

An Garda Síochána

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Ms. Brigid McManus
Chairperson
Judicial Planning Working Group.

**Re: Submission on behalf of An Garda Síochána to the Judicial
Planning Working Group.**

The following briefing material, as relates to An Garda Síochána, and the Terms of Reference of the Working Group, is forwarded for your information.

- To consider the number and type of judges required to ensure the efficient administration of justice over the next five years in the first instance, but also with a view to the longer term.**

An Garda Síochána has no specific observations in terms of the number of judges other than to provide the following general observations.

There has been an average of 46 pieces of legislation enacted each year during the last decade. In 2019, 54 Bills became law, one of the highest annual legislative totals, which included the areas of housing, Brexit, healthcare, supports for families, insurance reform, climate action, justice, and the economy. New legislation impacts on the judiciary in terms of upskilling and caseload volume. Expert skills will be required to clear backlogs in specialist courts (e.g. Commercial Court) and for the proposed new Planning and Environmental Law Court.

In addition to the consideration of the number and type of judges required to administer justice, the Judicial Planning Working Group should also consider requirements to ensure succession planning of judicial appointments for the future.

2. To consider the impact of population growth on judicial resource requirements.

In recent years, the size and composition of Irish society has changed. The Central Statistics Office (CSO) estimated the Irish population at 4,977,400 million in April 2020, an increase of 215,535 persons from April 2016 (April 2016 Census - 4,761,865 persons). It was estimated that 644,400 non-Irish nationals were resident in Ireland, accounting for 12.9% of the total population in April 2020. It is observed that Ireland's diverse society should be reflected in the Public Officer post-holders, including the judiciary in so far as possible.

3. To consider, having regard to existing systems, the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice.

Technological developments are moving at an increasing pace, with more organisations and individuals using technology to conduct their business and access on-line services, and most particularly during the Covid-19 pandemic, working from home became the norm. It is respectfully recommended that research into I.T. systems in other jurisdictions, including case management systems and work practices, should be considered by the Working Group. The continued use of video conferencing for accused persons on remand should also be considered. Court services record all District Court outcomes, and a similar system for Circuit Court outcomes would assist to improve service.

It is also suggested that the Judicial Planning Working Group might consider the possibility of establishing early morning District Courts in areas of need (from 8.00am onwards). This would clear overnight custody cases and deal with any warrant applications giving the working court list a clear chance of being completed within the day's business.

A large portion of District Court lists are populated with cases which are adjourned on a number of occasions for Gary Doyle Orders, copies of CCTV etc. Frequently these cases have signed confessions, CCTV evidence or the offenders are caught in the act. Time is put aside on court lists to hear these cases and often on the day of the hearing a guilty plea is entered. It is requested that there is engagement with the legal profession to encourage a plea of guilty at the earliest opportunity in cases where a plea is likely to be forthcoming which would result in a significant reduction in waiting times and help in meeting additional service demands and/or improving services and access to justice.

Cooperation should continue to develop and improve between the court service, the Judiciary, the legal profession and An Garda Síochána to ensure court cases are scheduled in conjunction with An Garda Síochána rostering of members to reduce the number of relist and adjournment applications as a result of witness unavailability to attend court. The inability to adjourn cases to dates when Garda members are available to attend court results in prosecutions being struck out/dismissed. Whilst every effort is always made to ensure Garda attendance, it is not feasible to have operational Gardaí working a 12 hour roster to appear in court on rest days or annual leave days. Whilst it is acknowledged that the courts must endeavour to progress prosecutions without undue delay, due consideration is necessary to minimize the requirement to attend court outside working rosters,

both from an organisational budgetary perspective, but more importantly from an employee welfare perspective.

4. **To evaluate the estimated impact of the Covid-19 pandemic on court caseload in the short, medium and long term strategies for reducing waiting times to significantly improve on pre-Covid levels.**

There have been substantial technological advances over the past few years, in particular with the use and enhancement of on-line video conferencing during the Covid-19 pandemic. It is proposed that technological developments should be taken advantage of and work practices attuned accordingly to reduce court waiting times.

5. **To examine the experience of other jurisdictions (particularly Common Law areas), and obtain accurate and up to date information on judicial practices and case management systems, together with caseload data in relation to Irish courts.**

It is noted that the consideration of the experience of other jurisdictions to obtain information on judicial practices and case management systems is also listed in the Terms of Reference which is a positive proposal. It is requested that any lessons learned from other jurisdictions, in respect of case management and working practices between the judiciary and police services, is shared with An Garda Síochána.

6. **To consider the costs associated with additional judge numbers, including salaries, allowances, judicial support staff and chambers.**

It is respectfully suggested that this Term of Reference is a matter for the Department of Justice following the Recommendations of the Working Group.

7. **To review the forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers include:**

- a. **Recommendations of the Civil Justice Review**

The proposals made by former Circuit Court President Mr Justice Ray Groarke to the Minister for Justice and Equality, for reconfiguration of the Circuit Court circuits and these recommendations, as well as those contained in the Civil Justice Review should also be considered by the Judicial Planning Working Group.

- b. **The O'Malley Review on victims of crime**

Included in the Report Recommendations is that all judges presiding over criminal trials for sexual offences should have specialist training which "equips them with an understanding of the experience of victims of sexual crime" and training in connection with "the questioning of witnesses who are especially vulnerable by virtue of youth or disability". An Garda Síochána welcome the introduction of measures that afford additional protection to vulnerable witnesses.

- c. **Family Justice Reform**

It is respectfully suggested that this Working Group should specifically consider Recommendation 11, of the Report on Reform of the Family Law System, published in October 2019, which recommended that “specialist judges with appropriate training should be assigned, though not exclusively confined to Family Law Courts for a minimum period of at least two years”. Recommendation 26 should also be considered which recommended that, “in addition to structural reforms, a substantial increase in the number of judges is essential – particularly at District Court level - to address the backlog of cases and relieve pressure on the judiciary”.

d. Review of Legal Aid financial eligibility criteria

In May 2021, Minister of State with special responsibility for Civil and Criminal Justice made changes to the eligibility criteria for the Civil Legal Aid Scheme, whereby the Housing Assistance Payment (HAP) will no longer be included in the calculation of entitlement to civil legal aid. This will have a positive impact for people of modest means as this will provide greater access to legal advice and representation where the other criteria on the scheme are met.

The Minister for Justice, under the Justice Plan 2021, has committed to commencing a Review to examine the Civil Legal-Aid Scheme more broadly and the Review Recommendations that will be proposed may alter the criteria for legal aid which may impact on the requirement for judges.

e. Courts Service Modernisation Programme

The Courts Service has published its Strategic Plan 2021 – 2023 on the first phase of the ten-year Modernisation Programme. It is respectfully suggested that the Judicial Planning Working Group should consider the Strategic Goals with particular emphasis on Goal 2, which is to work collaboratively with the judiciary to define and provide the resources needed to effectively carry out their judicial functions.

f. Commencement of relevant provisions of the Assisted Decision Making Capacity Act 2015

This Act was signed into law on the 30th December, 2015 and it provides for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future. The Act also provides for the appointment by such persons of other persons to assist them in decision-making or to make decisions jointly with such persons and to provide for the making of applications to the Circuit Court or High Court in respect of such persons, including seeking the appointment by the Circuit Court of decision-making representatives for such persons. Most parts of the Act have not yet been commenced, but when commenced will significantly impact on judicial requirements at Circuit and High Court levels.

This future requirement for judges should be taken into consideration by the Judicial Planning Working Group.

g. Judicial Appointments Commission Bill

The General Scheme of the Judicial Appointments Commission Bill 2020 provides for the establishment of a Judicial Appointments Commission of nine members to replace the Judicial Appointments Advisory Board (JAAB). It is respectfully suggested that the impact of this Bill should be considered by the Judicial Planning Working Group in making its recommendations.

h. PFG commitment to establish a new Planning and Environment Law Court

The Programme for Government commits to establishing a new Planning and Environmental Law Court managed by specialist judges, on the same basis as the existing Commercial Court model. It is to be expected that Judges appointed to the new Court would be specialised in the field resulting in more expeditious determination in such matters by the Court. In being modelled on the existing Commercial Court, it is anticipated that such a Court would be able to develop bespoke practice directions and special procedures to facilitate the efficient operation of the Court.

The operational impact, and exponential growth in these types of cases, of the proposed Planning and Environment Law Court, including the requirements for additional and specialised judges should also be taken into consideration by the Judicial Planning Working Group in making its recommendations.

i. Insolvency Review

As a result of the Insolvency Review, the Personal Insolvency (Amendment) (No. 1) Bill was published, which will reform personal insolvency legislation to increase supports for borrowers whose income has been adversely impacted by the current pandemic. A further Bill, the Personal Insolvency (Amendment) (No. 2) Bill, is being drafted and will address the full range of changes resulting from the statutory review of the Personal Insolvency Acts by the Department of Justice.

The proposed acts will increase the requirement by such persons to timely access to the Courts, and the consequential requirement of additional and specialised judges, which should be considered by the Judicial Planning Working Group in their recommendations.

j. Economic development

Economic development will impact the environment within which the judiciary operate, including caseload and specialisation of judges required, to determine such cases. It is respectfully suggested that the Judicial Planning Working Group should consider the environment, emerging trends and consider the future requirement for judges in terms of volume and specialisation.

8. To make recommendations for developing judicial skills in areas such as white collar crime.

The continuing and significant increase in the volume of white collar and cyber type crime require specialised judicial knowledge. In addition, because of the transnational nature of this type of crime, frequently there is an international

aspect to such investigations and proceedings. It is suggested that the Judicial Planning Working Group should examine the particular training, knowledge and skills required by judges to upskill and enable them to administer these crimes in a consistent manner.

9. To make recommendations on relevant issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice.

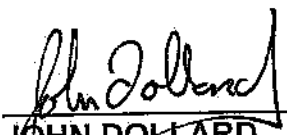
The Schengen Information System (SIS II) is an information system which allows national border control, customs and police authorities to share data between member States, and An Garda Síochána is now partaking in the system. The SIS II system, rolled out in March 2021 by An Garda Síochána, allows for the sharing of data on crime suspects, fugitives and missing persons. There were 27 persons arrested from March to July 2020, this figure increased to 86 arrests for the same period in 2021. It is respectfully suggested that the impact of SIS II, including Garda access to European Arrest Warrants, should also be considered by the Judicial Planning Working Group in making their recommendations.

10. To consider the implications of Brexit on the courts in regard to judicial resources and potential increased workloads arising.

Brexit presents a risk of increased criminality between Northern Ireland and the Republic of Ireland at a time when loss of EU police and judicial co-operation mechanisms could negatively impact operational effectiveness. Transnational crime crosses borders and any changes to a border can impact the volume of crime or the way criminal gangs exploit borders, including an increase in smuggling, immigration and terrorism crimes.

The impact of Brexit on criminal matters is being managed by a Group chaired by Deputy Commissioner Policing and Security, with Assistant Commissioner North-Western Region and Executive Director Legal on the Group. The impact of Brexit is also being managed and monitored on behalf of the Government by another Working Group under the auspices of the Department of Justice. It is respectfully suggested that any additional judicial requirements due to the impact of Brexit should be considered by the Judicial Planning Working Group.

Yours sincerely,



JOHN DOLLARD
CHIEF SUPERINTENDENT
COMMISSIONERS OFFICE

20th July 2021