

WHITE PAPER ON CRIME

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The Community and the Criminal Justice System



AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS
DEPARTMENT OF JUSTICE AND EQUALITY

ABOUT THE WHITE PAPER PROCESS - ROLE OF DISCUSSION DOCUMENTS

A White Paper provides a high level statement of Government policy, its rationale and the strategies to give effect to that policy. Development of the White Paper on Crime involves an end-to-end examination of the prevention, intervention and enforcement strategies to combat crime.

A series of discussion documents on key issues has provided structure for consultation during this process. This is the fourth and final document. The first three documents dealt with Crime Prevention, Criminal Sanctions and Organised and White Collar Crime respectively, and they are available on the Department's website (www.justice.ie).

This document includes a general, non-specialist overview of the issues in question, together with a number of questions to assist in shaping discussion and feedback. It is not intended to be a definitive statement of the law.

Comments need not be limited to the questions contained in the document and can be submitted by post or email to:

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Submissions on this document should be made **by the end of August, 2011.**

If making a submission, please state if the views expressed are personal or are being made on behalf of an organisation. If views of an organisation are being submitted, it should be made clear which organisation is represented.

Submissions may be subject to the provisions of the Freedom of Information Acts and may be published. Please indicate if you would prefer your submission to remain confidential.

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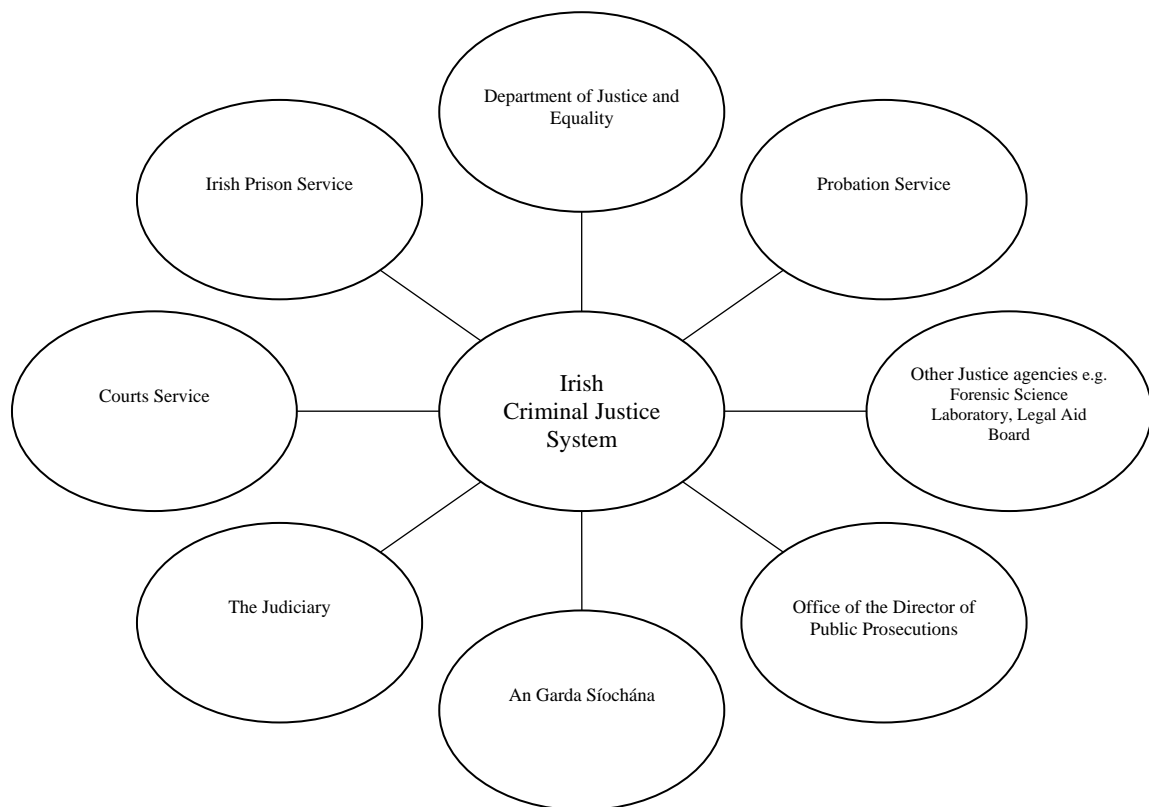
Introduction

A recurring theme in the White Paper on Crime consultation process has been the relationship between the criminal justice system and the community it serves. It is widely accepted that combating crime requires the input of ordinary citizens and communities. At the same time, the public rightly has expectations of the criminal justice system and its general capacity to protect communities and to deal with offenders. The commitment in the Programme for Government to enact legislation to strengthen the rights of victims of crime and their families is particularly relevant in this regard.

A further and equally important expectation on the part of the public is that the necessary powers of enforcement and investigation which are available to the criminal justice system are properly regulated and administered.

Many of the questions which arise in relation to service provision by the criminal justice system apply generally across the public service. As a consequence, the approach taken by the various criminal justice agencies reflects developments in the wider public sector in improving customer service.

Nevertheless, issues specific to the operation of the criminal justice system also arise and the fact that several bodies are interacting within that system (see below) adds to its complexity and the challenges it faces.



Key issues for consideration as part of this consultation include:

- public confidence in the operation of the criminal justice system and its capacity to tackle crime and the fear of crime.
- communications between members of the public and the criminal justice system.
- responsiveness to members of the public in their direct dealings with the criminal justice system.
- a greater role for members of the public in responding to crime, whether by providing information or engaging in local voluntary activity.

Many of these issues reflect questions raised and opinions expressed in the course of the White Paper on Crime consultation process to date.

Community Relations and the Criminal Justice System

Members of the public interact with the criminal justice system in a variety of ways. This document will examine the stages of the process which an individual will encounter from the time a crime is reported, through investigation to prosecution, court hearing and sentencing.

For most people, however, direct engagement with the criminal justice system on an individual basis is an infrequent event. Nevertheless, the relationship between members of the community and the system in a broader sense has an ongoing significance for everyone in society. It also has important implications for the effective and credible operation of that system.

Legitimacy, Fairness and Credibility within the Criminal Justice system

In order to have ongoing public support and trust, criminal justice systems need to operate in a rule-based and accountable fashion. Arbitrary, corrupt or oppressive measures will ultimately undermine the authority and credibility of the system and, in turn, the rule of law generally. The Irish criminal justice system is founded on Constitutional and common law principles of fairness and respect for individual liberty, and, in particular, the right to a fair trial and a presumption of innocence.

It is also essential, however, in the interests of efficiency and in order to instil public confidence, that the system functions effectively and protects the public.

Key overall components of a fair and credible system are:

- Effectiveness in detecting, deterring and punishing offending behaviour
- Fairness to all involved including victims, witnesses and accused
- Efficiency in the use of time and resources
- Transparency and prompt service delivery

Measuring Confidence in the Criminal Justice System

The relationship between the system and members of the public is founded on whether the system can meet realistic public expectations. If people do not have confidence in the criminal justice system, there is a risk of under-reporting of criminal offences and broader disengagement from criminal justice processes.

The nature of public reaction and assessment, and therefore public attitudes towards the criminal justice system, is complex. Attitudes pertaining to criminal justice processes are linked to socio-demographic characteristics and values regarding the nature of crime and the operation of the criminal justice system. For instance, the level of public satisfaction is related to factors such as, the respondent's gender, age, level of education, previous contact with the criminal justice system, history of

victimisation, satisfaction with personal safety, and sources of information about the criminal justice system (Hough and Roberts 2004).

Crime and Victimization surveys by the Central Statistics Office (CSO) measure the degree of confidence in the system and have found that there is a high level of confidence in the Gardaí in particular. The 2010 survey found that 67% of respondents rated the Gardaí in their local area as 'good' or 'very good'. By contrast, 41% of respondents were 'fairly confident' or 'very confident' and 55% were 'not at all confident' or 'not very confident' in the criminal justice system. Similar contrasts between confidence in police and in the system as a whole, as well as in other criminal justice bodies, have been found in other jurisdictions.

The Crime and Victimization survey also measures people's fear of becoming a victim of crime and their view of the seriousness of the problem. While a substantial number of people (59%) stated that they were not worried about becoming a victim of crime and 74% said that they felt safe or very safe walking home alone in their neighbourhood after dark, 83% regarded crime as being either a serious or very serious problem.

Public confidence concerns which have been identified by surveys across jurisdictions include the perception that sentences are too lenient, that the criminal justice system does not deal with cases promptly, and that the criminal justice system does not meet the needs of victims.

Initiatives to improve public confidence in the criminal justice system and in its components have been undertaken in a number of jurisdictions. Ongoing public consultation by way of regular surveys has been carried out. Measures have been taken to improve and promote public knowledge of crime and justice issues through, for example, public education programmes in the court system, as well as the ongoing provision of accessible and up to date information. Other measures have focussed on improving dialogue between the media and the criminal justice system to ensure an accurate and balanced portrayal of the criminal justice system (Butler and McFarlane 2009).

Information and Awareness of the Criminal Justice System

Communications between the criminal justice system and the general public have an important part to play in promoting public awareness and understanding of the operation of that system. There are two aspects to this information flow. In the context of a specific crime, victims need information about their case and about the process surrounding their case. In addition, the general public need access to accurate information about the performance of the criminal justice system generally.

In relation to individual victims, the *Victims Charter and Guide to the Criminal Justice System* is made available in print form and in a variety of languages on the website of the Victims of Crime Office. A range of other booklets for victims and witnesses in a variety of languages produced by a number of statutory and voluntary bodies, are available on the same website (www.victimsofcrimeoffice.ie). Individual agencies produce their own information for victims. For example, the Courts Service

has a range of information leaflets including, 'Explaining the Courts', 'Going to Court - young witnesses', and 'Who's who in the courtroom' and a range of information on its website for legal practitioners, jurors, witnesses, victims, litigants and the public. The Office of the DPP publishes a range of information booklets and guides including one on the role of the DPP and another, 'Going to Court as a Witness'.

In relation to information on the ongoing performance of the criminal justice system and new developments and issues arising, annual reports of the various criminal justice bodies are available online and in print. As mentioned earlier, the CSO compiles and publishes crime statistics and undertakes victimisation surveys. Research is also available on the websites of the different criminal justice agencies. A development of some significance is the Irish Sentencing Information System (ISIS) website which contains information about the range of sentences and other penalties that have been imposed for particular types of offences across court jurisdictions. This publicly accessible resource includes statistics on sentencing, synopses of relevant court judgments and a database on sentences imposed in various crimes and cases. The website has the potential to be a valuable tool not only for legal practitioners and researchers but also for those concerned with the needs of victims and their families.

Notwithstanding the range of information available on the criminal justice system one of the repeated themes during the White Paper on Crime public consultation has been the question of access to information concerning the criminal justice system. In particular, the scope for using new social media, text alerts and other modern communications techniques has been raised. In some jurisdictions crimes can now be reported by text message or on-line. A related concern has been a perceived distance between the criminal justice system and the interests and perspectives of ordinary citizens. Some individual victims have also voiced their frustrations in relation to getting information on their individual cases from criminal justice agencies.

Media and Awareness of Crime

The media naturally plays an important role in shaping people's awareness of crime and criminal justice issues, just as it does for many other issues of public interest. It is often suggested that this can distort people's perception of crime. Over recent decades the volume of coverage and number of specialist crime correspondents has increased greatly. High profile cases or particularly disturbing events tend to become the subject of multiple news reports and commentary. This can create the impression that the incidence of these events or the risk of becoming a victim is higher than might actually be the case. By contrast, some other types of crime may appear less newsworthy and hence go underreported. It is also suggested that by emphasising and overstating some types of serious crime, crime coverage fuels punitive tendencies in the debate on crime. The focus on short news cycle timeframes may deflect attention from longer-term crime prevention measures. A further criticism is that some coverage may reinforce the stigmatisation of certain groups or communities.

There is, however, considerable debate about the impact of media coverage suggesting that its impact is more complex than a straightforward causal link or that it is necessarily always an entirely negative one (Carli 2008). It should be acknowledged that crime reporting is not a recent phenomenon and that extensive

coverage of particular cases has been a staple of reporting since the 19th century at least. It may be that modern media produces more frequent, more graphic and visual, and hence more emotive, representations of crime. In Ireland at any rate, crime coverage has become an increasingly specialised field within journalism and features prominently in the marketing of some publications. Whether this coverage does in fact distort awareness and opinions is not easy to measure. As noted above, many people report greater concern about crime in general than their own personal risk of becoming a victim. It may be that people can distinguish coverage of serious and organised crime from their own immediate experiences.

Media coverage can also contribute in a positive way to crime prevention strategies by bringing attention to previously under-estimated or overlooked social problems, such as domestic violence or human trafficking. It may also participate in disseminating public information on self-protection and personal crime prevention, and even assist in the detection of crime, by means of television programmes like 'Crime-call'. There may in fact be further scope for partnerships between criminal justice bodies and the media in understanding and raising awareness around crime prevention issues. Finally, by providing information the media can play a democratic role in informing the public, increasing transparency and holding criminal justice bodies to account for their actions

Community Relations and An Garda Síochána

As the largest individual agency within the criminal justice system, and the most public face of law enforcement, An Garda Síochána is to the forefront in shaping the relationship between communities and the criminal justice system. How the organisation has approached this has evolved considerably over the years, although some of the basic principles remain constant.

In 2009, following consultation the organisation introduced a new 'National Model of Community Policing'. It defines community policing as a 'partnership based, proactive, community-oriented style of policing'. It is focused on Crime Prevention, Problem Policing and Law Enforcement, with a view to building trust and enhancing the quality of life in the entire community. Under this model, community policing is not considered a separate, specialist function but an ethos to be integrated into Garda operations generally.

Key components of the strategy include:

- Providing a dedicated, accessible and visible Garda service to communities
- Establishing effective engagement processes to meet the needs of local communities and provide feedback
- Accountability
- Using problem-solving initiatives, devised in partnership with communities and local agencies, to tackle crime and anti-social behaviour, through targeted enforcement and crime prevention and reduction initiatives
- Delivery of crime prevention and reduction strategies such as *Neighbourhood Watch, Community Alert, Business Watch*

- Engaging meaningfully with young people to develop and foster positive relationships
- Public empowerment, through the formal mechanisms of Joint Policing Committees, but also at local level through community policing

Joint Policing Committees

Joint Policing Committees (JPCs) are a recent feature in Irish crime prevention. They constitute a partnership process within each of the 114 local authority areas, involving An Garda Síochána, members of the Oireachtas, elected members and officials of local authorities, with the participation of the community and voluntary sector.

The functions of the JPC are set out in the Garda Síochána Act 2005 (s. 36(2)). The JPC monitors two broad areas: firstly, levels and patterns of crime, disorder and anti-social behaviour in its area, including patterns and levels of misuse of alcohol and drugs; secondly, the broader issue of factors underlying and contributing to crime, disorder and anti-social behaviour. A further function is to advise the local authority and An Garda Síochána on how they might best perform their functions with a view to preventing crime, disorder and anti-social behaviour within the area. The JPC also arranges and hosts public meetings periodically on matters affecting the policing of the local authority area. Meetings of the JPCs (with some limited exceptions) are themselves open to the public.

In September 2008, the Minister for Justice, Equality and Law Reform issued detailed guidelines on the operation of JPCs following consultation with the Minister for the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs. They cover the process of establishing JPCs in each of the 114 city, county and town council areas, including the numbers of elected representatives and other committee members, the role of the chairperson, procedures for meetings and the internal functioning of committees. The guidelines include:

- a code of practice on the operation of the Committees;
- provision for a core steering group to facilitate the efficient functioning of a Committee, made up of the chair of the Committee (who is an elected member of the local authority), a representative of the Gardaí and the county/city manager or a person nominated by him/her;
- provisions for cooperation between Committees which is seen as a means of ensuring an integrated approach between agencies and across neighbouring local authority areas.

The guidelines provide that a Committee or a subcommittee of a Committee will act as a mechanism through which, firstly, elected representatives and local communities can have a role in conveying information and views to Garda Divisional officers (Chief Superintendents) and District officers (Superintendents) to assist them in formulating and operating their policing plans and, secondly, Divisional and District officers can convey information and views to elected representatives and local communities to assist them in carrying out their duties, functions and activities. The guidelines encourage JPCs to consult on Divisional/District policing plans, as well as local authority initiatives.

Local Policing Fora

Finally, the JPC can establish, in consultation with An Garda Síochána, as it considers necessary, local policing fora at neighbourhood level. These are intended to deepen the engagement between An Garda Síochána, the local authority and neighbourhood communities and to discuss and make recommendations to the Committee on matters affecting the neighbourhood.

The process of establishing local policing fora in the 14 local drug task force areas is underway in accordance with commitments contained in the National Drugs Strategy 2009-2016.

To facilitate this, in July 2009, the Minister for Justice, Equality and Law Reform issued detailed guidelines on the operation of local policing fora in the local drugs task force areas following consultation with the Minister for the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs.

A number of these fora are well established at this point and work is ongoing towards the establishment of the remaining fora.

Future Development and Review of Joint Policing Committees

The operation of the JPCs is kept under ongoing review by the Department of Justice and Law Reform and the Department of the Environment, Heritage and Local Government. This ongoing review is informed by annual reports which each Committee is required to submit. In addition, An Garda Síochána has a National JPC Monitoring Office within its Community Relations and Community Policing Division.

By bringing together local authorities, An Garda Síochána and the community and voluntary sector, Joint Policing Committees provide a forum for discussion on safety and quality of life issues in communities. A platform is available for An Garda Síochána and local authorities both to pass on information on its activities in communities and to respond to the needs identified by communities themselves. In such a way the resources used by An Garda Síochána and local authorities for promoting and achieving community safety can be targeted to those areas and communities which are most in need.

JPCs, through their various communications functions e.g. organising public meetings concerning matters affecting policing in their area, can contribute to generating social capital in their locality and ultimately to creating safer communities.

While JPCs are at an early stage of their development, there are aspects of their structure, composition and operation which have been raised by a small number of JPCs with the Department of Justice and Law Reform in the context of the White Paper on Crime project. For example, it was suggested that representation from the community and voluntary sectors be increased and that specific provision be made for youth representation. Some thought that in some cases there are currently too many

JPCs within county boundaries and that JPCs should be allowed to adapt to local circumstances. In this regard, it is worth noting that Garda operational boundaries were recently realigned to match those of local authorities in order to facilitate the shared responsibility for taking steps to prevent crime, disorder and anti-social behaviour crime in accordance with the Garda Síochána Act 2005 (s.37). Finally, a number of suggestions centred on communication, such as, increase communication on the work of JPC both between JPCs themselves and with the wider public, or the development of a shared database on initiatives undertaken by JPCs across the country to contribute to a best practice approach to improving safety and quality of life of communities.

These are indicative of the type of issue which might be considered in any future review of Joint Policing Committees. However, given that JPCs are at a very early stage in their operations, any future review will be informed by experiences and developments over the course of time.

Community Relations and Customer Service within the broader Criminal Justice System

Many of the issues which arise in relation to service provision by the criminal justice system mirror those arising across the public sector. The approach taken by the various criminal justice agencies reflects broader developments in improving customer service by the State through Customer Charters and Customer Service Action Plans. Those charters and action plans set out standards of service which members of the public can expect and include commitments on, for example, communication, physical access, complaints and appeals, and consultation and evaluation of feedback.

While many of these aspects of customer service are similar to those arising elsewhere within the public service, certain initiatives are specific to the needs of those interacting with the criminal justice system. So, for example, the Prison Service has a dedicated officer whose function is to liaise with victims. Where victims of crime so request, the Prison Service Victim Liaison Officer will enter into direct contact with them on an ongoing basis to inform them of significant developments in the management of a prisoner's sentence, including, inter-prison transfers, Parole Board hearings (in the case of prisoners sentenced to eight years or more) and decisions arising out of this process, as well as temporary releases, and expected release dates. The Victim Liaison Officer will also provide victims with general information on the prison system, such as the regime in different prisons, remission on sentences and the operation of the Parole Board.

The Courts Service Customer Service Action Plan publishes targets for the organisation and sets out service standards court users can expect. The Service has established user group fora to deal with the specialist issues arising for those with regular business in the courts system, as well as an outreach programme which provides schools, community and other groups an opportunity to visit the courts during the year. These fora allow the views of those who use and access the courts to be taken into consideration in the development and operation of policy and accommodation. The Courts Service also hosts an annual forum for all court users

which provides an opportunity to engage with a range of organisations and individuals.

The Probation Service works to foster relationships within community and with community groups in order to re-integrate offenders and help make communities safer. The Service funds 47 community-based organisations to assist with the management of offenders in the community and which provide a range of programmes, including training and education, offender management programmes, and drug and alcohol abuse treatment. The Probation Service also has responsibility for the supervision and management of Community Service Orders which are intended to rehabilitate the offender and bring about meaningful reparation to the community for his/her crime. In order to deliver Community Service, the Probation Service interacts with local communities and local authorities in finding suitable locations and work within communities.

Also of importance to the reintegration of prisoners into communities is the rollout by the Irish Prison Service of a fully coordinated Integrated Sentence Management system (ISM) across all prisons and places of detention. The core goal of ISM is to move to a prisoner centred approach to the management of custodial sentences. ISM aims to identify, deliver and measure appropriate interventions to address the identified risks and needs of prisoners. It is intended to provide ISM to all newly committed prisoners with sentences of one year and upwards.

The flow of information within the criminal justice system, its quantity, quality and timeliness is crucial to public service delivery. Technology is being harnessed to improve the processes of the criminal justice system in order to achieve cost effectiveness and efficiencies, make best use of resources and ultimately to improve the quality of service provided to the public. A case in point is the Criminal Justice Interoperability Programme (CJIP) which won an eGovernment award earlier this year. Currently the CJIP handles all summons applications made by An Garda Síochána to the District Courts. It also handles the exchange of all district court outcomes, bails, warrants and adjustments. It is seen as an innovative and creative solution to what was a labour intensive administrative process prone to delays. CJIP has transformed the exchange of information between An Garda Síochána and the Courts Service. It has eliminated 75% of the administrative process steps and has replaced a paper based information exchange with an integrated electronic information exchange delivering improvements in the timeliness, accuracy and quality of criminal prosecution data.

Issues Specific to Particular Groups within Irish Society

The needs of all communities are not identical and across Irish society specific issues arise for particular groups. These may relate to that group's particular experience of crime and victimisation or their wider relationship with society, in some cases their experience of marginalisation or discrimination.

Taking its lead from the Government's 'National Action Plan against Racism' (NPAR) 2005-2008 and reflecting its National Model of Community Policing, An Garda Síochána published a Diversity Strategy 2009 – 2012. The emphasis

throughout the Strategy is on developing ‘reasonable and common sense’ measures to accommodate cultural diversity in Ireland. Its overall aim is to provide strategic direction to combat racism and to develop a more inclusive, intercultural society in Ireland. Measures flagged in the Strategy include the recruitment of ethnic minorities into An Garda Síochána both full time Gardai and Reserve Gardaí, Diversity Strategy Board to monitor progress and drive implementation. The Garda Racial Intercultural and Diversity Office was established in 2000, while the appointment of Ethnic Liaison Officers (ELOs) was authorised in 2002 with on-going training being provided to ELOs since then. The Garda Racial Intercultural and Diversity Office has published a number of information documents in various languages and liaises with a range of groups and communities.

Recognising the need to tailor service delivery to meet the needs of other specific groups in Irish society has resulted in a range of strategies and measures to respond to young people, older people and to the disabled not only in An Garda Síochána but across the various agencies of the criminal justice system. For example, the Probation Service included an intercultural goal in its 2009 strategy to ‘positively embrace diversity and promote the development of cultural awareness and good practice.’ The results of a survey of all foreign national offenders on supervision to the Probation Service was completed in May 2009 and used to inform good practice in service delivery. Other intercultural initiatives in the Probation Service include, the development of cultural reference guides for staff, cultural awareness training, best practice guidelines for companies providing interpreter service, and formal protocols for access to interpreters (The Probation Service 2010).

Interaction with the Criminal Justice System

Members of the public also interact with the criminal justice system on an individual basis, whether as a victim of crime, a suspect or accused, witness or juror. Specific issues arise with respect to each of these relationships, and each also has a bearing on the broader relationship between the community and the criminal justice system.

VICTIMS

In Ireland and in other common law countries, the position of victims within the modern criminal justice system had until recently been quite limited. A common criticism has been that the victim was seen merely as a witness in a crime being investigated and prosecuted by the State. More recently, however, the rights and expectations of victims have taken on new significance and are reflected in a range of legislative and administrative measures in many jurisdictions, including in Ireland. These aim to properly recognise the inherent human dignity of the victim of crime but are also necessary for the criminal justice agencies if they are to get high levels of cooperation from victims and the public generally. Without the active participation of the public, it is significantly more difficult to investigate and prosecute offences.

At EU level, these developments are reflected in the adoption by the European Council of a Framework Decision on the Standing of Victims in Criminal Proceedings (2001/22/JHA), the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA which has recently been adopted. In addition, the recently published draft Directive on victims of crime has given an additional focus to EU work in this regard.

At a national level this is reflected in, for example, the establishment of the Commission for the Support of Victims of Crime, Cosc (the National Office for the Prevention of Domestic, Sexual and Gender-based Violence), the Anti-Human Trafficking Unit and the Victims of Crime Office in the Department of Justice and Equality. Furthermore, the Programme for Government commitment to legislate to strengthen the rights of victims of crime will result in tangible benefits to victims of crime in their interactions with criminal justice agencies.

Victims and Reporting of Crime

Based on CSO (2010) survey data, reporting of crime appears to be related to the perceived seriousness of the crime, the financial loss incurred (and whether the loss is insured) and the individual's perception as to whether the Gardaí could or would do anything about the incident. Reporting varies considerably according to the nature of the incident (burglary: 75%, theft of or from vehicle: 67%, theft without violence: 63%, theft with violence: 64%, assault: 55%, vandalism: 55%). Amongst the principal reasons given for non-reporting were that the crime was not felt to be serious enough, or that the Gardaí could not or would not do something in response to the report.

Studies have shown that rates of reporting of incidents of domestic and sexual violence are particularly low. The National Survey on Domestic Abuse of Women and Men in Ireland found that a little fewer than 25% of those severely affected by abuse told the Gardaí (Watson and Parsons, 2005). As regards sexual violence, only 1% of men and nearly 8% of women who suffered adult sexual assault reported their experiences to the Gardaí (McGee et al, 2002).

Victims Charter

Improving the services available to victims is a key factor in increasing the reporting of crime. The rights and entitlements of victims are summarised in the *Victims Charter and Guide to the Criminal Justice System*. The most recent edition of this document was launched in July 2010.

The Victims Charter describes what victims can expect from each of the agencies involved and each step in the criminal justice process, from the reporting of a crime to An Garda Síochána through the investigation and initiation of a prosecution either by the Gardaí, or in more serious cases, the Director of Public Prosecutions. It describes what can be expected in court and at sentencing stage, and the management of the sentence, whether by the Prison Service or the Probation Service. The Charter also covers the work of the Criminal Injuries Compensation Tribunal, the Legal Aid Board, the Coroner Service and the Crime Victims Helpline (the only voluntary sector organisation covered by the Charter). It also provides contact details within each organisation if the individual victim's expectations are not met.

Meeting the Information Needs of Victims

A common theme in the approach of each agency within the criminal justice system is the importance of keeping victims informed about the progress of investigations, the prosecution procedure, courts' processes and decisions, and issues about prison and probation.

The Victims Charter of An Garda Síochána provides for all crime victims to be given the name and contact details of the investigating Garda and the incident number to help track the case, and also that they are kept informed of the case progress. In murder or other fatal cases, contact is maintained through a named Garda Family Liaison Officer from the investigation team. In cases of alleged human trafficking, Crime Prevention Officers from the Garda Síochána liaise with suspected victims to assess any security risk and to advise on suitable precautions.

Another important development is a pilot scheme introduced in October 2008, where the Office of the DPP will, whenever possible, give reasons for decisions not to prosecute, or to discontinue a prosecution, in fatal cases which occurred after 22 October, 2008, if asked to do so by parties closely connected with the deceased. Reasons will be given only in circumstances where it is possible to do so without creating an injustice. This policy leaves unaltered the long-standing rights of victims and their families to request the DPP to review a prosecutorial decision or meet the

prosecution team before a trial to have legal procedures in a case explained. Nor does it alter the power of the DPP to seek a review of an unduly lenient sentence.

Research carried out for the Commission for the Support of Victims of Crime (2010) identified information needs as being a key concern for victims. Many victims responded that they felt there was a lack of information available regarding the workings of the criminal justice system and the rights of victims within the system. Notwithstanding the initiatives described above, many expressed dissatisfaction with the level of information and communication with them. For instance, there is a high level of satisfaction with the sympathetic manner in which the Gardaí generally take statements. However, the study found dissatisfaction with the amount of information given by the Gardaí to victims during the investigation and prosecution of offences. Similar results have been found in research dealing specifically with victims of domestic or sexual violence (Hanly *et al.* 2009).

Research also shows the value in linkage between the police and the auxiliary support services (Hester 2005) and indicates that withdrawal from cases may be lower where victims are supported in their engagement with the criminal justice system. It is reported that respondents were significantly more satisfied with the investigation if the Gardaí had provided them with information about support services and investigation procedures (Hanly *et al.* 2009).

In order to address concerns of this nature, the Garda Victims Liaison Office was established. This Office is responsible for policy development and effective implementation of An Garda Síochána Victims Charter.

Victims and the Trial Process

A victim is not a party to the criminal case and is not usually legally represented. Nevertheless, some parts of the law relating to the trial process apply directly to victims. These include special provision to allow for evidence taken from a child under 14 years in the case of violent or sexual or trafficking offences to be recorded on video and the video submitted as evidence. This provision also applies to a person with an intellectual disability. A live television link to the court may be used for any questioning of a child in court on this evidence, or for the provision of evidence generally by a child in such cases unless the court has good reason not to allow this. If the court allows it, any other person may give evidence through a live television link in cases involving violent, sexual or human trafficking offences.

In a rape or sexual assault case, the name of the victim is not made public. Only those with a direct interest in the case, and the media, can be present in court in a rape or serious sexual assault case. A parent, relation or friend can accompany the victim in the court. In the case of alleged human trafficking, any person who publishes or broadcasts any information including a photograph of the alleged victim or any depiction of the physical likeness of the alleged victim that is likely to enable the victim to be identified, will be guilty of an offence and liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years, or both. Notwithstanding these provisions, it remains the case that the legal process can be particularly daunting for victims of domestic and sexual violence and this has been

identified as a contributing factor to the high levels of attrition (cases not proceeding to completion) observed in such cases (Hanly *et al.* 2009).

In recognition of the daunting nature of the trial process, the Commission for the Support of Victims of Crime provides funding to a range of organisations which accompany victims to court for support and to provide information about the court process. These organisations cover domestic violence, sexual violence, sexual abuse of children, cases heard in the Central Criminal Court and general crime victims.

The physical environment of the trial process is also of importance. The potentially distressing effect on the victim of some court facilities – the cramped surroundings and the “forced proximity” to the defendant has been observed (Bacik 1998). Victim waiting rooms are now available in over 50 refurbished courthouses and a dedicated victim suite is available within the Criminal Courts of Justice in Dublin, where a large proportion of the most serious criminal cases are heard. A system of reserved seating is operated in courtrooms for victims’ families in murder and manslaughter cases.

Legal Representation and Victims

In the Irish and other common law adversarial systems, the parties to the case are the prosecution and the defence. The prosecution does not represent the victims, other than in the sense that it is representing the State in seeking to bring an offender to justice. It is however contended that to add a third legal party to this process would impact on the even-handedness of the trial process and conflict with constitutional protections for procedural justice in criminal matters.

Some specific exceptions exist to this, however. The Legal Aid Board can give advice (but not representation in court) to victims of rape and other serious sexual assaults. In addition, if during a rape or other serious sexual assault case, the accused applies to the court to raise issues about the complainant’s prior sexual experience, the Legal Aid Board will provide legal representation for the complainant.

Victims and the Sentencing Hearing

Since 1993, sentencing judges have been required to take into account the impact of a violent or sexual offence on the direct victim. In addition, such victims have had the right to make an oral statement (commonly called a victim impact statement) at the sentencing hearing describing the impact of the crime. These laws were reformed in 2010 in order to expand the range of offences to which they apply and to put in place additional safeguards for vulnerable victims. The right to make a victim impact statement has been extended to the family members of a victim who has died or who is ill or disabled as a result of a crime. Where the victim is a child under 14 years of age, or a person (whether a child or an adult) with a mental disability a family member or guardian may make the victim impact statement instead of the child or the person with the mental disability. A court may allow a child, a person with a mental disability, or any other person who wishes to make a victim impact statement to do so by live television link. This means that the child or other person does not need to be present in the courtroom.

As before, the court may get evidence about the impact of a crime on a victim through requesting a victim impact report. The court can ask a professional person – such as a probation officer or a member of a rape crisis centre – to prepare a written report on the crime’s impact on the victim or the family. This victim impact report can deal with the physical, emotional, mental or economic impacts which the victim or the family has suffered as a result of the crime.

Criminal Injuries Compensation

The Criminal Injuries Compensation Tribunal runs the compensation scheme for personal injuries suffered due to a crime. This allows a victim to seek payment for expenses and losses suffered as a direct result of a violent crime, or in trying to prevent a crime or in saving someone’s life. The scheme also allows for the family of a victim who has died due to a violent crime to receive a payment. An EU Directive on Compensation to Crime Victims (2004) provides for cooperation between EU member states so that victims can get compensation for crimes committed in another member state.

Separately, a victim may take a civil case for compensation against an offender. It is up to the victim and their legal team to take this case. When making a compensation award, however, the Criminal Injuries Tribunal has to deduct any money paid to the victim by the offender.

Finally, a court may order an offender to pay compensation to a victim as part of the outcome of a criminal case.

Restorative Justice

Restorative justice has been defined as “a victim-sensitive response to criminal offending, which through engagement with those affected by crime, aims to make amends for the crime which has been caused to victims and communities and which facilitates offender rehabilitation and integration into society” (Final Report from the National Commission on Restorative Justice (2009)).

An Garda Síochána is responsible for implementing a restorative justice programme for youth offending under the Children Act 2001. The Garda Diversion Programme has over 100 Garda Juvenile Liaison Officers trained and accredited in Restorative practices and delivers over 5000 restorative interventions each year for a range of serious offences such as robbery, assaults, criminal damage and public order.

In addition, two restorative justice projects for adults operate in Tallaght and in Nenagh. Restorative justice provides an additional option which may be available to the court at pre-sanction stage for people who plead guilty, or who are found to be guilty of certain criminal offences. The majority of referrals are for first-time offenders, for offences which would not normally attract a custodial sentence but which could result in a conviction and/or a referral to the Probation Service.

Different restorative justice models exist. If the offender agrees to participate in a restorative justice programme such as the offender reparation model, for example, the Judge will adjourn the case to allow the offender to meet with the restorative justice team which can include stakeholders within the criminal justice system (Probation Service, Courts Service, and An Garda Síochána), as well as victim support and community sector volunteers, and, possibly, the victim. A meeting may then be convened, during which the offender will explain why he or she is there. The facts of the case will be discussed and the victim will explain how the offence has affected him or her. If a contract of reparation is agreed, it is then presented for approval to the judge on the adjourned date. If this approval is forthcoming, the judge will adjourn the case to allow for the implementation of the contract. On the second return to court, a report on the offender's performance of the contract is given to the judge who, depending on the outcome, will either dismiss the charge or go on to deal with the matter appropriately.

The Probation Service has introduced a scheme to test a range of restorative interventions for adult offenders based on the recommendations contained in National Commission's report. The scheme is intended to facilitate an evaluation of the role such interventions might play having regard to overall effectiveness, potential, and value for money considerations. It will involve an expansion of the existing restorative justice projects in Nenagh and in Tallaght. The Nenagh Community Reparation project will be extended to Limerick and Tipperary, while the Tallaght based Restorative Justice Service will be extended to the Criminal Courts of Justice.

The objective of the scheme is to build the foundation for the implementation of a robust restorative justice model of practice providing an alternative to a prison sentence of less than 12 months duration. This will test the model's ability to manage up to 100 adult offenders by Community Reparation and up to 300 by the Restorative Justice Service. The model will involve the use of community and volunteer resources.

The Probation Service will monitor, oversee, and evaluate the implementation of the scheme and will provide a report on the effectiveness and value for money of the model after a 12 month operational period.

Issues of Concern to Victims

The adversarial system discussed earlier is one reason for dissatisfaction by victims. Although there is no likelihood of a radical change in the adversarial system, many of the provisions and services set out above can be seen as mitigating actions taken to improve the experience of victims in the criminal justice system. Issues of concern remain, however, including in respect of access to information and consistency in service provision. Victims can also find the court experience daunting, confusing and frustrating. Adjournments, delay, and lack of sentencing consistency were cited by victims groups in a pre-consultation meeting held with victim representative groups. Notwithstanding the efforts of the organisations and the individuals working within the system, there are real challenges in consistently applying best practice throughout the country in complex circumstances and responding to crime on a 24 hour, year round basis. Increased monitoring of services to victims by the criminal justice

agencies may have a role to play in consolidating existing good practice and extending it throughout the system.

Certain legislative provisions, such as victim impact statements and reports, video link and recorded evidence already exist to assist and support victims. The Programme for Government includes a commitment to legislate to strengthen the rights of victims and their families. The key aim of such legislation will be to support a genuine improvement in the service and information to victims. Legislation has an important symbolic and practical role to play in improving the lot of victims of crime. However, if it does not give rise to consistent action on the ground, legislation is of limited value. Therefore, it would appear that monitoring of existing services and continued monitoring after legislation has been enacted and brought into force would need to accompany the legislation, to ensure that better services are in fact delivered.

As noted earlier, particular concerns arise with respect to victims of sexual assault and the high attrition rate in the prosecution of such cases. As part of The National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014, measures are being taken to address this problem. These include the supports and services described in the preceding sections but attention has also been drawn to the impact that the stereotyping in the public mind of such crimes and their victims can have on successful investigation and prosecution.

Many of the important services received by victims are delivered by voluntary sector organisations and some issues arise with respect to these services also. More than forty such voluntary organisations, some providing a service with staff and others using volunteers, are funded by the Commission for the Support of Victims of Crime. Small locally based organisations can remain very close to their clients and can have an admirable flexibility of response to meet the particular circumstances of a case. However, not all of these organisations are well known to their potential client groups. There can be some confusion on the part of victims when they are referred from one organisation to another. In addition, those in the caring professions, who might be expected to refer clients to the voluntary sector organisations, are not always aware of which one to contact. There are also gaps in service provision on a geographic basis. Therefore, there may be scope for these smaller organisations to learn from each other in a more structured way about good practice and equally to learn from the mistakes of their colleagues in the field. Through increased cooperation they could be in a position to provide a more competent, caring and efficient service to their clients.

A final issue of concern is that the experience of victims can be made more intense by the intrusion of media, both at the time of the offence, during the trial and afterwards through re-running stories on anniversaries and at other times. There is a balance to be struck between news reporting, legitimate public comment and the sensitivities of victims including the family and friends of victims. Journalistic guidelines exist. Questions include whether these guidelines are sufficient, whether they are widely known, whether they are observed to the letter and in spirit, and whether existing redress mechanisms serve victims of crime.

WITNESSES

General

Members of the public take direct part in the criminal justice process by reporting a crime and coming forward as a witness to the crime. When a person reports a crime to the Gardaí, the Gardaí take a witness statement from the victim or the person who has reported the crime.

A key feature of court proceedings in Ireland is that much evidence is given orally by witnesses who have relevant personal knowledge of the matters at issue. An important justification for the system of giving oral evidence, including the right to cross-examine witnesses, is that seeing the demeanour and hearing the evidence of a witness in the witness box is an important part of ascertaining the truth.

The prosecution or the defence can call anyone who has information about a crime to be a witness at a trial, including the victim. In general, all persons are competent to give evidence and may be compelled to attend to give evidence. The trial court issues a witness summons requiring a person to attend before the court and give evidence. A person who disobeys a witness summons is guilty of contempt of court.

Generally, the identity of a witness is revealed when giving evidence because the Constitution requires that all cases should take place in public unless the law makes an exception. As discussed in the previous section on victims, such exception can be made in, for example: in rape and some sexual offence cases and cases where the accused is under 18 years of age.

Types of Witness

A person may be involved in a criminal case as an "eye-witness" (where they personally witnessed something happen that is relevant to the case), as an "expert witness" (in a case about a matter that is outside the ordinary knowledge of the judge or jury to give an opinion on something that is relevant to the case), or as a "character witness" to give evidence of the character of the accused or convicted in a criminal case.

Witness Statements

In the more serious cases, once the Gardaí have charged the accused, the prosecution team will put together evidence against the accused in the 'book of evidence' which contains statements from witnesses, including the victim and also includes other relevant documents and a list of any physical evidence that will appear in court, such as photographs or weapons.

Once the case begins in court the witness can be the subject of cross-examination - the prosecution asks the witness questions to get his or her evidence following which the defence may further question the witness. A judge may disallow any question put in cross-examination which may appear to be vexatious, demeaning to a witness, or irrelevant.

In most cases, witness evidence is given in the courtroom. As described earlier, in some cases, however, a witness may be able to give evidence by videolink.

Supports for Witnesses

The technical language, vocabulary, working practices and procedures which are part of the criminal justice process have been found to hinder lay witnesses (Bacik 1998). Both the Courts Service and the DPP's office produce information leaflets for people appearing in Court as witnesses. A range of leaflets are also available on the Victims of Crime Office website (www.victimsofcrimeoffice.ie under "booklets").

The prosecution solicitor works with Gardaí to ensure that the witness knows what is happening in a case. Generally, where a person is giving evidence as a victim they meet the prosecution team at a pre-trial meeting. The pre-trial meeting allows the barrister and solicitor to explain to the witness what happens in court. However, they are prevented from discussing the victim's evidence.

A further measure of support for witnesses is seen in the design of the new Criminal Courts complex in Dublin which provides separate areas for prosecution witnesses and vulnerable or child witnesses which have a video link to the courtroom.

Witness Intimidation and Protecting Witnesses

Since 1997, An Garda Síochána has operated a Witness Security Programme in response to attempts by criminal and other groups to prevent the normal functioning of the criminal justice system, including threats of violence and systematic witness intimidation. Its operation is supported by the Criminal Justice Act 1999 (s.40) which makes it an offence for any person, without lawful authority, to try to identify the whereabouts or any new identity of a witness who has been relocated under the Programme. The offence is punishable on indictment by a fine or a term of imprisonment of up to five years.

An Garda Síochána enforces the provisions in the law relating to witness intimidation and protection. In circumstances where the Senior Investigation Officer in a case has identified a witness who is crucial to the case and the evidence to be proffered is not available elsewhere, and there is also a serious threat to the life of the witness or his/her family, an application can be made, with the consent of the witness, to have him/her included in the Witness Security Programme. Where a threat to or intimidation of a witness or a potential witness arises during the course of criminal proceedings, the matter may be addressed through the trial judge, who has discretion to revoke bail or place other sanctions on the accused/suspect.

Furthermore, the Criminal Justice Act 2007 (s.26) empowers a Court, following the conviction of a person for a serious offence, to make a 'protection of persons' order. The purpose of the order is to protect the victim of the offence or any other person named in the order from harassment or intimidation by the offender. Other persons that might be listed in such orders include the relatives of the victim or witnesses.

In addition, the Criminal Justice Act 2006 (s.16) allows a Court to admit, in certain specified circumstances, previous witness statements where a witness recants or refuses to testify at trial. This provision is designed to ensure that witness statements may still be available to the Courts even though the witness subsequently refuses to co-operate because of intimidation.

The Programme for Government contains a commitment to provide statutory guidelines for the Witness Security Programme.

THE SUSPECT AND THE ACCUSED

Introduction

Once it has been established that a crime has been committed, a suspect must be identified and apprehended for a case to proceed through the criminal justice system. A suspect or a person who is accused of a crime has rights protected by the Irish Constitution and in international human rights law. These rights give rise to a range of views from those who hold that the system is weighted in favour of offenders to those who consider that legislation has diluted important protections for the accused.

Presumption of Innocence

The presumption of innocence is a fundamental principle of the Irish criminal justice system. Although not specified in the Constitution, the courts have confirmed that the principle is "so basic to the concept of a fair trial" that it obtains constitutional protection¹. The European Convention on Human Rights is explicit and states: 'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law' (Art. 6.2.).

Detention for the Purpose of Questioning

The Criminal Justice Act 1984 provided for the first time in Irish law a general power permitting detention where this is necessary for the proper investigation of an arrestable offence, which may include questioning but which also includes the carrying out of tests on the suspect and preventing him from using his liberty to interfere with the investigation.

Since 1984, a number of other detention powers have been added to the statute book to deal with particular types of crime e.g., the Criminal Justice (Drug Trafficking) Act 1996 provides for detention up to 7 days for persons suspected of drug trafficking while the Criminal Justice Act 2007 provides a similar power in relation to organised crime offences.

¹ Heaney v Ireland [1994] 3 IR 593

The 1984 Act placed rights that had been identified by the courts, in particular, the right of access to a solicitor, on a statutory footing. Provision was also made for the electronic recording of interviews. These measures have played an important role in protecting the rights of suspects, as has the strict approach taken by the courts to the admissibility of incriminating statements made in circumstances where the constitutional rights of the suspect had been breached.

Questioning of Persons in Garda Custody

The questioning of persons in Garda custody is regulated by statutory provision to safeguard the rights of those in detention. In addition to the requirements of the Garda Custody regulations, it is now standard for all interviews to be video-recorded. The actions of Gardaí are open to scrutiny by the courts and they are also open to investigation by the Garda Ombudsman Commission.

Right to Silence and against Self-incrimination

The right to silence is closely connected to the presumption of innocence. The issue has been the subject of much debate and was considered by both the Committee reviewing the Offences against the State Acts in 2002² and more recently by the Balance in the Criminal Law Review Group in 2007. In general terms a detained person is entitled to maintain silence on the basis that his or her silence will not be admissible in proceedings against him or her and a defendant cannot be compelled to give evidence in court, nor can the prosecution remark on this.

The right to silence in the face of questioning by a member of An Garda Síochána is not absolute. The law permits inferences adverse to the accused to be drawn in proceedings from the accused's failure to mention a defence on which he or she subsequently seeks to rely or from his or her failure or refusal to account for suspicious circumstances which clearly call for an answer. The law governing the drawing of inferences was amended in 2007³ in order to expand its application to all arrestable offences (i.e., offences carrying a maximum sentence of imprisonment of 5 years or more) and to strengthen the system of safeguards.

This system of safeguards means that:

- only such inferences as are considered proper by the court may be drawn;
- the person cannot be convicted solely or mainly on such inferences;
- inferences may only be treated as corroboration, not as primary evidence;
- the person must be warned in ordinary language that the question of an inference may arise and the person must have been afforded a reasonable opportunity to consult a solicitor before they decide to refuse to account;
- the interview must be recorded.

The Criminal Justice Bill 2011 contains proposals to strengthen the system of safeguards that applies by providing that the person must have been informed of his or

² Chapter 8, Report published May 2002.

³ Criminal Justice Act 2007.

her right to consult a solicitor and (other than where he or she waived that right) been afforded an opportunity to do so before the failure concerned occurred.

Access to a Lawyer when in Detention

All persons detained in Garda custody are entitled to consult a solicitor on as many occasions as the person wishes. The Criminal Justice Act 1984 (Treatment of persons in custody in Garda Síochána Stations) Regulations 1987 provide that the member in charge of a Garda Station shall, without delay, inform an arrested person (or cause him/her to be informed) that he/she is entitled to consult a solicitor. This information is given orally and also by way of written notice. The time of the giving of the oral information and the written notice are recorded in the custody record and acknowledged by the arrested person. The solicitors, however, are not allowed to be present during the Garda interviews. Recent case law of the European Court of Human Rights in this area is being examined to establish its implications, if any, for Irish law and practice.

The Criminal Justice Bill 2011 will provide, *inter alia*, for a statutory provision to ensure that an interview may not commence unless a detained person has actually consulted a lawyer, except where the detained person has waived their right, or in certain specific circumstances where there is a compelling reason to begin, such as risk to life, or the destruction of evidence. Enactment of this legislation is one of the priorities of the Minister and it is anticipated that it will have completed its passage through the Oireachtas before this summer.

Advisory Committee on Interviewing of Suspects in Garda custody

The sixth report of the Tribunal of Inquiry into Complaints concerning some Gardaí of the Donegal Division (the Morris Tribunal) in 2008, included a recommendation that a Committee be established to oversee policy on interviews in Garda custody and to consider any changes in the law or practice as required. In light of this recommendation the Minister for Justice and Law Reform established an Advisory Committee on the interviewing of suspects in Garda Custody in 2010. The Committee is chaired by a High Court Judge and includes members of the legal profession and the Irish Human Rights Commission and senior representatives of An Garda Síochána. The terms of reference for the Committee are to keep under review the adequacy of the law, practice and procedure relating to the interviewing of suspects detained in Garda custody, taking into account evolving international best practice. The Committee will also advise the Minister and the Garda Commissioner on any changes that may be necessary. The question of the right of access to a lawyer is one of the issues being considered by the Committee.

Director of Public Prosecutions (DPP)

In all serious cases, the DPP decides whether or not to prosecute and what the charge should be. That decision can have far-reaching consequences for an individual even where an accused person is acquitted.

A prosecution is instituted where there is a *prima facie* case against the suspect (i.e., there is admissible, substantial and reliable evidence that a criminal offence has been committed by the suspect). The evidence must be such that a jury, properly instructed on the relevant law, could conclude beyond a reasonable doubt that the accused was guilty of the offence charged

Bail

Bail is based on the principle that the accused is presumed innocent until proven guilty. Where an accused person has been detained in custody prior to the first court appearance, the prosecutor, in addition to considering the charges to be presented to the court, is required to consider any continuing need to remand that person in custody. The Bail Act 1997 provides: 'When an application for bail is made by a person charged with a serious offence, the court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.'. Bail can also be refused where there is a danger that the accused might abscond or interfere with witnesses. Where there is a serious breach of a condition attached to the grant of bail the prosecutor may seek its revocation.

Criminal Legal Aid

The Supreme Court in the case of *The State (Healy) v Donoghue* [1976] found that access to legal aid is a constitutional right. Under the Criminal Justice (Legal Aid) Act 1962, the Courts, through the judiciary, are responsible for the granting of legal aid. An applicant for legal aid must establish to the satisfaction of the Court that his/her means are insufficient to enable him/her to pay for legal representation for himself/herself. The Court must also be satisfied that, by reason of the 'gravity of the charge' in the case or the 'exceptional circumstances', it is essential in the interests of justice that the applicant should have legal aid.

Under the 1962 Act, an applicant for free legal aid may be required by the Court to complete a statement of means. It is an offence for an applicant to knowingly make a false statement or conceal a material fact for the purpose of obtaining legal aid.

Legislation to transfer the management and administration of criminal legal aid from the Department of Justice and Equality to the Legal Aid Board is expected to be published in 2011.

Appealing a Conviction or Sentence

An accused person can appeal a conviction or sentence. If the trial took place in a District Court, the accused can appeal the conviction or the sentence to the Circuit Court, and have a full re-hearing of the case. If the trial took place in the Circuit Court, the Central Criminal Court or the Special Criminal Court, the accused can appeal the sentence or the conviction to the Court of Criminal Appeal where a

Supreme Court judge and two High Court judges sit to hear the appeal. In such an appeal the judges read the transcript of the original trial instead of hearing the evidence all over again. If the accused has gone to prison, s/he must usually stay in prison while waiting for the case to go to the Court of Criminal Appeal.

If the trial took place in the Circuit, Central Criminal or Special Criminal Court the DPP can appeal the sentence. The DPP can ask the Court of Criminal Appeal to review a sentence that he thinks is 'unduly lenient'.

Double Jeopardy

Under the common law an acquitted person could not face repeated prosecution for the same offence. This is known as the rule against double jeopardy. The Criminal Procedure Act 2010 has modified this rule in order to allow acquittals to be re-opened where new and compelling evidence emerges post-acquittal, the trial was tainted or the trial judge erred in law. Following the 2010 Act it is no longer the case that all acquitted persons are entitled to an irrebuttable presumption of innocence. However, having regard to the need for some finality in the criminal justice process from the perspective of the acquitted person and the need to maintain the integrity of the system the Act requires an exacting test to be met before an acquittal may be re-opened.

JURIES

Juries are an essential part of the administration of justice in our country and serving on a jury is often the closest a member of the public will get to direct participation in the criminal justice process. One of the goals of the jury system is to underpin the legitimacy of justice by including community input in the criminal process. The assumption is that ordinary people applying their common sense can arrive at a fair and reasonable verdict. Jurors are selected at random and are sworn to give a verdict on the basis of evidence given in a court case.

Role of Juries in the Trial Process

The law relies on juries to decide on facts which are often in dispute. In a criminal case, the task of the jury is to decide whether an accused person is guilty or not guilty of the offence for which he/she has been charged. The guilt of an accused person has to be proved to the high standard of proof beyond reasonable doubt.

The jury must reach its verdict by considering only the evidence legally introduced in court and the directions of the judge. The jury does not interpret the law. It follows the directions of the judge as regards legal matters. The jury has no role in sentencing. This decision is left to the judge following submissions made by both sides.

Eligibility for Jury Service

The rules about qualification and liability for jury service in Ireland are set down in Part II of the Juries Act 1976 (amended by Civil Law (Miscellaneous Provisions) Act 2008).

Every citizen aged 18 years or upwards whose name is on the register of Dáil electors can be called for jury service. The law currently deems certain people ineligible to serve, including anyone involved in the administration of justice, such as judges, Gardaí or lawyers. Various categories of people are also disqualified from jury service, including people convicted of a serious offence and also people who are not Irish citizens. Some categories of people are excused as of right, including members of various professions and a wide range of public servants but others may be excused where the County Registrar or trial judge is satisfied there is good reason for doing so. Recent court decisions have addressed the question of eligibility, and legislative amendments are under consideration at present.

Jury Intimidation

While the possibility of juror intimidation is removed through non-jury trials in the Special Criminal Court in cases related to organised crime, there are also specific legislative measures to counteract this problem.

The Criminal Justice Act 1999 (s.41) creates the offence of harming, threatening or menacing, or in any other way intimidating or putting in fear a juror or potential juror, or a member of his or her family, with the intention of causing the course of justice to be obstructed, perverted or interfered with. Potential jurors, i.e., people who have been called for jury duty but who have not been empanelled on a jury are covered by this legislation. The penalty for this offence was increased in the Criminal Justice (Amendment) Act 2009 so that it is now punishable on indictment by a fine and/or a term of imprisonment of up to 15 years.

The design of the new Criminal Courts complex reflects a concern for the protection of jurors and for reducing the scope for the intimidation of jurors.

Law Reform Commission Consultation on Jury Service

In 2010, the Law Reform Commission published a consultation paper on Jury Service (LRC CP 61-2010). The paper addresses concerns that the processes for jury selection might not result in selection of juries that are representative of the community, including the exceptions for a range of professional persons and public servants and for the exclusion of non-Irish citizens. The paper also considers other concerns such as the impact of wireless technology on access to information by jury members during deliberations and whether the availability of jury panel lists runs the risk that jury members might be open to intimidation or jury tampering. The paper also examines the issue of expenses incurred by jurors, especially self-employed jurors arising from their unavailability for their normal professions while sitting on the jury.

The Law Reform Commission makes a range of provisional recommendations in its consultation document, including replacing the blanket exception for certain professionals with an individualised excusal system based on 'good cause' and that capacity be recognised as the appropriate requirement for jury service rather than presence of a physical disability alone. The document also suggests that selection be extended to include non-Irish citizens who satisfy certain requirements.

The Commission acknowledges the limited scope of this consultation and gives a non-exhaustive list of other issues 'of importance' relating to the law on juries: the organisation of jury districts; the number of jurors on a jury; the respective roles of the judge and jury; whether juries are sent home or sequestered during cases; or majority jury verdicts. Commenting on this list, one writer (Coen 2010) suggests other aspects of the jury which might have been included: jury bias, nullification, pre-trial publicity, the unreasoned verdict, jury research and the ability of jurors to do the task required of them, particularly in the face of complex evidence. The latter issue has been discussed in the third White Paper on Crime Discussion Document, *Organised and White Collar Crime*, particularly in the context of white collar crime trials, which can be both complex and lengthy.

Conclusion

The criminal justice system aims to deliver a service to the community with a view to enhancing public safety. In doing so the system interacts with various different parties including victims, witnesses, the accused, as well as criminal justice professionals. Each group has different and, at times, competing views of the system. At a broader level the general community also has expectations as to how the system should deliver on its objectives. The challenge is to be able to deliver a service which is fair, effective, efficient and transparent. To do so, the system must aim to meet expectations across the community in a balanced fashion.

This document has provided an overview of the measures in place on the part of the criminal justice system to respond to the needs of the individuals it interacts with and the communities it serves. In keeping with developments within the public sector generally, there is an increased recognition of the need to develop improved information and participation channels for an increasingly engaged and active citizenry and for services to be delivered in partnership with communities. This is particularly relevant to the criminal justice system and the public it serves if it is to make the best use of resources in designing and targeting its responses to crime.

Questions for Consideration

- What measures can be taken to enhance public confidence in the operation of the criminal justice system and its capacity to tackle and to prevent crime and the fear of crime? Is the system meeting public needs and expectations?
- Can dialogue between members of the public and the criminal justice system be improved? Are the existing mechanisms for listening to public concerns adequate?
- What might be done to improve awareness of the activities of the criminal justice agencies and the services they provide?
- What works well in the present system to serve members of the public in their direct dealings with the criminal justice system? How can what works well be replicated more widely in the system?
- How can the various parts of the criminal justice system best work together to meet the needs of victims, witnesses and the wider community?
- What is the role of legislation in improving the experience of victims of crime in the criminal justice system? What might usefully be included in such legislation?
- How can members of the public be encouraged to play a greater role in responding to crime, whether by providing information, or engaging in local voluntary activity?

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