clear Court of Appeal judgments on this but I believe that ultimately this is an area where Sentencing Guidelines could further support consistency of approach; and also support defence lawyers in providing good information to their clients at an early stage about the merits of not unnecessarily taking a trial date if they do not ultimately intend to contest a case. I should also acknowledge that to facilitate early pleas, it is essential that the prosecution fulfil its disclosure obligations as early as possible.

DPP v. WC Judgment

As everyone here knows to ensure that a trial is fair, there is a duty on the prosecution to provide any relevant material to the defence. This duty has become more challenging in a digital age, particularly in circumstances where some of the material is of a deeply private and sensitive nature. The recent judgment of the Supreme Court in *DPP v. WC* has brought more clarity to the obligations of all parties – the prosecutor, the defence and the trial judge – in this regard. The judgment rejects the notion that disclosure of counselling notes in sexual offence cases is required on the basis that material is remotely or potentially relevant. It clarifies that no aspect of the right of the accused to remain silent can render it appropriate to leave opaque what case the defence may seek to make at trial; and that it is the role of the trial judge to decide on disputes. *WC* also makes clear that issues involving serious intrusion into private life are not generally subject to disclosure unless directly germane to an issue in the case.

It is up to us now in the prosecution service to operationalize *WC* and ensure that we continue to fulfil the fair trial rights of suspects, while also ensuring the privacy rights of victims and other third parties.

While I have set out this morning just some of the areas that I believe require attention and reform, there is also much that can be said about the deep resilience in the prosecution service and in the wider criminal justice system. This resilience comes from the people who dedicate their professional lives to this work in the criminal justice system and have the capacity to remain focused on delivering a fair and effective service in the face of extensive workloads, and a high level of scrutiny.

Independence of the Irish Prosecution Service

The independence of the Irish prosecution service, and indeed the Irish judiciary and our independent Bar, is a real strength and all of us who work in the criminal justice system need to be vigilant and disciplined in protecting that independence.

Having said that, the concept of “independence” is one that needs to be constantly held up to the light to make sure that it does not mean immunity from public scrutiny and that we can listen to feedback and criticism but retain our balance and objectivity. Where a decision is made to prosecute, the case that follows takes place in a public forum, is reported on by the media, and is generally accessible to the public save for some exceptions. There are few areas of decision making with similar levels of public scrutiny and accountability.

Where there is a decision not to prosecute, victims are entitled to reasons and to a review of that decision. The public, however, do not get access to the details of the evidence or the reasoning. There are good policy reasons for this. It is very important that the public knows that when engaging with the criminal justice system, information is received and retained in confidence by the Office of the DPP and will not be discussed or disclosed except for the purpose for which it was provided. The principle of innocence until proven guilty is a cornerstone of all criminal justice systems committed to the rule of law. This principle must be protected where decisions are made not to prosecute as well as where decisions are made to prosecute. For these reasons, as Director, I do not comment publicly on individual cases.

My Office does however publish extensive data in our annual reports about the numbers of cases we prosecute, the outcomes of these cases and the timeline for decision making. We participate on a wide range of working groups where we listen to the questions of colleagues from the NGO sector and our criminal justice partners, explain our work and learn from the feedback of our stakeholders.

It is important also that whilst assuring the independence of my Office that I and my staff collaborate to support an effective and well-functioning criminal justice system. The level of activity that is currently occurring in the criminal courts is a new context that requires us to re-examine how we work together with our criminal justice partners. There is the potential I believe to continue to deepen our collaboration across the system – all with the end focus of improving the system for the people of Ireland.

I will leave it to my colleagues, Marion Berry and Helena Kiely, who are chairing the first and second sessions this morning to introduce the speakers and the subject of their presentations. I would however like to really thank all of our speakers – our own Tricia Harkin who is currently the National Member for Ireland in Eurojust; Bernard Condon a very experienced Senior Counsel who is on our panel; Derek Smart, Chief Superintendent in An Garda Síochána; Ms Justice Biggs; Chief Superintendent Com Noonan; Aoife O Leary; and Noreen Landers to talk about the new Juvenile Justice Protocol. Thanks to all of them for their collegiality in agreeing to speak. I know it is a significant ask and we are grateful to them for it. My thanks also to Shane Martin who I know will send us off on a light note.

I would also like to thank you all for coming this morning – including the Attorney General, my predecessors Claire Loftus and James Hamilton, as well as former Deputy Director Barry Donoghue. I also want to take the opportunity to thank in particular all of my own staff, all of the barristers on our panels and the 30 state solicitors who represent me around the country for all of your work and commitment on behalf of the people of Ireland. Finally, I want to thank all of you from the wider criminal justice community – including our colleagues from An Garda Síochána and the many other investigative agencies who send us files – who have joined us here this morning. I hope that you all enjoy the day.

Finally finally – I want to thank the team in my Governance and Public Affairs Unit for all the work that went into today’s conference – but in particular Kevin Graham for all of his trojan work.