



**Chambers  
Ireland**  
Advancing business together



## Chambers Ireland submission to the Department of Justice on the Judicial Planning Working Group

November 2021

Chambers Ireland, the voice of business throughout Ireland, is an all-island organisation with a unique geographical reach. Our 40 members are the Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

In September 2019, our Network pledged to advocate for and support the advancement of the Sustainable Development Goals. In doing so, we use the Goals as a framework to identify policy priorities and communicate our recommendations, and we have a particular focus on five of the goals encompassing decent work and economic growth (SDG 8), sustainable cities and

communities (SDG 11), advancements in gender equality (SDG 5), viable industries, innovation, and infrastructure (SDG 9) and progress in climate action (SDG 13).<sup>1</sup>

There are two particular areas in which the actions of this proposed working group will greatly affect our members. Firstly, there are the long delays that our members experience when they seek to use the courts services to vindicate their commercial rights and the contractual obligations that their counterparties enter into. Secondly, there are the delays which are experienced as a result of not having a dedicated environmental and planning court.

## Key Points

- Our legal system is clearly under-resourced for the case load and scale of activity that we demand of it.
- Delays within the Commercial Court are greatly impinging on our national competitiveness and are an undue burden on businesses – the number of judges assigned to this court needs to significantly increase.
- The delay in instituting an Environmental and Planning Court is undermining the efficiency of our economy and is also imposing grave costs on the exchequer.
- The task of clearing the Covid-19 backlog, given how overwhelmed the court system was pre-pandemic is likely to be an impossible task given the current resourcing of the courts services.
- The expansion of the National Development Plan, the Housing for All Scheme, the creation of an Offshore Renewable Energy Industry, the upgrading of our national transmission networks to accommodate renewable energy, and the need to upgrade our transport networks if we are to meet our climate action targets are all likely to result in a significant increase in the number of cases which will be taken to challenge decisions taken by planning authorities over the next number of years.
- Firms creating bases of operation in Ireland as a result of Brexit so that they can continue to trade within the EU is likely to result in increased activity within the commercial courts.

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<sup>1</sup> The Chambers Ireland SDGs. Available at: <https://www.chambers.ie/policy/sustainable-development-goals/chambers-ireland-sdgs/>

## Commercial Court capacity costs Irish businesses

Every delay which is experienced as a result of our slow legal services involves extra costs and risk for businesses. It is clear that our non-traded sector is an important limiter upon our national competitiveness and the legal sector plays a key role in this.

As the then Competitiveness Council noted in 2015, and again in 2020<sup>2</sup>, and the World Bank has repeatedly highlighted in their ‘Ease of Doing Business’ reports that Ireland’s commercial courts system fails to deliver justice to businesses here in a timely fashion.

*“In relation to Ireland’s poor performance for enforcing contracts, the data used focus primarily on the efficiency of the commercial court system, measuring the time and cost of resolving a commercial dispute between two firms and the quality of the judicial process. Ireland’s ranking (91st) emphasises how far it is behind the leading performers; this partially reflects the extremely long length of time it takes to resolve a dispute (650 days).”*

National Competitiveness Council (2020)

Our courts system is hugely under-resourced relative to the workload that was placed upon it pre-pandemic and as a result underserves our community. Because of the courts backlogs that have arisen as a result of the coronavirus restrictions, this under resourcing is going to ensure that our access to justice will be even more severely limited unless there is a great expansion in the numbers of courts and in the number of justices that are available to serve in those courts.

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<sup>2</sup> <http://www.competitiveness.ie/publications/2019/the-world-bank-2020-rankings-bulletin-19-3.pdf>

Chambers Ireland was disappointed to see that so little of the increase in the Department of Justice’s budget for 2022 was to go into expanding the operations of the courts service.

The World Bank has repeatedly demonstrated that the legal elements of doing business in Ireland are sorely under supported, as evidenced in the below graphic.

**Figure 1: Ireland and UK Doing Business Ranking**



**Source: World Bank**

National Competitiveness Council (2015) Graphic<sup>3</sup>

<sup>3</sup> <http://www.competitiveness.ie/Bulletins/Doing-Business-Bulletin.pdf>

The two areas where we are weakest relate to the ‘enforcement of contracts’ and also the ‘permits to conduct construction’. Within this the most harmful element is the procedures to “request and obtain planning permission”<sup>4</sup> and to “request and obtain fire safety and disability access certificates”. These processes are at baseline very slow and costly, where disputes arise these costs and delays multiply.

### **Increased demand from the planning system will further burden courts**

Chambers Ireland greatly welcomes the Government’s recent commitment to expand the ambition of our National Development Plan. Fortunately, this expanded ambition has expanded under the Review to Renew<sup>5</sup> revision of the Plan. Budget 2022 will see expanded resources going to An Bord Pleanála, the National Parks and Wildlife Service, the Office of the Planning Regulator and local authorities to improve the skill base of those within the planning departments of those organisations. This has been a key ask of Chambers Ireland in our discussions with officials at all levels.

However, investment in the court services is another key element in ensuring that this most important part of government policy can be delivered. This investment in the quality of administration within the planning authorities is likely to see the typical standard of planning decision being raised, which will in turn lead to a quicker process. Nonetheless, we must expect that the number of objections will continue to rise in line with the number of developments, regardless of the quality of the decision-making. Therefore, the courts services will have to accommodate a massive increase in the number of planning permission cases which will be taken because of the ambition of the National Development Plan, and also the scale and range of housing projects that will be needed if we are to be able to deliver the homebuilding programme that is key to the Housing for All Scheme<sup>6</sup>.

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<sup>4</sup> [https://www.doingbusiness.org/en/data/exploreconomies/ireland#DB\\_dwcp](https://www.doingbusiness.org/en/data/exploreconomies/ireland#DB_dwcp)

<sup>5</sup> <https://assets.gov.ie/200358/a36dd274-736c-4d04-8879-b158e8b95029.pdf>

<sup>6</sup> <https://assets.gov.ie/197237/29edec3e-6664-4e62-86b2-af2e77f2f609.pdf>

As a result, the nurturing of an effective, consistent, and robust planning administration across the state will need to be complemented by the introduction of a dedicated Environmental and Planning court, modelled on the existing commercial courts, which will be resourced to such an extent that it will be effective in minimising the delays that planning permissions will otherwise cause in the development of the infrastructure we need to meet our green transition targets.

### **Timeliness of the Judicial Working Group's activities**

The Programme for Government and Justice Action Plan 2021 have committed to establishing “a working group to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years”. Chambers Ireland’s concern is that this process is already long delayed, and that the working group should recommend the expansion of the number of judges that are available to serve the commercial court as it is, while also to instituting an Environmental and Planning Court, with immediate effect.

There will be extra costs for the Department of Justice in this, but these must be set against costs that will be associated with the delays which an inefficient service places upon the Exchequer in the context of National Development Plan delays, the costs of crisis housing which are part of the lack of availability of affordable accessible accommodation, the costs to businesses (and as a result the wider state) which arise from the extremely slow process for enforcing contracts in Ireland, and also the long run costs which will be associated with the failure to deliver on climate action mitigation infrastructure developments as a result of the inability of the High Court to hear planning cases in a timely fashion.

Furthermore, as burdened as our commercial courts are, they are likely to become more burdened as a result of Brexit. Ireland will be the sole English-speaking common law jurisdiction within the EU, which will likely place us in a position to be the jurisdiction of choice for many third countries that seek to trade with the EU.

Chambers Ireland is also conscious that there will be a need to expand the number of justices which are available to act within other courts to accommodate the reduction in the backlog which is associated with Covid-19. The Working Group should take care to ensure that there are dedicated pools of judges for each of the needs and that the pool of potential judicial roles should not be universal or else immediate reactions to crises, as opposed to considered planning, will determine which areas receive additional resources.