Submission of the

Chief Justice, the Designate Chief Justice and Court Presidents

to the

Judicial Planning Working Group

September 2021

Executive Summary

Introduction

1. A high quality and effective justice system depends on the availability of adequate judicial resources. There is no doubt that measures such as reform of procedures, technology, and alternative means of resolving disputes are valuable tools in improving the functioning of courts. However, courts require, and will always require, an adequate number of judges to administer justice in courts established by law in accordance with Article 34.1 of the Constitution.

2. The provision of adequate judicial resources is essential to Ireland's compliance with the provision of a right to a hearing within a reasonable time under the European Convention on Human Rights and the constitutional right to a timely hearing. Delay carries significant consequences for individual citizens and organisations.

Part A: International Comparisons

3. Ireland has the lowest number of judges in Europe and by far the lowest in the European Union. Significant differences between the organisation of the Judiciary in Ireland and the Judiciary of England and Wales, Northern Ireland and Scotland must be taken into account when comparing Ireland with such jurisdictions for the purpose of assessing judicial resource requirements in Ireland. A close examination of such jurisdictions, which appear to have a similar low number of judges confirms the conclusion that Ireland is under resourced. In addition, the Judiciary of Ireland's position in a European legal space dilutes any contention that the number of judges required in Ireland is significantly less than in most other European countries.

Part B: Suggested improvements in relation to filling judicial vacancies

4. There are some specific measures which could be taken in relation to filling judicial vacancies which the Court Presidents believe would assist in ensuring that that judicial resources can be utilised to an even fuller capacity.

1. The removal of delay in all aspects of the judicial appointment process, thereby allowing a judge to take up judicial office at the earliest opportunity would contribute to a more efficient use of judicial resources.

2. Consideration should be given to making provision in legislation to allow for the completion by members of the Irish Judiciary of proceedings after retirement so that judges can continue to hear cases until they reach the mandatory retirement age.

3. Consideration should be given to providing for the sitting of judges in retirement to help to meet the judicial resource demands arising out of temporary and/or unexpected shortages. It is suggested that the appointment of retired judges through the proposed Judicial Appointments Commission would be the best way to safeguard judicial independence if judges were to be recruited from retirement.

4. Consideration should be given to increasing the mandatory judicial retirement age.

Part C: Impact of Proposed reforms on Judicial Resources

5. The Court Presidents are very supportive of reform that makes the court system more efficient and there is always an opportunity to implement further reform to bring about greater improvement. However, reform of the system and having an adequate number of judges are not alternatives, but are interdependent.

6. The Court Presidents endorse the *Report of the Review of the Administration of Civil Justice*, including some specific recommendations regarding procedural reform, and expect that, in time, its implementation will lead to the more efficient administration of civil justice.

7. This is subject to the view that case management should be extended but should be performed by judges. This can only be achieved if there are enough judges to carry out case management.

8. The Court Presidents agree that, to varying extents in each court jurisdiction, ADR is useful and has some potential to alleviate the burden on judicial time. However, it is more applicable to some courts than others and to some types of proceedings more than others and required judges to have sufficient time to undertake training in ADR.

9. The Court Presidents also endorse the recommendation of the Review Group on the Administration of Civil Justice in relation to measures that should be taken to assist lay litigants.

10. The Presidents note that the following recent or forthcoming proposals referred to in the terms of reference of the Judicial Planning Working Group are, in general, likely to create a need for additional judges:

- The O'Malley Review on Victims of Crime;
- Family Justice Reform;
- Review of Legal Aid Financial Eligibility Criteria
- Courts Service Modernisation Programme
- Commencement of Relevant Provision of the Assisted Decision Making Capacity Act 2015
- Judicial Appointment Commission Bill;
- Programme for Government commitment to establish a new Planning and Environmental Law Court;
- Insolvency Review;
- Economic Development;
- The Judicial Council and its Committees;
- Amendment to the Data Protection act 1988;
- The Residential Tenancies Act 2004;
- The Criminal Procedure Act 2019;
- Electoral Reform Bill 2020.

11. Although the enactment of new legislation often creates a benefit to society, it often creates a significant workload for judges. It is recommended that going forward a judicial resources impact assessment be carried out to assess the potential impact of proposed legislation on judicial resources.

Part D: Conclusion

12. Spending on the judicial system of Ireland, including the salaries of judges and court staff is low in comparison with other European countries. The cost of judicial salaries is proportionately low in comparison to spending on the Courts Service, the Justice Group vote and total exchequer expenditure.

13. However, a greater investment in judicial resources would be of significant value to the State. First, it would provide a better and more efficient service to the citizens and businesses which use the court system by removing delays and ensuring that an inadequate number of judges with an ever increasing workload is not a barrier to access to justice. Secondly, an effective and efficient court system has a knock-on, positive effect on society, including but not limited to contributing to a thriving business environment and longer term investment decisions.

14. The establishment of a Court of Appeal and the consequent provision of adequate judicial resources so that the resources follow is just one example of how the availability of the appropriate level of judicial resources facilitates judge-led innovative and agile management to reduce and eliminate waiting times. The success of the Strategic Infrastructure Division and Commercial List of the High Court are other examples of how investing in judicial resources works well. In order to replicate this so as to deliver benefits throughout the entire system, the judicial resources outlined in the submissions relating to each of the individual five court jurisdictions is required.

Appendix One: Submission of the President of the District Court

15. To ensure that the District Court is accessible, fair, speedy and cost-effective and to enhance public confidence in the judicial system for litigants and other service users, the urgent appointment of eighteen additional judges to the District Court is required. Over the coming five years, further judges will also be required. The basis for this includes the following:

- The increase in population since the last increase in the number of District Court judges in 2008

- Delays predating Covid 19
- Judicial Ratio/Shortage of judges
- Burdens imposed by new legislation
- Lack of Capacity in the District Court to deal with the volumes of new cases
- Backlogs arising from the Covid 19 pandemic
- Increased numbers and complexity of Family law and Childcare cases

Appendix Two: Submission of the President of the Circuit Court

16. Eight additional Judges are required immediately. Below is a tabular representation of how many Judges are assigned to each Circuit at the moment, how many are required immediately to deal with present demands.

Circuits	**No. of Judges Assigned**	**Extra Judges Required**
Dublin	14	5
Midland	3	1
South Western	5	2
Western	2	.5
Eastern	4	2
Northern	1	1
South Eastern	5	1
Cork	3	0

Appendix Three: Submission of the President of the High Court

17. The High Court requires a significant number of additional judges to meet its obligations to those who need access to justice to vindicate their rights. Without taking into account the five judges provided for in the Civil Law (Miscellaneous Provisions) Act 2021, 24 additional judges are needed to meet current demand, reduce backlogs, reduce court delays, implement improved, streamlined and fairer practices and procedures and to enable every judge to undertake continuing professional development. However, by the time the Working Group reports, due to the effects of the Assisted Decision Making

Capacity Act, 2015 and the Schengen Agreement (later mentioned), at least 27 will be required.

The judges of the High Court recommend a root-and-branch review of the number of judges and other resources available to support the court.

Appendix Four: Submission of the President of the Court of Appeal

18. The workload of the Court of Appeal is entirely dependent on the volume of appeals that are generated in the courts from which appeals are heard. If there is an increase in the number of judges in the High Court and the Circuit Court, then more cases will be dealt with in those courts, and inevitably, there will be more appeals.

19 If the Court of Appeal is to cope with an expanded workload, offering reasonably early hearing dates and then delivering judgments of a high quality within a reasonable time, then it must follow that extra resources will be required. The extent of the resources required will obviously depend on the extent to which numbers rise in the High Court and Circuit Court, but on a tentative basis, it seems realistic to think in terms of a need for an extra six judges.

Appendix Four: Submission of the Designate Chief Justice on behalf of the Supreme Court

20. The experience of the Supreme Court leading up to the Constitutional amendment in 2014 and thereafter, illustrates both the significant benefits to be gained from comprehensive and well thought out reforms in adjusting judicial numbers to workload and the significant cost involved in failure or delay in addressing such issues.

21. The Supreme Court does not seek any present change to its numbers or any adjustment of the statutory limit and supports the submissions made for increases in judicial numbers in other jurisdictions.

Contents

Introduction

1. A high quality and effective justice system depends on the availability of adequate judicial resources. There is no doubt that measures such as reform of procedures, technology, and means of resolving disputes are valuable tools in improving the functioning of courts. However, courts require, and will always require, an adequate number of judges to administer justice in courts established by law in accordance with Article 34.1 of the Constitution.

2. Such a requirement must be viewed against the backdrop of the constitutional right to a timely hearing in both criminal and civil proceedings[1] and the right under Article 6.1 of the European Convention on Human Rights to "a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The European Court of Human Rights has repeatedly found Ireland to be in breach Article 6.1 in addition to the right to an effective remedy under Article 13. In a recent judgment of the ECtHR regarding this issue, which was chosen by the Strasbourg Court as a lead case in relation to the issue of effective domestic remedies in Ireland for complaints about excessive length of proceedings, the following point was made in a concurring Opinion:

> "The case… reflects the daily reality which faces courts in jurisdictions where the ratio of judges to population is low, where the volume of litigation is substantially greater than the number of judges made available to deal with it, where commensurate resources are lacking, and where procedural rules may need an overhaul to protect the courts and other litigants from those who waste time."[2]

[1] See for example *State (Healy) v. Donoghue* [1976] 1 IR 325 ; *State (O'Connell) v. Fawsitt* [1986] IR 36; *O'Domhnaill v. Merrick* [1984] IR 151; *Toal v. Duignan & Ors (No.1)* [1991] ILRM 135; *Toal v. Duignan & Ors (No.2*) [1991] ILRM 140); *Nash v. DPP* [2015] IESC 32.

[2] *Keaney v Ireland* (Application no. 72060/17)

3. It must also be viewed against international standards which provide that a sufficient number of judges and appropriately qualified support staff should be allocated to the courts.[3]

4. It is acknowledged that there are many ways of improving access to justice other than by increasing judicial numbers. The recent *Review of the Administration of Civil Justice* report provides many such examples. However, such measures can only improve the system to a certain extent and it will take time before any effect of the implementation of many current proposals for reforms on judicial resources will be evident. It is therefore of fundamental importance, that both in the immediate term, the medium term (over the next five to seven years) and in the long term, Ireland has a sufficient number of judges to administer justice.

5. This paper is divided into the following parts:

Part A provides some comparative figures which indicate that Ireland has the lowest number of judges in Europe. It also outlines some preliminary caveats when comparing the number of judges in Ireland with the number in other countries in order to assess whether Ireland has an adequate number of judges.

Part B sets out some generally applicable suggested improvements in relation to the filling of judicial vacancies.

Part C provides some observations in relation to proposed and forthcoming reforms and their potential impact on judicial resources.

Part D concludes with some brief observations in relation to the value of investing in judicial resources;

Appendices One to Four are court jurisdiction specific submissions of the Presidents of the five court jurisdictions. These submissions contain more detailed information in relation to the jurisdiction, structure, working arrangements and judicial resource requirements in the District Court, Circuit Court, High Court, Court of Appeal and Supreme Court..

[3] Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, on judges: independence, efficiency and responsibilities, para 35.

Part A: International comparison

1. International bodies which undertake comparative assessments in respect of the quality and effectiveness of justice systems have consistently reported that, of the 47 Council of Europe member States, Ireland has the lowest or, by a tiny margin, the second lowest number of judges per head of population.

European Commission for the Efficiency of Justice (CEPEJ)

2. In its most recent evaluation report on European judicial systems, the European Commission for the Efficiency of Justice (CEPEJ), which aims to improve the efficiency and functioning of justice systems in Council of Europe member States, indicated that Ireland has 3.3 professional judges per 100,000 inhabitants.[4] Of the 45 States involved in the evaluation, this was marginally higher than only one jurisdiction, England and Wales, which has 3.1 professional judges per head of population. CEPEJ noted that "there are between 10 and 30 professional judges per 100,000 inhabitants in most States and entities and that their distribution between the States and entities has remained broadly stable over the years."[5] Only four of the 45 States included have a figure of less than five judges.[6] In addition to Ireland, those jurisdictions are England and Wales, Northern Ireland and Scotland.

[4] European Judicial Systems: CEPEJ Evaluation Report (tables, graphs and analyses), 2020 evaluation cycle (2018 data). Available at https://rm.coe.int/evaluation-report-part-1-english/16809fc058, at p.46. Note that CEPEJ categorises professional judges into three types and uses full time equivalents (FTE) for the number of professional judges' positions effectively occupied, whether they are practicing full time or on an occasional basis. The categories are 1. professional judges, recruited, trained and paid as such and who perform their duty on a permanent basis; 2. occasional professional judges who do not perform their duty on a permanent basis, but are paid for their function as a judge; 3. non-professional judges who sit in courts and whose decisions are binding but who do not fall within the category of professional judges, arbitrators or jury members. This category includes lay judges, i.e. judges without initial legal training who are known in France as "juges consulaires" and in Montenegro, North Macedonia, Slovenia and Serbia as "sudija/sodnik-porotnik".

[5] Page 46.

[6] Page 46.

3. However, as noted at below, the roughly similar figures for the neighbouring jurisdictions of England and Wales, Scotland and Northern Ireland do not translate in practice to Ireland having a greater or similar number of judges and it is impossible to draw such a comparison.

4. Ireland's position at the bottom of the comparative table of judicial numbers has been consistent in previous CEPEJ evaluations.[7] The European Commission uses data from CEPEJ to compile the EU Justice Scoreboard. The most recent Scoreboard notes that "[a]dequate human resources are essential for the quality of a justice system"[8] and indicates that Ireland has the lowest number of judges per head of population in the EU.[9]

5. In contrast, Ireland has the ninth highest number of lawyers per 100,000 inhabitants of the 45 States evaluated by CEPEJ[10] and the eighth highest in the EU.[11]

   Ireland has the lowest number of judges in Europe and by far the lowest in the European Union.

Comparisons with Neighbouring jurisdictions

6. It would be incorrect to take the seemingly comparable figures the CEPEJ provides for Ireland, England and Wales, Scotland and Northern Ireland as an indication that Ireland is similarly, and therefore adequately, judicially resourced.

[7] See reports associated with former evaluation cycles of CEPEJ, available at https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems/former-evaluation-cycles..
[8] 2021 EU Justice Scoreboard, available at p. 28.https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf at p.
[9] Ibid.
[10] European Judicial Systems: CEPEJ Evaluation Report (tables, graphs and analyses), 2020 evaluation cycle (2018 data) at p. 71.
[11] EU Justice Scoreboard 2021 at p. 29.

The use of lay judges

7. First, the CEPEJ notes that the "small number of professional judges per inhabitant in UK - England and Wales (3 per 100,000 inhabitants), UK - Northern Ireland and UK - Scotland, is due to the very high proportion of cases dealt with by non-professional magistrates."[12] Therefore, the CEPEJ figures for those jurisdictions do not take into account the lay judges which carry out judicial functions in those jurisdictions. For example, a publication by the Judiciary of England and Wales, indicates that Magistrates (Justices of the Peace), who are members of the local community without legal background who act as judges in the magistrates' court with a legal adviser and work part-time, deal with over 95% of all criminal cases.[13] Lay justices and magistrates are also a feature of the Scottish and Northern Ireland system.

8. Lay judges are not a feature of the Irish system. This sets Ireland apart from neighbouring jurisdictions with a similar legal system and which according to the CEPEJ figures have a comparable low number of professional judges.

Structure of the Judiciary

9. Secondly, comparisons with neighbouring jurisdictions are complicated by differences in the way in which the Judiciary is structured.[14] First, of the three categories of judges used by the CEPEJ, Ireland has only one: professional judges, recruited, trained and paid as such and who perform their duty on a permanent basis. Members of the Judiciary of Ireland are appointed by the President on the advice of the Government and generally serve in judicial office until they reach the

[12] European Judicial Systems: CEPEJ Evaluation Report (tables, graphs and analyses), 2020 evaluation cycle (2018 data) at p. 46.
[13] The Judiciary of England and Wales: a visitor's guide. Available at https://www.judiciary.uk/wp-content/uploads/2016/05/international-visitors-guide-10a.pdf.
[14] https://www.judiciary.uk/wp-content/uploads/2016/05/international-visitors-guide-10a.pdf

statutory retirement age of 70. There is no provision for the appointment of part-time or temporary judges in Ireland.

10. In addition to lay judges or magistrates referred to above, England and Wales, Scotland and Northern Ireland, also have what CEPEJ describes as "occasional professional judges who do not perform their duty on a permanent basis, but are paid for their function as a judges". For example, in England and Wales there are recorders who make up 42% of judges.[15] Recorders are fee-paid part-time judges who sometimes deal with less complex or serious cases and are paid according to the number of sittings or days worked who sit in both Crown and County Courts. Deputy District judges, who are part-time and fee-paid, make up 21% of judges.[16] They sit in the County Courts and District Registries of the High Court for a number of days a year.

11. The latest CEPEJ statistics indicate that in England and Wales, Northern Ireland and Scotland, there are 10.7, 30.5 and 1.4 occasional professional judges per 100,000 inhabitants respectively.[17] Scotland, for example, provides a breakdown of such judges as: six retired judges, 10 temporary judges, 36 part-time sheriffs, five part-time summary sheriffs and 22 reemployed retired sheriffs.

12. There are also differences in the use of other non-judicial office holders. For example, in Ireland, there are 41 High Court judges and one Master. In Northern Ireland, there are 11 High Court judges and 7 Masters.[18]

Significant differences between the organisation of the Judiciary in Ireland and the Judiciary of England and Wales, Northern Ireland and Scotland must be taken into account when comparing Ireland with such jurisdictions for the purpose of assessing judicial resource requirements in Ireland. A close examination of such

[15] The Judiciary of England and Wales: a visitor's guide. Available at https://www.judiciary.uk/wp-content/uploads/2016/05/international-visitors-guide-10a.pdf.
[16] Ibid.
[17] See CEPEJ-stat database, where data can be filtered by professional judges, occasional professional judges or non professional judges: https://public.tableau.com/app/profile/cepej/viz/CEPEJ-Explorerv2020_1_0EN/Tables
[18] https://www.judiciaryni.uk/about-judiciary/judicial-members

jurisdictions, which appear to have a similar low number of judges confirms the conclusion that Ireland is under resourced.

Comparisons with countries with different types of legal systems

13. It is acknowledged that the disparity in the number of judges across European countries can, to an extent, be explained by differences in legal systems.[19] Ireland has a legal system with a common law tradition which, as an adversarial system, is based on a model under which a judge is often described as being a 'referee' between the parties to a case. In contrast, European legal systems are often inquisitorial in nature, which involves a judge having a role in investigating the facts in a case. It may be that such an inquisitorial system requires more judges. This goes some way towards explaining why, for example, France, Germany and Italy have 10.9, 24.5 and 11.6 judges per 100,000 inhabitants respectively, and why Ireland's figure is so low in comparison.

14. It is also acknowledged that, as noted by the CEPEJ, the number of judges per 100,000 inhabitants may be affected by geographic factors and/or the evolution of European legal systems.[20] It refers to an area in Central and Southeast Europe, where legal systems are influenced by Germanic law and which have more than 20 judges per 100, 000 inhabitants.[21] Moreover, it notes that Eastern European countries traditionally have a very high per inhabitant rate of judges and civil servants, whereas Western and Southern European countries with legal systems influenced by Nordic law, Common law and Napoleonic law tend to have a lower per inhabitant number of professional judges.[22]

15. Notwithstanding such disparities and, while it is easy to suggest that civil law jurisdictions in Europe require more judges due to the often inquisitorial nature of their systems, or because of a pattern of high judicial numbers in a particular

[19] Page 47.
[20] Page 47.
[21] Austria, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Germany, Greece, Hungary, Latvia, Lithuania, Montenegro, North Macedonia, Poland, Serbia, the Slovak Republic and Slovenia.
[22] In particular, Belgium, Denmark, France, Ireland, Italy, Malta, the Netherlands, Norway, Spain, Sweden, UK – England and Wales, UK – Northern Ireland and UK – Scotland.

geographic area, Ireland has increasingly more in common with such civil law jurisdictions with higher judicial numbers.

16. Ireland, together with all of these countries are part of a European legal space which places obligations on the Judiciary of a growing volume and complexity. A majority of the countries referred to in the CEPEJ evaluation report, are members of the European Union. The CEPEJ illustrates that Ireland has the lowest number of judges per head of population in the EU and the EU member State with the second lowest figure, Denmark, still has almost double the number of judges per 100,000 inhabitants as Ireland (6.5).

17. At a broad level, membership of the EU brings the role of members of the Irish Judiciary closer to that of judicial peers in other EU member States, who also apply EU law. The procedure through which judges may (or must in the case of courts of last instance) request the Court of Justice of the European Union to provide a preliminary ruling, applies as equally to judges in Ireland as to judges in, for example Slovakia (25.3 judges per 100,000), Austria (27.3) or the Czech Republic (28.4).

18. The increasing harmonisation of EU law can impose obligations on judges in Ireland which brings their roles closer to the inquisitorial approach taken in jurisdictions with a much higher judicial count. For example, EU law governing consumer contracts places an obligation on national courts to undertake, of their own motion, an assessment of the fairness of consumer contract terms regardless of any raising by the parties of such a point.[23] This requirement is more akin to an inquisitorial model, but applies across the EU.

19. Ireland's judges have, in common with judicial peers in Europe, the requirement to apply a complex framework of human rights law including the Constitution, the

[23] This stems from jurisprudence of the Court of Justice of the European Union in cases such as Case C-240/98 to C-244/98 *Océano Grupo Editorial SA v Rocío Murciano Quintero and Salvat Editores SA v José M Sánchez Alcón Pradès and Others* [2000] ECR I-04941; Case C-415/11 *Mohamed Aziz v Caixa d'Estalvis de Catalunya* (ECJ, 14 March 2013).

Charter of Fundamental Rights of the EU and the European Convention of Human Rights.

20. Moreover, it is the case that major issues must be decided by a higher court in all jurisdictions and often only once irrespective of the size of population or jurisdiction of the highest court of a particular jurisdiction. Cases dealt with by the highest courts tend to be complex and demanding on judicial resources, and the issues are similar across all jurisdictions.

The Judiciary of Ireland's position in a European legal space dilutes any contention that the number of judges required in Ireland is significantly less than in most other European countries.

Part B: Suggested improvements in relation to filling judicial vacancies

1. There are some specific measures which could be taken in relation to filling judicial vacancies which the Court Presidents believe would assist in ensuring that that judicial resources can be utilised to an even fuller capacity.

Delay in filling of judicial vacancies and in being appointed to judicial office

2. In order to provide some context, it is important to refer briefly to the way in which judicial vacancies are currently filled. However, the judicial appointment process is currently the subject of proposed reform. A General Scheme of a Judicial Appointments Commission Bill has been published.[24] If introduced, a new body known as the Judicial Appointments Commission will be established to replace the current Judicial Appointments Advisory Board ('JAAB').

3. Under the Constitution, persons are appointed to judicial office by the President on the advice of the Government. The JAAB, which was established pursuant to the Courts and Courts Officers Act 1995 currently has the function of identifying persons and informing the Government of the suitability of those persons for appointment to judicial office.[25]

4. Section 16(1) of the Act provides that a person who wishes to be considered for appointment to judicial office shall so inform the Board in writing and shall provide the Board with such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to their education, professional qualifications, experience and character. When there a judicial vacancy arises in any of the five court jurisdictions, the Minister for Justice writes to the Chief Justice pursuant to section 16(2) of the Courts and Courts Officers Act, 1995 requesting the Judicial Appointments Advisory Board to furnish her with nominations for the vacancy or vacancies, and the name of each person who has informed the Board of his or her wish to be considered for appointment. The Chief Justice convenes a meeting of the

[24] General Scheme of Judicial Appointments Commission Bill, available at http://www.justice.ie/en/JELR/General%20Scheme%20of%20the%20Judicial%20Appointments%20Commission%20Bill%202020.pdf/Files/General%20Scheme%20of%20the%20Judicial%20Appointments%20Commission%20Bill%202020.pdf.

[25] Section 13(1) of the Courts and Courts Officers Act 1995.

JAAB at the earliest opportunity, which considers any expressions of interest in accordance with its procedures as provided for in s. 14 of the 1995 Act.

5. According to s. 16(4) of the 1995 Act, where fewer than seven persons inform the Board of their wish to be appointed to a judicial office or where the Board is unable to recommend to the Minister, at least seven persons, the Board must submit to the Minister the name of each person who has informed the Board of his or her wish to be considered for appointment to judicial office and the Board must recommend to the Minister for appointment to that office such of those persons as it considers suitable for appointment. If fewer than seven persons apply to the JAAB or if there is more than one vacancy in a court, the JAAB may recommend fewer candidates than seven.[26] For the JAAB to recommend a person for appointment, he or she must meet the statutory criteria specified in the 1995 Act as amended.

6. In advising the President in relation to the appointment of a person to a judicial office the Government must first consider for appointment those persons whose names have been recommended to the Minister pursuant to s. 16 of the 1995 Act.[27] However, the Government may appoint a person to judicial office who was not recommended by the JAAB.

7. The Government may advise the President to appoint to judicial office a person who is already a serving judge.[28] The appointment of judges to higher courts therefore often falls outside the scope of the JAAB. Judicial Appointments Advisory Board may advertise a vacancy in a higher Court and invite applications for suitably qualified lawyers, including members of the solicitor and barrister professions who have been practising for the requisite number of years, and serving judges.

8. When the Government has nominated a person for appointment to judicial office, the President of Ireland and the Taoiseach sign a warrant of appointment. A date is then fixed for a 'swearing in' ceremony as Article 34.6.3° provides for the making and subscribing

[26] Sections 16(4) and 16(5) of the Courts and Court Officers Act 1995.
[27] Section 16(5) of the Courts and Courts Officers Act 1995.
[28] Section 17 of the Courts and Court Officers Act 1995.

by every judge before entering upon his duties as such judge not later than ten days after the date of his appointment or such later date as may be determined by the President, a declaration in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court.

Delay

9. It is the experience of the Court Presidents that, when a judge retires or is appointed to another court, there can be a delay in filling the vacancy. Occasionally there may be a delay in the advertising of the vacancy and the making of recommendation(s) by the JAAB. There may also be a delay in the Government nominating a replacement to the court in which the vacancy arises. Alternatively, there is often a delay between the nomination by the Government of a person to fill the vacancy, and the appointment of the person to judicial office by the President. The Court Presidents understand that the latter is often due to the requirement that the Taoiseach and President both be present to sign the warrant of appointment. While previously there may only have been a few days between nomination and appointment, a number of the Court Presidents have experienced delays of a number of weeks or a number of months in some instances in the filling of judicial vacancies.

10. The removal of any such delays would assist in ensuring that no judicial working time was lost between the retirement of a judge and the appointment and taking up office of a new judge.

11. At a broader level, when the findings of this Working Group result in a recommendation in relation to the number of judges that are required, and in the event that a full complement of judges is accordingly appointed, it would be useful to have a mechanism under which nominations for appointment for judicial office were carried out in a more structured and routine way well in advance of the judge commencing work. As the judicial retirement age is provided for in legislation, it is easy to predict when judicial vacancies will arise.

12. The legislation under which the current JAAB operates provides for the submission by the JAAB to the Minister on request by the Minister either where a judicial office stands vacant or before a vacancy in judicial a vacancy in judicial office arises.[29] Although the number of judges in each jurisdiction is fixed by legislation, there does not appear to be anything preventing anticipated vacancies from being filled in advance.

The removal of delay in all aspects of the judicial appointment process, thereby allowing a judge to take up judicial office at the earliest opportunity would contribute to a more efficient use of judicial resources.

The Retirement Cliff

13. A second issue applies in particular to the Court of Appeal and Supreme Court as collegiate courts and is also referred to in the section of this submission which relates to the Supreme Court at Appendix 5. It stems from the difficulties associated with a judge ceasing to hold office when he or she retires. In collegiate courts, judges hear cases on panels of three in the Court of Appeal and typically in panels of five in the Supreme Court, although a seven judge court may sit for cases of particular importance and judges may sit alone for case management. Although there is often a 'lead' judgment with which other judges may agree with or disagree with in whole or in part, each judge is free to write his or her own judgment.

14. Collegiate courts work together to deliver judgment in cases before the Court regardless if this means the writing of several separate judgments. When a judge is approaching his or her retirement age, the President of the relevant court must take into account when assigning judges to hearings that a judge will need to deliver judgment in the case before he or she retires. Consequently, it is necessary to refrain from assigning a judge who is approaching retirement age to cases several months before he or she actually retires as there is no reasonable prospect of the judge being in a position to deliver the judgment by the date of retirement.

[29] Section 16 of the Court and Court Officers Act 1995.

15. Such a situation has a knock-on impact on other members of a collegiate court who must work towards the date of the retirement of the relevant judge to finalise any judgments involving the retiring judge.

16. Placing a judge approaching the end of his or her tenure on 'lighter' duties is not the most efficient use of judicial resources. It would be preferable if there was a mechanism in place which would allow for a period of time in which a judge may continue to work on and deliver outstanding judgments after retirement, and thereby allowing the judge to continue to sit to hear cases until the date of his or her judicial retirement age.

17. An example of a similar approach may be found in the common law jurisdiction of Canada, where the Judges Act contains the following special retirement provision in respect of judges of the Supreme Court:

"**Retired judge may continue to hold office**

- **41.1 (1)** A judge of the Supreme Court of Canada who has retired may, with the approval of the Chief Justice of Canada, continue to participate in judgments in which he or she participated before retiring, for a period not greater than six months after the date of the retirement.
- **Marginal note: Salary, etc.**

  (2) A retired judge participating in judgments shall receive

  (a) the salary annexed to the office during that period less any amount otherwise payable to him or her under this Act in respect of the period, other than those amounts described in paragraphs (b) and (c);
  (b) an amount that bears the same ratio to the allowance for incidental expenditures actually incurred referred to in subsection 27(1) that the number of months in the period bears to twelve; and
  (c) the representational allowance referred to in subsection 27(6) for the period, as though the appropriate maximum referred to in that

subsection were an amount that bears the same ratio to that allowance that the number of months in the period bears to twelve."[30]

18. The Judicial Pensions and retirement Act 1993, which extends to judicial office holders throughout the United Kingdom also makes provision for completion of proceedings after retirement. Section 27 provides:-

> "27 **Completion of proceedings after retirement.**
>
> (1) Notwithstanding that a person has vacated or otherwise ceased to hold an office to which this section applies—
> (a)he may act as if he had not ceased to hold the office for the purpose of continuing to deal with, giving judgment in, or dealing with any ancillary matter relating to, any case begun before him before he ceased to hold that office; and
> (b)for that purpose, and for the purpose of any proceedings arising out of any such case or matter, he shall be treated as being or, as the case may be, as having been a holder of that office;
>
> but nothing in this subsection shall authorise him to do anything if he ceased to hold the office by virtue of his removal from it.
>
> (2) Where a person has vacated or otherwise ceased to hold a qualifying judicial office but the office in question is one to which this section applies, then, notwithstanding anything in subsection (1) above, any remuneration that may be paid in respect of service of his in that office by virtue of that subsection shall be remuneration by payment of fees (and not a salary) and accordingly that service shall not be regarded as service in qualifying judicial office."

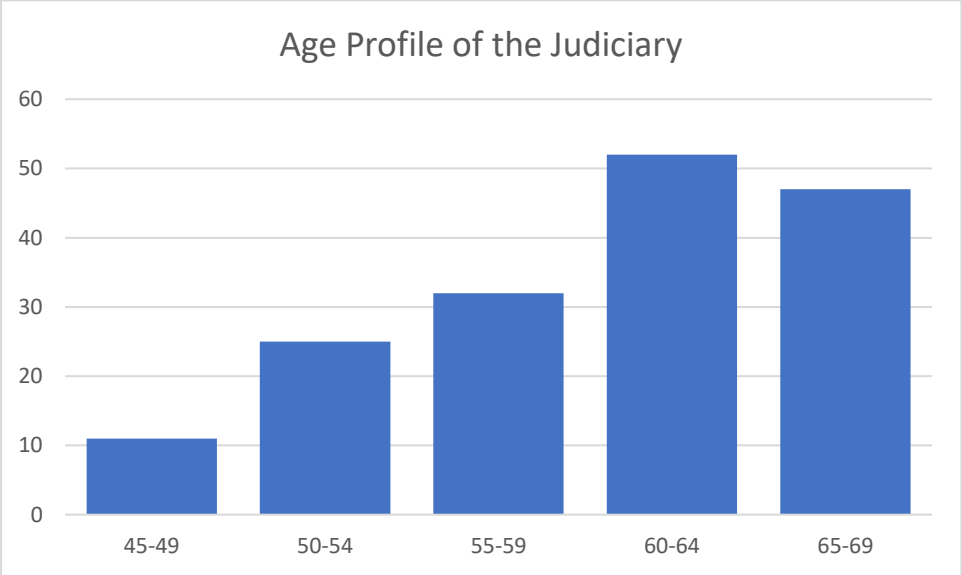
Consideration should be given to making provision in legislation to allow for the completion by members of the Irish Judiciary of proceedings after retirement so that judges can continue to hear cases until they reach the mandatory retirement age.

[30] Section 41.1 of the Judges Act R.S.C. 1985, c. J-1 as amended.

Temporary or unexpected shortages

19. Necessary absences can create significant gaps in judicial resources. The submissions of the Presidents of the District Court, High Court and Court of Appeal make reference to this issue in the context of the situation in those courts. The issue is one which can affect any court or indeed any profession yet there is no mechanism for dealing with such absences for the Judiciary.

The following graph represents the age profile of the Judiciary as of the 15th June 2021.



20. The average age of a judge is 60.5. 93% of judges are aged 50 or above. 59% of judges are aged 60 or above. 28% of judges are aged 65 to 69.

21. While people worldwide are living longer than ever before,[31] and this includes people in Ireland,[32] public health data indicates that the prevalence of most chronic conditions and the percentage of people with health related limitations increases with age.[33] In

[31] Data available from the World Health Organisation at https://www.who.int/data/gho/data/themes/mortality-and-global-health-estimates/ghe-life-expectancy-and-healthy-life-expectancy

[32] Ageing and Public Health: an overview of key statistics in Ireland and Northern Ireland, a report published by the Institute of Public Health, available at https://publichealth.ie/wp-content/uploads/2020/04/20200416-AGEING-PUBLIC-HEALTH-MAIN.pdf

[33] ibid at pp 10-13 and p. 18.

Ireland, 10% of people aged 35 to 44 have health related limitations on activity.[34] That figure is 27% for people aged 55-64.[35]

22. Therefore, statistically, it is likely that at any given time, a proportion of the Judiciary need to take sick leave.

23. In addition to necessary absences due to illness, other judicial resource needs arise which cannot easily be predicted in advance. Often, a judicial vacancy is filled through the appointment of a judge serving on another Court to the vacant post. Of the 143 judicial appointments made during the years 2014 to 2020, 43 involved a serving judge being appointed to judicial office in another court.[36] This amounted to 30% of judicial appointments during that time period. This means that a court can often lose a judge with significant experience on the court until a new judge is appointed to fill the consequential vacancy.

24. Situations also occur which result in an unexpected backlog of cases. For instance, the parts of this submission relating to the High Court, Circuit Court and District Court outline some of the significant backlogs which have been caused by the effects of the COVID-19 pandemic.

Sitting in retirement

25. A potential solution to necessary absences, consequential vacancies and unexpected backlogs may be to consider providing for retired judges to serve on a temporary basis. This solution is also mentioned in the submission provided by the Supreme Court. In Ireland there are only full time, salaried judges who must retire when they reach the statutory retirement age, which is now 70 for all judges.[37] This is not the case in other jurisdictions with a similar legal tradition to Ireland.

[34] Ibid.
[35] Ibid.
[36] Based on figures provided by the Courts Service.
[37] Section 47 of the Court and Court Officers Act 1995 changed the retirement age of judges of the High Court and Supreme Court from 72 to 70, subject to judges appointed prior to the coming into operation of that section. Section 47A as inserted by s. 18 of the court of Appeal Act fixed the retirement age of judges of

Examples from other common law jurisdictions

26. In England and Wales, part-time working is a possibility for judicial salaried roles up to and including High Court level subject to it having no material adverse impact on the business needs of the courts or tribunals or the services to users.[38] A salaried part-time judicial office holder is subject to the same benefits (on a pro rata basis, where applicable) and the same terms and conditions as a full-time office holder and must give up legal practice on appointment.[39]

27. There are also fee paid judicial office holders. These include tribunal appointments, Recorders and deputy district judges. The Judicial Appointments Commission describes them as "often, though not always, similar to the equivalent salaried appointment but may deal with less complex or less serious cases."[40] They sit for a number of days per year and are paid in accordance with the number of sitting days worked. Fee-paid judges may return to legal practice.

28. The current mandatory retirement age for judicial office holders in the United Kingdom is 70.[41] 'Sitting in retirement' is a policy which allows certain salaried judges to retire, draw their pension, and continue to sit as a fee-paid judge if there is a business need. Following a consultation, the Government of the United Kingdom intends to increase the mandatory retirement age to 75. The Ministry of Justice has indicated that it is expected that this will reduce the business need for judges to sit in retirement. However, it considers that, in exceptional circumstances, the ability to draw on retired

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the Court of Appeal at 70, again subject to serving judges appointed prior to the coming into operation of the Court and Court Officers Act 1995. There are no members of the Judiciary to which the retirement age of 72 applies. Section 18 of the Court and court Officers Act 1995 provides for a retirement age of 70 for judges of the Circuit Court. Section 4 of the Courts Act 2019 increased the retirement age of judges of the District Court from 65 to 70. It is possible for a judge to retire earlier when they become eligible for pension benefits on reaching a certain age or after a certain number of years of service.

[38] JAC website.

[39] Ministry of Justice *Judicial Salaried Part-time Working Policy* (September 2020), available at https://judicialappointments.gov.uk/wp-content/uploads/2020/11/Revised-Judicial-Salaried-Part-Time-Working-Policy-Final-002.pdf

[40] Judicial Appointments Commission, 'Part-time judicial roles' https://judicialappointments.gov.uk/part-time-judicial-roles/

[41] The Judicial Pensions and Retirement Act 1993 introduced a mandatory retirement age (MRA) of 70 for most judges and non-legal members in England and Wales, Scotland, and Northern Ireland.

judges remains an important flexibility to help meet immediate demands of courts and tribunals, where there may be temporary shortages, and therefore sitting in retirement will continue.[42]

29. In Canada, federally appointed judges must retire at the age of 75. Judges may also opt for supernumerary status, with a reduced workload. To be eligible, judges must be 65 and have served at least 15 years on the bench, or have 10 years of service by the age of 70.[43] Section 28 of the Judges Act provides:-

"Supernumerary Judges

Federal Courts and Tax Court

28(1) If a judge of the Federal Court of Appeal, the Federal Court or the Tax Court of Canada notifies the Minister of Justice of Canada of his or her election to give up regular judicial duties and hold office only as a supernumerary judge, the judge shall hold the office of supernumerary judge of that Court from the time notice is given until he or she reaches the age of retirement, resigns or is removed from or otherwise ceases to hold office, or until the expiry of 10 years from the date of the election, whichever occurs earlier, and shall be paid the salary annexed to that office.

Restriction on election

(2) An election may be made under subsection (1) only by a judge

(a) who has continued in judicial office for at least 15 years and whose combined age and number of years in judicial office is not less than 80; or

(b) who has attained the age of 70 years and has continued in judicial office for at least 10 years.

Duties of judge

(3) A judge who has made the election referred to in subsection (1) shall hold himself or herself available to perform such special judicial duties as may be assigned to the judge

(a) by the Chief Justice of the Federal Court of Appeal, if the judge is a judge of that Court;

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[42] See Ministry of Justice judicial Mandatory Retirement Age: response to consultation available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967234/judicial-mandatory-retirement-age-consultation-response.pdf at p. 7.

[43] Section 28 and 29 of the Judges Act.

> **(b)** by the Chief Justice or the Associate Chief Justice of the Federal Court, if the judge is a judge of that Court; or
> **(c)** by the Chief Justice or the Associate Chief Justice of the Tax Court of Canada, if the judge is a judge of that Court."

30. The retirement age of provincially appointed judges is set out in various pieces of legislation establishing the provincial courts, which is often 70. Again, the relevant legislation often provides for supernumerary judges.

31. The salary of a supernumerary judge is the salary annexed to the office of a judge of that Court, other than the office of a Chief Justice or Associate Chief Justice.[44] The conditions of eligibility for the office of supernumerary judge are the same as the conditions under s. 42 of the Judges Act, which allow a judge in to receive "an annuity equal to two-thirds of the salary annexed to the office held by the judge at the time of his or her resignation, removal or attaining the age of retirement, as the case may be." Therefore, a supernumerary judge receives full salary and the cost to the State of a judge electing to be supernumerary is only one third of a full judicial salary.

32. In the United States, a federal court judge who has reached the age of 65 and who has a reached a figure of 80 in respect of age combined with years of service may take 'senior status', which involved a judge receiving a full salary for a reduced workload.[45] The service requirements for a judge to retire with an annuity equal to the salary the judge received at the time of retirement are the same as those which must be fulfilled in order to take senior status.[46] For a judge to continue to receive the salary of a senior status judge, a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met certain requirements relating to work undertaken as provided for in the relevant legislation.[47]

[44] Judges Act, s. 28(4)
[45] 28 U.S. Code § 371
[46] Ibid.
[47] Ibid.

Sitting of retired judges in Ireland

33. In Ireland, providing for judges who reach the mandatory retirement age to serve for a certain length of time would allow the system to benefit from the expertise of senior, experienced judges when the need arises. It would also allow for judges who reach the age of 70 who are willing and capable of continuing to provide service to do so without the requirement to have a full case load for an extended time period. Such an approach would be cost effective for the State, which would only be required to pay the difference between the annuity to which the judge is entitled and a full salary or a proportion thereof depending on the length of time for which the judge would continue to work.

34. It is suggested that such an approach may be a better option than, for example, the appointment of fee paid judicial office holders as provided for in England and Wales who may then return to practise as lawyers. There is a tradition and it is provided in the Code of Conduct of the Bar of Ireland that judges following retirement or resignation, who return to the Bar may not practice in a court of equal or lesser jurisdiction than the court of which they were a judge, which would create practical difficulties.[48]

35. Although there has been limited case law involving persons who wished to return to practise after being a member of the Judiciary,[49] the position of a person who previously practised who is appointed a judge and on retirement seeks to recommence practise as a barrister remains for consideration.[50] There may be constitutional difficulties in respect of a process which allowed barristers or solicitors to be appointed judges and then return to practise. First, there is a requirement in Article 25.3 of the Constitution that "[n]o judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument". Second, such an approach may not be consistent with the principle of judicial independence as provided for in the Constitution and Article 6 of the European Convention on Human Rights.

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[48] Code of Conduct of The Bar of Ireland (26th July 2021), article 5.32, available at https://www.lawlibrary.ie/media/lawlibrary/media/Secure/Code-of-Conduct-20-7-20.pdf,

[49] *In the matter of the Solicitors (Ireland) Act 1898 and In the matter of an Application by Sir James O'Connor* [1930] I.R. 625; *White v the Bar Council of Ireland & ors* [2017] 1 I.R. at 290.

[50] As noted by the Courts of Appeal (Finlay Geoghegan J) in *White v the Bar Council of Ireland & ors* [2017] 1 I.R. at 290.

36. In addition, European standards regarding judicial independence indicate a preference for permanent judges rather than probationary judges or judges appointed for a fixed term. The Council of Europe recommends that judges should have guaranteed tenure until a mandatory retirement age, where such exists.[51] If judges are to have a term in office, it should be established by law.[52] Although the recommendations do allow for the appointment of judges on a probationary or fixed term basis, best practice is that in such cases the decision to confirm or renew the contract must be made by an independent body, not the executive or legislative power.[53]

International standards

37. Any mechanism through which retired judges are appointed on a temporary basis would need to comply with the constitutional guarantee of judicial independence and relevant international standards.

38. Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, on judges: independence, efficiency and responsibilities provides that "[t]he authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers." With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers."[54] However, "where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and

[51] Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, on judges: independence, efficiency and responsibilities, para. 49. See also the Venice Commission's Report
[52] Ibid at para 50.
[53] Ibid at para. 51. The European Commission for Democracy through Law (Venice Commission) echoes this preference in its Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010).
It refers to a decision of the Appeal Court of the High Court of Justiciary of Scotland (*Starr v Ruxton,* [2000] H.R.L.R 191 and *Millar v Dickson* [2001] H.R.L.R 1401) as illustrating the sort of difficulties that can arise in relation to fixed term appointments. The Scottish Court held that a criminal trial before a temporary sheriff appointed for a fixed term of one year and who was subject to the discretion of the executive not to reappoint him was inconsistent with the guarantee of trial before an independent tribunal in Article 6(1) of the European Convention on Human Rights.
[54] Supra note 51 at para 46.

competent authority drawn in substantial part from the judiciary… should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice."[55] This was highlighted in respect of Ireland in the recently published European Commission Rule of Law Report Country Chapter on the Rule of Law situation in Ireland.[56] The Magna Carta of Judges adopted by the Consultative Council of European Judges in 2010 also provides that "[d]ecisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence."[57]

Consideration should be given the providing for the sitting of judges in retirement to help to meet the judicial resource demands arising out of temporary and/or unexpected shortages. It is suggested that the appointment of retired judges through the proposed Judicial Appointments Commission would be the best way to safeguard judicial independence if judges were to be recruited from retirement.

Review of retirement age

39. Another way of contributing to the effective use of judicial resources would be to consider extending the mandatory retirement age for judges. Following a recent consultation process, the Government of the United Kingdom has decided to increase the mandatory retirement age of judicial office holders in the United Kingdom from 70 to 75.[58] The rationale for undertaking the review of the retirement age is to reflect the increased life expectancy of people since the mandatory retirement age of 70 was legislated for in 1993, and to address the resourcing needs of the judiciary. The increase will provide judicial office holders with the option of sitting for longer if they wish to do so. It is considered that the change will promote diversity by allowing people

[55] Ibid at para 47.
[56] European Commission Rule of Law Report Country Chapter on the Rule of Law situation in Ireland at p. 4.
[57] Consultative Council of European Judges, Magna Carta of Judges, at para. 5.
[58] Ministry of Justice 'Judicial Mandatory Retirement Age: responses to Consultation', available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967234/judicial-mandatory-retirement-age-consultation-response.pdf and Press release 'Judicial retirement age to rise to 75' (9th March 2021) https://www.gov.uk/government/news/judicial-retirement-age-to-rise-to-75 .

to take up a career as a judge later in life and making judicial office more attractive to a wider group of people.

40. It may be worth undertaking a review of the mandatory judicial retirement age in Ireland. The same potential benefits identified in the consultation process of the United Kingdom may apply in Ireland. Providing judges with the option of sitting for longer may be another way of retaining highly experienced judges. It may also cost effective way of increasing the number of judges as judges who would ordinarily be entitled to a pension on reaching the age of 70 could continue to work. The extension of the mandatory retirement age may also encourage a wider pool of people to apply for a judicial office if they were given the opportunity to do so later on in their legal careers. Consideration could be given to providing for some flexibility for judges who choose to sit beyond 70, such as working on a part-time basis.41. Such a step would not overcome the need for a greater number of judges in general, but would be part of an overall approach in addressing judicial resources needs.

Consideration should be given the increasing the mandatory judicial retirement age.

Part C: Impact of Proposed Reforms on Judicial Resources

1. Much reform has been implemented in order to make the courts system more efficient. There is always an opportunity to implement further reform to bring about greater improvement and efficiency in the system. It is beyond the scope of this submission to make detailed recommendations for reform of the court system. However, some of the jurisdiction specific sections in Part D suggest some measures which could be taken, drawing on the experience of the Court Presidents.

2. Any reform measures can only contribute to generating improvement to a certain extent. Reform of the system and having an adequate number of judges are not alternatives, but are interdependent.

3. The terms of reference of the Judicial Planning Working Group include a review of a number of forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers. While it cannot be foreseen what the impact may be in relation to many of the stated proposals, the following brief observations may be made.

Report of the Review of the Administration of Civil Justice

4. The *Report of the Review of the Administration of Civil Justice* makes over 90 recommendations as measures concerning changes in court procedure and, practice, improved physical and ICT facilities and new administrative arrangements.[59] As noted in the introduction to the Review Group's report, some of the recommendations are more far-reaching that others.[60] It is far beyond the scope of this submission to revisit the Review Group's report or undertake a comprehensive review of the civil or criminal administration of justice. However, the Court Presidents endorse the recommendations of the Review Group in general. If implemented, the recommendations of the Review Group should improve the efficiency of the court system. However it is suggested that it will be some time before the positive outcomes of the implementation of the recommendations will be embedded in the system.

[59] Review of the Administration of Civil Justice Report (October 2020), available at https://www.gov.ie/en/publication/8eabe-review-of-the-administration-of-civil-justice-review-group-report/.
[60] Ibid.

The Court Presidents endorse the *Report of the Review of the Administration of Civil Justice* and expect that, in time, lead to the more efficient administration of civil justice.

Below are some examples of recommendations which might be considered by the Judicial Planning Working Group in the context of its terms of reference.

(i) Procedural reform

5. Regarding procedural reform, the Review Group notes some reforms already legislated for which it suggested are not yet embedded, such as:

- pre-action protocols which include requirements that must be complied with by the parties to clinical negligence actions before such actions are brought; [61]
- case management;[62]
- pleadings reform so that the rules of court regulating the content of pleadings be amended to require parties to plead their case with far greater precision than has been the case to date with a view to ensuring that the real issues in dispute can be identified prior to trial.[63]
- the procedure for adducing expert evidence;[64]

The Court Presidents agree with the above recommendations of the Review Group regarding procedural reforms legislated for but not yet embedded , subject to some observations in relation to case management.

(ii) Case management

6. The Review Group report notes that strong support reflected in submissions by the Judiciary, legal profession, private and State sector, for the extension of case management, in particular to a wider range of litigation in the High Court. However, it recognised that this would present resourcing challenges in particular for the High Court,

[61] Ibid at p. 130.
[62] Ibid.
[63] Ibid at p. 131
[64] Ibid.

where case management powers are at present vested in judges only. It recommends the appointment of a sufficient number of suitably qualified court officers as Deputy Masters to preside at case management conferences, whether in conjunction with, or as an alternative to, greater involvement by judges in case management. This, it suggested would enable judicial resources to be concentrated on (a) hearing pre-trial applications disposal of which requires the exercise of judicial powers which could not, within the bounds of Article 37.1 of the Constitution, be assigned to a Master or Deputy Master and (b) conducting trials.

7. The Review Group suggests that greater use could be made of the case management rules in the Circuit Court in cases to which those rules already apply, and that consideration could usefully be given to extending case progression by practice direction to other categories of case.

8. It is the experience of the Court Presidents that court-led case management has significant benefits of identifying and narrowing down issues and therefore resulting in a shorter substantive hearing. Case management is discussed in more detail in the sections of this submission relating to the High Court and Supreme Court at appendices 3 and 5. In summary, case management can produce a number of benefits, such as:

- identifying and reducing the issues to be tried, and therefore shortening the hearing and reducing the cost of litigation;
- focussing parties on the issues which often results in earlier settlement, and thereby reducing costs and saving court time;
- crystallising the issues and therefore reducing the time it takes to hear a case;
- in complex cases, familiarising judges with the issues in a case and therefore reducing the time it takes to hear a case.

9. However, the Court Presidents believe that it is important that case management be conducted by judges in order to be effective. First, the management of a case by the judge who will hear the substantive issues assists the judges in becoming familiar with the case. This is an investment which ultimately can result in the substantive hearing taking less time and being conducted more efficiently. In addition, judges, in particular those hearing

cases in specialised, complex areas of law, are best placed to case manage such proceedings rather than officials who are unfamiliar with specialised areas of law.

10. In addition, case management is not a panacea and is best suited to complex cases. Moreover, the extension of case management would require additional judicial resources as case management itself takes time.

Therefore, the view of the Court Presidents is that case management should be extended but that it should be performed by judges. This can only be achieved if there are enough judges to carry out case management.

(iii) Previous recommendations

11. The Kelly Review Group also refers to reforms already recommended in previous reports, such as:

- the extension of pre-action protocols beyond clinical negligence cases as recommended by the Expert Group on Article 13 of the European Convention on Human Rights;[65]
- provision in statute for limitations on adjournments as recommended by the Expert Group on Article 13 of the European Convention on Human Rights;
- provision in rules of court for automatic discontinuance of proceedings where within 30 months proceedings have not been set down for trial or in cases not requiring to be set down for trial, have not had a date fixed for trial, and in which there has been no proceeding (not including an entry of appearance or delivery of a notice of intention to proceed) that appears from records maintained by the Court;
- recommendations in the Law Reform Commission's Report on Consolidation and Reform of the Courts Acts.

12. It also recommends the following procedural reforms:

[65] Ibid at p. 133

- the harmonisation of the forms and proofs necessary for the commencement of proceedings across the first instance jurisdictions and (b) the standardising and simplification of terms and language used in civil procedure;
- specific reforms regarding lodgement and tender procedure; notices for particulars in personal injuries actions, interrogatories; *Lis pendens* procedure; summonses to produce documents; requirement to enter appearance and judgment in default of defence;
- the establishment of a separate and distinct High Court clinical negligence list and that the required judicial and other resources be made available to ensure the proper functioning of this list. The viability of such a list will be heavily dependent on judicial resources and attendant supports.
- the establishment of a dedicated list, by way of adjunct to the Commercial Court, to hear and determine intellectual property disputes and disputes concerning technology.

The Court Presidents agree that the above recommendations in relation to procedural reform would improve the system. However, most would require more, and not fewer judges.

(iv) Alternative Dispute resolution

13. The Review Group notes that Ireland "now has an extensive and robust legal framework supporting recourse to ADR in the form of the rules of court and provisions of the Arbitration Act 2010 and the Mediation Act 2010 and does not see any immediate need for further enhancement of that framework."[66] It believes that it is perhaps "still too early to gauge the practical effectiveness or otherwise of the recent mediation reforms and that in the absence of data (the number of cases wherein parties have been invited to consider mediation etc.) at this time, any such assessment would be speculative."[67]

14. It notes the challenges faced by practitioners and judges in ensuring that ADR is used and that recourse to litigation is a last resort. The Review Group endorses views

[66] Ibid at p. 142
[67] Ibid at p. 142

expressed by some who responded to its consultation as to the importance of education and orientation focused on practitioners and litigants and extension of ADR to categories of dispute where it is underutilised, and that such observations suggest a need for cultural change and perhaps a change in emphasis in certain areas of professional legal training and education.

15. The Court Presidents agree that, to varying extents in each court jurisdiction, ADR is useful and has some potential to alleviate the burden on judicial time. However, it is more applicable to some courts than others and to some types of proceedings more than others. For example, the Supreme Court submission notes that ADR has limited impact in Supreme Court appeals under the new constitutional arrangements. Moreover, any shift in culture or increased education in relation to ADR as suggested by the Review Group would of itself require that judges have sufficient time to undertake judicial training in relation to ADR, which requires more judicial resources.

(vii) Lay litigants

16. Many people represent themselves in proceedings, whether out of necessity or choice, and are entitled to do so. However, unrepresented litigants can in general significantly reduce the efficiency of court proceedings involving such litigants. The proportion of lay litigants is significant. While data is not available in all courts, Court of Appeal figures indicate that 24% of litigants in 2020 were lay litigants. The figures were: 29% in 2019; 31% in 2018; 28% in 2017; 27% in 2016; 29% in 2015. In the Supreme Court, 40% of applications for leave to appeal were filed by lay litigants in 2020. The percentage was 30% in 2019 and 33% in 2018.

17. The Court Presidents note the commitment in the Department of Justice Action Plan 2021 to commencing a review of the Civil Legal Aid Sceme in Q3 of 2021.[68] Such a review

[68] Department of Justice Statement of Strategy Justice Plan 2021, available at http://www.justice.ie/en/JELR/Department_of_Justice_Strategy_Statement_2021_-_2023.pdf/Files/Department_of_Justice_Strategy_Statement_2021_-_2023.pdf and Action Plan 2021, available at http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf

is a welcome opportunity to examine how a greater number of people who wish to be legally represented but cannot afford legal representation might be brought within the civil legal aid scheme.

18. The Court Presidents also endorse the reommendation of the Review Group on the Administration of Civil Justice that:

- A central on-line information hub should be created through which dedicated legal and practical information is provided for those contemplating bringing proceedings without professional representation; and provision of "drop in" facilities in proximity to court buildings should be established to enable unrepresented litigants to avail of voluntary legal advice services; and
- The Department of Justice and Equality should establish a Steering Group comprised of the various agencies and bodies concerned to co-ordinate planning by the public sector, voluntary advice sector and branches of the legal profession of measures to facilitate impecunious litigants in need of legal advice and assistance. This should include an examination of the existing information sources for individuals seeking advice or assistance; provide content for and design of a new, dedicated website to assist such individuals; identifying and providing for categories of individual with particular needs; identifying opportunities for co-location of legal advice or assistance services with court buildings, existing and planned; and provision of input to the court rules committees on opportunities for simplification of procedures and language in rules and forms.

19. In addition, the Chief Justice has established a working group on access to justice comprised of: the Chief Justice, an additional judge of the Supreme Court, a representative of the Bar, a representative of the Law Society, the CEO of FLAC and the Chair of the Legal Aid Board. The Group will hold a conference in October 2021 with a view to highlighting existing initiatives to improve access to justice and examine unmet legal needs, with a view to identifying the Group's strands of work.

20. The Chief Justice's Working Group recognises that access to justice is a multi-faceted issue and is considering it from a wide perspective. One of the areas which may be

considered and which will be the subject of a workshop at the conference is the issue of unrepresented litigants.

The O'Malley Review on victims of crime

21. The *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* made recommendations in relation to key aspects of the criminal justice process in so far as it relates to vulnerable witnesses and identified ways in which the treatment of such witnesses might be improved.[69]

22. The recommendations of the O'Malley Report which appear to be most relevant to the issue of judicial resources are the following, which concern delay:

- Legislation should be introduced as soon as possible along the lines proposed in the General Scheme for a Criminal Procedure Bill drawn up in 2015 by the Department of Justice and Equality, to provide for the establishment of preliminary trial hearings. The governing legislation should allow, to the greatest extent practicable, for issues that may contribute to delay in the commencement of trials or to the adjournment of trials to be addressed at such hearings.[70]
- The Sentencing Guidelines and Information Committee, established under the terms of the Judicial Council Act 2019, should consider giving priority to drawing up a guideline on discounts for guilty pleas and also to sentencing guidelines for sexual offences, especially those offences in respect of which there are no judicially developed guidelines.[71]
- Further empirical research should be undertaken on the processing of sexual offence cases from the time at which a complaint is made until the case comes on for trial, in those cases where a prosecution is initiated. The purpose of this

[69] *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* available at http://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf
[70] Ibid at p. 63.
[71] Ibid at p. 121.

research would be to identify any problems that may contribute to delay and any measures that might be adopted to address those problems.[72]

- Any proposal for the appointment or allocation of additional judges to the criminal courts should be preceded by an assessment of the impact which this would have on the court accommodation and facilities that are available, or that would be required, for victims and other persons participating in or attending sexual offence trials.[73]

23. The report makes recommendations in relation to training for persons dealing with victims of sexual crime, including that all judges presiding over criminal trials for sexual offences and all lawyers appearing in such trials should have specialist training which equips them with an understanding of the experience of victims of sexual crime and that they should also have training in connection with the questioning of witnesses who are especially vulnerable by virtue of youth or disability.[74] It recommends that the Judicial Studies Committee, established by the Judicial Council Act 2019, should consider providing such training for judges.[75]

24. With regard to the potential impact of the proposals on the requirement for judicial resources, the following observations may be made:

- Preliminary hearings may reduce delays when such a process is embedded. However, requisite judicial resources are required in the first place in order to conduct preliminary hearings;
- Adequate time for judges to undertake the training recommended in the O'Malley report is needed;
- Both in the case of trials involving vulnerable witnesses and criminal trials more broadly, additional judges are needed.

[72] Ibid.
[73] Ibid.
[74] Ibid at p. 130.
[75] Ibid.

Family Justice Reform

25. The Family Court Bill General scheme proposes the establishment of a District Family Court, a Circuit Family Court and a Family High Court as divisions within the existing court jurisdictions.[76] Such courts would be comprised of principal judges appointed from amongst the judges of the District Court, Circuit Court and High Court, and such number of ordinary judges as may be fixed by legislation (not less than three in the case of the Family High Court).[77] In the case of the District Family Court and Circuit Family Court, the judges of those courts would be assigned to those courts for a minimum of three years and there would be a requirement for such judges to take such course or courses of training or education, or both, as may be required by the Judicial Studies Committee established by the Judicial Council.[78]

26. The General Scheme envisages the division of the State into geographical areas known as Circuit Family Court circuits and District Family circuits for the purpose of the family courts and the establishment of the Family Law Rules Committee. The General Scheme proposes a significant reconfiguration of the jurisdiction of the courts in respect of family law proceedings. The High Court would hear only special care cases, adoption cases and abduction cases at first instance, together with appeals from the Circuit Family Court and cases stated from the District and Circuit Family Courts. All other family law proceedings would be heard in the District Family Court or Circuit Family Court.

27. The General Scheme provides that a judge of the District Family Court before whom proceedings commenced in that Court are pending may, on the application of any party or on his or her own motion, transfer the proceedings to the Circuit Family Court if he or she considers the Circuit Family Court to be the more appropriate Court, depending on (a) the number of issues that remain in dispute between the parties, (b) the complexity of these issues, (c) where applicable, the value of any land or other assets to which the proceedings relate, and (d) the likely duration of the proceedings.

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[76] Family Court Bill General Scheme (September 2020) available at http://www.justice.ie/en/JELR/Family%20Court%20Bill%20General%20Scheme.pdf/Files/Family%20Court%20Bill%20General%20Scheme.pdf

[77] Ibid., Head 6, Head 11 and Head 16.

[78] Ibid., Head 6 and Head 11.

28. The Court Presidents are of the view that successful reform of the family justice system depends on adequate resources, both infrastructure and personnel being made available. It is important that any reformed family court system has enough judges with enough time to undergo appropriate training and that any reconfiguration of jurisdiction in family law proceedings between the court levels is taken into account when considering judicial resource needs in each court.

Review of Legal Aid financial eligibility criteria

29. The commitment by the Department of Justice to review the legal aid financial eligibility criteria is welcome. Without such a review having commenced, it is impossible to ascertain its potential consequences for judicial resource needs. However, any change to the criteria which would have the effect of bringing more people within the criteria for legal aid may result in more persons having access to legal representation, and may potentially increase the number of persons having recourse to the courts.

Courts Service Modernisation Programme

30. Significant reform has been recommended, implemented or is expected in relation to the modernisation of the courts.

31. According to the Long Term Strategic Vision of the Courts Service to 2030, *Supporting Access to Justice in a Modern, Digital Ireland,* [79] the Courts Service seeks to provide a modern, transparent and accessible courts system that is quicker, easier to access and more efficient. A number of the outcomes envisage a move to digital processes and e-litigation. The Modernisation Programme intends to deliver the Court Service's Long Term Strategic Vision. The ten year Programme has been designed around a four phased approach to ensure planned outcomes are achieved, and that funding can be re-evaluated at regular intervals. The programme is currently in the Phase 1 or the Transition Phase which focuses on establishing the foundations for modernisation. There are four Pillars

[79] https://www.courts.ie/acc/alfresco/b1bf7300-e162-46cd-995e-abc042799b87/Strategic%20Vision%202030.pdf/pdf#view=fitH.

of Reform: (i) Civil Reform; (ii) Criminal Law Reform (iii) Family Law Reform; (iv) Organisational Reform

32. The onset of the COVID-19 pandemic has accelerated technological change in the courts, which quickly implemented new ways of working to ensure the continued administration of justice. Numerous Practice Directions and statements were issued by the Court Presidents and the Courts Service outlining the response to the pandemic[80] and the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 provided for a range of reforms to respond to new challenges and legal issues arising from the COVID-19, including, among other measures, placing remote hearings on a statutory footing in recognition of the move towards remote hearings. The courts continue to make use of remote hearings where possible.

33. Investment in ICT in the courts suffered significantly during the recession and the funding allocated to the Modernisation Programme and the associated reforms which would bring Ireland closer in line with other jurisdictions are very welcome. There is no doubt that major reforms in the way the courts system uses technology with the consequence of a considerable increase in access to digital services will result in greater efficiency, better services for all court users and support improved access to justice.

34. However, it is very challenging to consider at this early stage what, if any, the impact of such reforms may have on judicial resources. The Programme is a long term, ten year programme. Moreover, although digitisation will generate greater overall efficiencies, it is unlikely to reduce the amount of sitting time or other work conducted by judges in relation to cases.

35. Further, any significant changes to the way judges work arising out of ICT focused modernisation will require appropriate judicial training and the resources needed for such training to be conducted during work time.

[80] These are available at https://www.courts.ie/covid-19-response-updates.

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

36. The Assisted Decision-Making (Capacity) Act 2015 provides for, among other things, the making of applications to the Circuit Court or High Court in respect of 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 the Circuit Court of decision-making representatives of such persons. The Act provides for the conferral of jurisdiction in relation to capacity and decision-making matters on the Circuit Court save for a number of matters which are reserved to the High Court. Whilst the Circuit Court will become the most common jurisdiction in relation to capacity issues, the High Court will retain its jurisdiction to deal with appropriate matters as they arise. This was confirmed in the Supreme Court decision of *In Re JJ* [2021] IESC 1.

37. The submission of the Circuit Court in Part D notes that additional Circuit Court judges will be required to deal with new work associated with this legislation.

Judicial Appointments Commission Bill

38. According to the Summer 2021 Government Legislative Programme[81], the purpose of the Judicial Appointments Commission Bill is to amend the law in relation to judicial appointments and to establish a Judicial Appointments Commission to make recommendations with regards to judicial appointments. If enacted, the Judicial Appointments Commission Bill will result in multiple members of the Judiciary participating on both the Commission itself and any statutory committees that will fall under its remit.

39. The General Scheme of the Judicial Appointments Commission. As well as the involvement of the Chief Justice, other Court Presidents and any judges in the Commission, the General Scheme provides for, amongst other things, the establishment of a Judicial Appointments Procedures Committee consisting of five members of the

[81] Department of the Taoiseach, Government Legislative Programme – Summer 2021, https://assets.gov.ie/133424/38c66205-61b1-4a61-99e0-05aca9eaff4b.docx

Commission, two of whom will be lay members. It is proposed that the Chief Justice or a Judicial Council nominee member, as determined by the Chief Justice, shall act as Chairperson. It also provides for the establishment of committees to assist the Procedures Committee which shall consist of such and so many members of the Commission, as determined by the Commission itself, subject to the committee comprising the same number of lay members as judicial members. Accordingly, this proposal may have the effect of placing a further increase on judicial resources as judges will serve of the committees of the Judicial Appointments Commission and will be required to carry out work on getting the Commission and its Committees up and running in addition to establishing the procedures of the Commission and requirements for judicial office.

Programme for Government commitment to establish a new Planning and Environmental Law Court

40. The Programme for Government, published in June 2020, states that "[i]t is evident that in areas such as planning law three is a need for greater specialism to enable the more efficient management of cases." Specifically, the Programme includes a commitment to establish a 'Environmental and Planning Law Court'. It is proposed that this Court would be managed by specialist judges and would operate on the same basis as the existing Commercial Court model.[82]

41. Allied to this commitment is a review and reform of the judicial review process, whilst adhering to the State's European Union law obligations under the Aarhus Convention. Whilst particulars of this proposal and how such a court would be structured and operated have not yet been published, it is envisaged that should such commitments come to fruition, they will undoubtedly lead to a demand on existing judicial resources.

[82] Ibid

Insolvency Review

42. The Department of Justice are currently undertaking a statutory review of Part 3 of the Personal Insolvency Acts 2012 – 2015. It is expected that this review will be completed in Q3 of 2021.[83] It is expected that any recommendations necessitating legislative change will be addressed by the Personal Insolvency (No. 2) Bill 2020. Pending the publication of the review, it is not possible to indicate as to whether any of the recommendations made will impact on judicial resources.

Economic development

43. Whilst the domestic economic outlook remains uncertain, in light of the ongoing COVID-19 pandemic, it is likely that economic factors will impact on judicial resources going forward.

44. For example, a recent report indicates that 169 corporate insolvencies were recorded in the first half of 2021 is represents a 38% decrease on the figure for the same period in 2019.[84] The authors of that report have commented that:

> "[t]he continued low level of corporate insolvency activity is likely to be influenced by the broad range of government measures introduced to support businesses during the pandemic."[85]

45. The report authors go on to state that:

> "The current crisis has created a significant challenge for many otherwise viable Irish companies and we anticipate that the first half of 2022 will paint a more accurate picture of how the Covid-19 pandemic has influenced the economy and the knock-on effect on our SME sector."[86]

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[83] Department of Justice, Justice Action Plan – Mid Year Progress Report, 12 August 2021 < http://www.justice.ie/en/JELR/Justice-Plan-2021-Mid-Year-Progress-Report.pdf/Files/Justice-Plan-2021-Mid-Year-Progress-Report.pdf> accessed 24th August 2021

[84] Deloitte, Corporate Insolvency Statistics H1, < https://www2.deloitte.com/ie/en/pages/finance/articles/Decrease%20in%20level%20of%20corporate%20insolvencies%20in%20H1-%20Deloitte%20.html> accessed 24th August 2021

[85] ibid

[86] ibid

46. The establishment of the Commercial list in the High Court in 2004 was driven primarily by an increase in economic activity in Ireland at the time, and the consequential demand that activity was placing on the courts system. Conversely, the fallout from the economic downturn precipitated the introduction of certain measures to address the consequences brought about by the downturn, in particular, in relation to personal insolvency. Part Six of the Personal Insolvency Act 2012 provided for the amendment of the Courts Acts to create a cadre of Specialist Judges of the Circuit Court to facilitate the speedy consideration of insolvency applications by that Court. In June 2013, six such judges were appointed. As of August 2021, two of these judges remain serving in office.

47. Economic development or contraction is likely to result in an increase in the demand on judicial resources in areas such as corporate insolvency, family and litigation more generally.

Other reforms

48. There are other recent or forthcoming proposals which are likely to impact judicial resources which are not mentioned in the JPWG terms of reference but are referred to in the court jurisdiction specific submissions, such as:

- Amendment to the Data Protection act 1988;[87]
- The Residential Tenancies Act 2004;[88]
- The Criminal Procedure Act 2019;[89]
- Electoral Reform Bill 2020.[90]

[87] See submission of the President of the Circuit Court at Appendix Two.
[88] Ibid.
[89] See submission of the President of the High Court at Appendix Three.
[90] The General Scheme of the Electoral Reform Bill 2020 proposes the establishment of an independent Electoral Commission. The Chairperson, nominated by the Chief Justice, shall be either a former judge of the Superior Courts or a judge of the Supreme Court, a judge of the Court of Appeal or the High Court (following consultation by the Chief Justice with the President of the respective court).

The Judicial Council

49. The Court Presidents agree with the submission which was provided by the Judicial Council to the Judicial Planning Working Group in relation to the consequences of the involvement of judges in Judicial Council work and judicial training for the workload of judges. In that context, the submission of the High Court also highlights the work which will arise for judges upon the full commencement of the Judicial Council Act, in particular in respect of: (1) the disciplinary procedures in the Part 5 of the Judicial Council Act (the Sentencing and Personal Injuries Guidelines and (3) Judicial Education.

50. The commitment of judicial time associated with the obligations involved in the Judicial Council apply to all court jurisdictions.

Judicial Resources Impact Assessment

51. The Court Presidents are of the view that the assessment by the Judicial Planning Working Group of the potential impact of recent or forthcoming legislative proposals on judicial resource requirements presents a suitable opportunity to make a general recommendation in relation to this issue. The non-exhaustive list of recent or forthcoming proposals in the terms of reference in of the JPWG and mentioned in this submission, most, if not all of which create a need for more judges, illustrates a need to carry out an assessment of the potential impact of proposed legislation on judicial resources before enactment.

52. The submission of the President of the District Court refers to the particularly significant impact that new legislation has on the District Court, where the creation of most new offences gives rise to a jurisdiction to try them in the District Court. Examples include the Fines (Payment and Recovery) Act 2014 and the Victims Directive and Criminal Justice (Victims of Crime) Act 2017 which have greatly contributed to the workload of judges of the District Court. Although legislation can have a significant benefit to society, it can often create a need for additional judicial resources which is not addressed.

It is recommended a judicial resources impact assessment be carried out to assess the potential impact of proposed legislation on judicial resources.

Non case related commitments

53. In addition to work carried out in respect of cases, judges are expected to devote an ever increasing amount of time to other commitments. Such commitments are discussed in the submissions of the Supreme Court and High Court and apply in respect of all court jurisdictions. It is expected that the OECD research project will reflect the demand of such commitments on judicial time.

55. Such work includes, but is not limited to:

- Membership of committees, board and working groups;
- Outreach and Education;
- International engagements, including attendance at events for judicial training, bilateral and multilateral networking and representative duties.

Part D Conclusion: The value of investing in judicial resources

1. Consideration of additional judicial resource needs tends to attract discussion of the costs involved and it is understood that this the work of the Judicial Planning Working Group will involve a cost/benefit review.

2. In that context it is worth noting that spending on judicial salaries is low in comparison with the total expenditure on the Courts Service, the Justice Group vote and the total exchequer expenditure. In 2020, the payment of judicial salaries was €29.87 million.[91] By comparison, Courts Service expenture amounted to €156.378 million[92]and spending on the Justice group sector was €2.99 billion.[93]) Judicial salaries accounted for only 0.04% of total exchequer expenditure (€70.37 billion).[94]

3. Further, spending on the judicial system, including the salaries of judges and court staff is low compared to other European countries. The 2021 EU Justice Scoreboard indicates that Ireland has the third lowest general government total expenditure on courts as a percentage of GDP and that Ireland ranks the second lowest on expenditure on salaries of judges and court staff in the EU.[95]

4. The value of investing in judicial resources in order to improve the efficiency of the justice system cannot be underestimated. It has a dual benefit.

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[91] The payment of judicial salaries is charged directly to the Central Fund as it is a non-voted expenditure. Non-voted expenditure represents expenditure which the Oireachtas has declared by law to be paid from the Central Fund without annual reference to Dáil Éireann. Non-voted expenditure includes central fund charges which are a permanent charge on the State revenues and represent those services which are charged on and payable out of the Central Fund by continuing authority of statues. The Finance Accounts contain detailed analysis and classification of the payments into and out of the Central Fund as well as details of the National Debt. They have a statutorily specified purpose in relation to providing an annual statement of the transactions, recorded on a cash basis, of the Central Fund.

[92] This is the Revised Estimate of the Courts Service for 2020. See Department of Finance, Revised Estimate for Public Services – Vote 22 – Courts Service, https://assets.gov.ie/45297/f9e861cb7e894a03841058f4b36775f7.pdf, p. 88

[93], Department of Finance, Revised Estimate for Public Services – Summary of Gross Expenditure (Capital and Current), https://assets.gov.ie/45297/f9e861cb7e894a03841058f4b36775f7.pdf, p. 88

[94] Department of Finance, Revised Estimate for Public Services – Total of Estimates of Supply Services, https://assets.gov.ie/45297/f9e861cb7e894a03841058f4b36775f7.pdf, p. 11

[95] 2021 EU Justice Scoreboard, available at https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf at pp. 26-27.

5. First, it creates a benefit to the citizens and businesses in the States which require, and have a right, to timely access to a court hearing. Timely access to court hearings is a fundamental component of access to justice for citizens and organisations. It is not an option or something to be weighed up in a cost/benefit analysis, but is a right which may be breached if not complied with by the State.

6. Second, an effective and efficient court system has a knock-on, positive effect on society It is a key to economic performance and the business and investment climate. In that regard the OECD has observed:

> "A functioning rule of law and justice system contributes to a thriving business environment and longer term investment decisions. It supports contract enforcement, reduces transaction costs and creates a level playing field for market stakeholders by instilling confidence in "the rules of the game," ensuring fair competition and protecting property rights. The OECD work (2013)[96], including its economic surveys, increasingly highlights the importance of the rule of law and effective justice institutions for economic growth.[97] The OECD Policy Framework for Investment[98] (PFI) suggests that when key elements of effective access to justice are missing or result in inefficient (e.g. complex, costly, and lengthy) procedures, companies, including SMEs, would limit their activities."[99]

7. Under Ireland for Law, the Government seeks to promote Irish Law and Irish Legal Services to the international business community as part of the Government's wider strategy of pursuing trade and investment arising out of Brexit. Properly resourced courts, and in particular an adequate number of judges, is key to the success of the Ireland for Law initiative.

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[96] Palumbo, G., et al. (2013), "Judicial Performance and its Determinants: A Cross-Country Perspective", OECD Economic Policy Papers, No. 5, OECD Publishing, Paris, https://doi.org/10.1787/5k44x00md5g8-en

[97] OECD Economic Surveys (Portugal 2019, Slovak Republic 2018, etc). http://www.oecd.org/economy/surveys/

[98] https://www.oecd.org/investment/pfi.htm

[99] OECD (2018), Access to Justice for Business and Inclusive Growth in Latvia, OECD Publishing, Paris, https://doi.org/10.1787/9789264303416-en.

8. Many measures have and could be taken to improve the justice system in order to make it more efficient or to fulfil access to justice without recourse to the courts. The Court Presidents and wider Judiciary are in favour of such measures. However, such measures, even taken at their most effective, will not lessen the need for a significant number of additional judges as set out in the jurisdiction specific submissions so that the necessary human resources can be provided to enable judges to administer justice as provided for in the Constitution.

9. The provision of a court system in Ireland where, at its core, timely access to justice is a reality rather an aspiration is now achievable provided that there is appropriate investment in judicial resources. Those appointments and the implementation of the improvement measures and reforms mentioned will realise the country's obligations to its people and the requirements of the business community.

10. The Irish judiciary has a track record in the creation and execution of innovative approaches to making the court system more efficient. Largely to date that has been to stem the tide to combat problems caused by inadequate resourcing. However recent history has shown that the opportunity to deliver more and achieve real success arises when the appropriate supports are available. Most lately the successes in the Supreme Court and Court of Appeal are illustrative of how the availability of the appropriate level of judicial resources facilitates judge-led innovative and agile management to reduce and eliminate waiting times. Prior to that, the high profile successes of the Strategic Infrastructure Division and most notably the Commercial List were notable examples of planning and implementation by the judiciary of its own initiative.

11. These are examples of what success could look like across the entire Irish court system if the Presidents of the courts were appropriately resourced to achieve their objectives. A real and visible difference will become apparent in all court jurisdictions if a similar approach can be adopted, leading to optimum time periods from commencement to conclusion of a case. This proof of concept is long established in providing access to justice in Ireland but has never been fully resourced. In order to

upscale that concept so as to deliver benefits throughout the entire system, the judicial resources outlined are required.

Appendix One: Submission of the President of the District Court

Contents

Introduction

The District Court is an essential part of a functioning democracy because this is the Court where more than 80% of all litigants start and conclude their exposure to the judicial system. Ensuring equal access to justice is fraught with multiple constraints - financial, spatial, qualitative and time. The high volume of mixed cases coming into the court creates an imperative for increased efficiency. Court processes need to differentiate between the high volume "standardised" (e.g. road traffic cases) issues and more complex and time consuming criminal and civil cases. For context, there are 167 judges in Ireland, and sixty-four (including the President) of those are assigned to the District Court. Those sixty-four judges presided over 476,174 cases in 2020.[100]

To ensure that the District Court is accessible, fair, speedy and cost-effective and to enhance public confidence in the judicial system for litigants and other service users, the urgent appointment of eighteen additional judges to the District Court is required. Over the coming five years, further judges will also be required. The basis for this includes the following:

1. The increase in population since the last increase in the number of District Court judges in 2008
2. Delays predating Covid 19
3. Judicial Ratio/Shortage of judges
4. Burdens imposed by new legislation
5. Lack of Capacity in the District Court to deal with the volumes of new cases
6. Backlogs arising from the Covid 19 pandemic
7. Increased numbers and complexity of Family law and Childcare cases

Each reason above will be addressed in more detail later in this submission.

[100]In 2017 525,030 cases came into the District Court and 411,642 cases were resolved representing 21% more cases coming into the system than the system can handle. In 2018 the number of cases into the District Court increased slightly to 528,789 and 403,669 cases were resolved representing 24% more cases than the system can handle. In 2019 the number of cases into the District Court increased more substantially to 550,965 cases while 413,024 cases were resolved which represents 25% more cases than the system can handle. More significantly, of the 476,174 cases which came into the District Court in 2020, only 262,580 were resolved which represents 55% more cases than the system can handle.

Organisation

The number of District Court Judges is currently fixed at not more than 63 Judges[101] plus the President of the District Court, which has not changed since 2008.

There are three types of District Judges:

(a) 18 Judges (including the President) permanently assigned to DMD;

(b) 26 Permanently assigned to other districts (includes 3 in Cork, 2 in Limerick, and one each to remaining districts;

(c) 20 Moveable judges.

Dublin Metropolitan District judges

DMD Judges are assigned from time to time by the President to District Courts sitting in Dublin as follows:

- CCJ – which deals with most criminal business: 6 Judges;
- Dolphin House – which deals with family law: 4 Judges;
- Chancery Street – which deals with childcare: 3 Judges;
- Court 23 in the Four Courts – civil and licensing matters: 1 Judge;
- Court 8 in the four Courts – regulatory prosecutions: 1 Judge
- Children's Court – all criminal matters involving persons under 18: 1 Judge;
- Blanchardstown – criminal business: 2 Judges;
- Swords/Balbriggan – criminal, civil & family: 1 judge;
- Tallaght – criminal, civil: 1 judge;
- Dun Laoghaire – criminal, civil: 1 judge;
- Cloverhill – Criminal (custody matters): 1 judge.
- Drug Treatment Court: 1 day per week; presided over by a Judge assigned to Tallaght District Court

[101] Courts and Court Officers Act, s. 11 as amended by the Civil Law (Miscellaneous Provisions) Act 2008, s. 32.

- Small Claims Court – 1 day per week; presided over by a Judge assigned to Court 23 in the Four Courts

There are a **minimum of twenty-two judges** required to preside over the above courts each day, and it will be noted that there are only **eighteen judges** (one of which is the President, who due to significant other demands, is not available to sit full-time) assigned to the DMD. Therefore, even without accounting for illness, leave, training, non-court commitments (e.g. service on bodies such as the Courts Service Board, Judicial Council and various Committees), at least **four moveable judges** are required to service the DMD. This number increases when factors such as the foregoing arise, or when the Special Criminal Court is in session, as this requires two District Court judges.

Judges permanently assigned to districts outside the DMD

There are twenty-four districts comprising DMD and twenty-three other districts. Cork has three judges, Limerick two, and the remaining twenty-one have one judge each. In Cork and Limerick, the work is divided between criminal business, family & childcare law and civil & licensing, with the different judges specialising accordingly. In the remaining single judge districts, the permanently assigned judge is responsible for all the work. In Cork and Limerick, weekend and out of hours courts are divided on an informal basis into rotas by the permanently assigned judges. In the single judge districts, the assigned judge is on call for all weekend/out of hours work. In some parts of the country, judges in neighbouring districts work an informal rota, to avoid being on call every weekend. However, in many districts, due to geographical distance, this is not possible. All judges permanently assigned to districts outside Dublin are also assigned to between one and five adjoining districts, for certain purposes specified in s.32 A of the Courts (Supplemental Provisions) Act 1961, as amended.[102] All DMD judges, and moveable judges are also assigned to all districts for the purposes of s.32 A.

A substantial number of districts have caseloads well in excess of what can reasonably be handled by a single judge[103]. A second judge will need to be appointed to each of these districts. This would enable the work to be divided between them, and would allow for

[102] E.g., granting search warrants, arrest warrants, and similar urgent matters
[103] See Appendix A

lengthy backlogs in criminal trials, family law cases, and childcare hearing to be reduced, and then maintained at reasonable levels.

Moveable Judges

There are twenty moveable judges, a number fixed by law. They can be assigned by the President to cover illness, leave, absence of permanently assigned judges due to attending training, conferences, other business (e.g., Courts Service board or Judicial Council duties), assignment to the Special Criminal Court (two District Judges are on SCC duty at any given time). When resources permit they can also be assigned to hear lengthy cases (e.g., contested childcare hearings which can typically last anything from several days to several weeks), or to deal with backlogs of criminal or family law hearings in various districts. At present, due to vacancies (one at time of writing and two appointed on 8th September, but currently undergoing training), illness and leave, it has not been possible to provide cover for all scheduled courts, let alone special courts/long hearings (i.e., longer than two days). Over the past number of months, scheduled courts have had to be cancelled on numerous occasions, due to lack of cover when sudden illness of a judge arises. This causes immense difficulty for litigants, accused persons (particularly those in custody), lawyers, Gardaí, witnesses and prison escorts, many of whom may have travelled a distance to attend court, only to arrive and find it cancelled.

Work of the District Court

The District Court is a court of local and summary jurisdiction. The work of the court can be divided into different categories which are outlined below. Sixty-four District Court judges presided over 476,174 cases in 2020. This represents more than 80% of all cases in the country's courts. The District Court provides 24/7 cover 365 days a year. For example, 1,263 "out of hours" courts (i.e., Saturdays, Sundays, Bank Holidays etc.) together with 701 special courts were provided by District judges in 2020. In 2019 this figure was 1,234 out of hours sittings. There were also 729 "special courts" – i.e., sittings on days other than scheduled court sitting days. These arise, where, for example, the assigned judge puts cases into a special court, which cannot be fitted into the scheduled days – e.g., longer criminal or family law matters, childcare cases etc. It has sat every day since the pandemic began, and processed considerable volumes of work in spite of the

pandemic. To put this another way, the District Court has **34%** of the country's judges but, in 2020 handled **82%** of the work of the Courts.

Working Hours of the District Court

Nominally, the courts commence sitting at 10.30 a.m. The judge will usually deal with a number of applications in chambers before the start of the list – e.g., applications for search warrants, interim barring orders or protections orders etc. The finishing times vary depending on the level of business on any given day, the type of cases being dealt with, and where applicable, whether cases listed for contested hearing go ahead by way of full hearing, with witnesses called and examined, or not.[104] While most District Courts finish sitting around 4.30 – 5pm, it is not unusual for courts to last much longer, often into the evening depending on the type of case. In the country districts for example, the family law days frequently last until up to 8pm, and sometimes later.

Although there are eighteen judges assigned to the DMD, inclusive of the President, there are in fact twenty-two courts held each day, requiring at least four moveable judges to be assigned to the DMD each day. When permanently assigned DMD judges are on leave, ill, or on duty in the Special Criminal Court, their places have to be filled by moveable judges. In practice, on any given day approximately seven moveable judges will be working in the DMD.

Additionally, an evening court is held each weekday at 4.30 pm in the CCJ, presided over by one of the judges assigned to the CCJ, on a daily rota basis. Two courts are also held each Saturday, for emergency business, at 10.30am and 4.30pm, again presided over by a CCJ judge, on a rota basis. Two courts are also held on Bank Holidays, for emergency business, presided over as above.

One judge is assigned for a week at a time to cover "out of hours" courts – e.g., urgent search warrant applications, extensions of detention periods, preservation of crime scene applications etc. This judge can be called out at any time at night or in the early hours

[104] For example, a criminal assault case may be listed for hearing, with an estimated time requirement of two hours, but on the day, the defendant might plead guilty, and witnesses are not required. Similarly a civil action, family law hearing or childcare case may be listed for hearing, but may settle on the day and it is not usually possible to know in advance. The court lists more cases than it can hear for this reason.

(often more than once in the same night), or on Sundays, Bank Holidays etc. This judge also covers the Saturday courts. This duty is rotated between the judges assigned to the DMD.

At Christmas and Easter the District Court sits in the DMD for emergency business.[105] Around the country, most districts also provide court sittings during these vacations. During the month of August, courts are provided all over the country to deal with emergency business.

It is often the case that a judge cannot always take leave when they wish to do so, and there is no certainty that there will be a judge available to cover courts if sudden illness occurs which can result in cancelled sittings.

Criminal

Almost all criminal cases commence in the District Court with a very small number of exceptions. Cases to be tried on indictment are initially processed in the District Court, and may involve several appearances, including bail hearings[106] and other applications, before the matters are sent forward for trial to the Circuit or Central Criminal Court. The District Court deals with assaults, public order, theft, fraud, criminal damage, possession and sale of drugs, domestic violence prosecutions, almost all road traffic prosecutions, and less serious sexual offences, to name the most common. A criminal matter before a District Court can involve anything from very brief procedural matters lasting minutes, to more complex pleas and sentencing, and fully contested hearings involving witnesses, which can last from thirty minutes to several days/weeks. However the majority of contested hearings in the District Court typically take approximately an hour.

The District Court also deals with the vast bulk of regulatory criminal matters, e.g., planning prosecutions, litter and waste management, pollution cases, fisheries prosecutions, TV licences, HSE, Road Safety Authority, Taxi Regulator, ESB, EPA, Revenue, medical, veterinary, tobacco, and many more. There are **208** bodies, agencies, Government Departments, local authorities, and regulators who can initiate

[105] Over the 9 day Christmas vacation in 2020, the District Court in Dublin provided 22 courts, excluding those conducted by the "on call" judge. Over the 6 day Easter vacation in 2021, there were 11 courts in the DMD.

[106] S.2 bail applications can take a considerable amount of time and are usually contested.

prosecutions, in the majority of cases by way of summary prosecution in the District Court.

Much time is taken up in the District Court with the issuing of search warrants and orders under Money Laundering Acts and other similar legislation. Applications can often contain twenty or more pages which means judges have to consider these very carefully. At Present in the CCJ, the issuing of warrants takes place before the usual business of the Court and judges are often placed under unnecessary time constrains in dealing with these very important matters which are often pivotal in criminal justice proceedings. The District Court has currently restrained more than €4.5 million, £76,760 and $1300AUD held in bank accounts.[107]

Family Law

Applications for custody, guardianship, access to children; maintenance for spouses and children; safety and barring orders are in the main dealt with in the District Court. Many of these cases are time consuming, with often heightened/emotional/distressed litigants, many of whom are unrepresented, which often leads to protracted hearings.

Childcare

This is a very significant jurisdiction whereby the District Court can order children to be taken into the care of the State (via the Child and Family Agency) until they are eighteen years old. Emergency Care Orders can arise suddenly, and frequently outside of normal court sittings. Childcare cases typically involve monthly interim order hearings and applications for access etc, and can be before the Court for several years before being ready for hearing. Each interim care order involves the judge having to read, in advance, lengthy reports from social workers and GALs, and possibly other experts. A fully contested childcare hearing can involve 10 – 20 witnesses, including psychologists and other experts, and frequently involve more than two respondents, as well as the CFA and GALs, all of whom are separately represented by solicitors and counsel. They typically take anything from a few days to several weeks. A recent example was a case that took 115 days at hearing, spread over three years, because it was only possible to provide the judge for periods of two to three weeks at a time. While these cases make their way

[107]Criminal Assets Bureau, Annual Report 2020 at p.18-19
https://www.cab.ie/wp-content/uploads/2021/09/CAB-Annual-Report-2020-Final.pdf

through the Court, the children remain in foster care, as they do not know whether they will return to their parents, remain in foster care, or remain with the same carers. This give rise to substantial additional difficulties for already traumatised, abused children. Written judgements are frequently required which require extra time for judges to research and write. This is a development in Child Care litigation which has changed the nature of a District Judges' work as heretofore it was not expected that written judgements be given. It should be stated that written judgement are not necessary in all cases.

Civil

Civil cases dealt with in the District Court include debt collection and enforcement; noise pollution cases; small claims; licensing; and claims in tort and contract up to €15,000 in value. Personal injury claims up to €15,000 are also dealt with in the District Court, and while up to now very few have been taken in the District Court, the recent adoption of the Personal Injuries Guidelines is likely to see a sharp increase in the number of such cases coming before the Court. These cases also typically take several hours to hear, so will be very difficult to fit into the normal scheduled courts in single judge districts.

Criminal Justice (Mutual Assistance) Act 2008

These are cases where a foreign court has sought to have a witness/witnesses examined by video-link from an Irish court. They are most frequent in the DMD, where many multi-national technology firms are headquartered. There are significant backlogs (over **400** at time of writing) in dealing with these, as they typically take half a day each, and several EU countries have expressed concern at these delays.

Fines Enforcement

This is a relatively new procedure introduced by the Fines Act 2014 which commenced in 2016. It is extremely cumbersome and time consuming. It involves a number of court events for almost every enforcement application brought. At present there are approximately **114,000** enforcement notices awaiting issue by the Courts Service due to Covid related delays. The Courts Service estimate that this backlog alone will take 1.5 years to clear, even if no new notices were issues in that time.

Judicial Ratio

To improve the effectiveness and efficiency of the District Court it is necessary to reduce the backlog of cases and waiting times for those seeking access to justice. Supporting the judiciary to improve case management and reduce case backlogs reinforces the rule of law because it enables effective and functional access to justice, especially for those of modest means. To achieve this goal will require a significant increase in the number of Judges of the District Court. The performance, quality and efficiency of the judicial system are significantly influenced by the workload of judges. The current number of District Court judges is insufficient – evidenced by the strong empirical documentation of need in the annual reports of the Courts Service as well as other national and international sources. This level of workload cannot be sustained on existing judicial numbers.

Capacity of the District Court

In each of the three years from 2017 to 2019, up to **25%** of cases coming before the District Court could not be resolved. In 2020, this figure rose to 55% not resolved; however, this is not a representative figure, due to the pandemic. All non-urgent matters were simply adjourned, but many of them still remain to be dealt with. It is likely that there will be a similar outcome for at least the first half of 2021. Meanwhile, new cases continue to come into the system. The ending of pandemic restrictions on normal work and social activity will inevitably give rise to more cases – e.g., road traffic, public order and assault prosecutions, as well as licensing applications. Between 2017 and 2019 there was a 5% increase in the overall number of cases coming into the District Court. It will not be sustainable for the District Court to operate where the cases coming into the jurisdiction are consistently greater than the capacity to meet the demand. Sooner or later the system will break down and this likelihood will be increased significantly in the post pandemic response phase.

Shortage of Judges

The figures reported by the European Commission for the Efficiency of Justice indicate that Ireland has the lowest number of judges per 100,000 habitants at **3.4 fulltime judges per 100,000**. This is the lowest ratio in the 47 countries examined by the European Commission as far back as 2010, when the figure was almost the same, i.e., 3.2 per 100,000. More significantly, is also the lowest judicial ratio within the 27 countries in

the EU. The closest EU countries to the Irish ratio are Denmark and Malta, with **9 judges per 100,000 inhabitants**. Both have significantly more than double the number of judges in Ireland. Of the total of 167 judges in Ireland only 64 are assigned to the District Court. Those 64 presided over 476,174 cases in 2020 and 550,965 in 2019. This represents more than **80%** of all cases in the country. Analysis of Courts Service data shows a 5% increase in the number of cases that have come into the District Court between 2017 and 2019.

At present, of the sixty-three judges of the District Court theoretically available there is currently one vacancy for a moveable judge, two judges have been appointed as of 8th September 2021 but have to complete three weeks of induction before sitting, one judge is retiring in February but will be using the leave accumulated until that date and is currently unavailable for assignment. This accumulation of leave, resulting in earlier retirements can occur because of a requirement to provide cover due to a shortage in judges.[108] One judge currently requires three days compassionate leave per week. Another judge requires two days medical leave per week. Another judge sits approximately 5 days per month due to medical reasons. At most there are fifty-nine judges available to be assigned and fifty-five at fewest. The number of judges available will rise to sixty-one at most and fifty-seven at fewest once the newly appointed judges complete their induction. It is noteworthy that some judges are unable to sit in every venue due to underlying medical conditions or lack of facilities for judges with disabilities.

The role of Moveable Judges is important as these Judges provide substitute cover for when a Judge is unable to sit due to holiday, illness, or attendance at CPD etc; they also currently take long criminal, family law, or child protection cases in a District which cannot hear the case within a working day. Cases which take between half a days to several weeks at hearing are currently heard by a Moveable Judge at a 'special court sitting' to ensure Constitutional fair procedures for all parties including children. The Moveable Judge system provides flexibility and efficiency, but can become inefficient. For example, when the work they are brought in to deal with consists of ongoing cases, which need to be dealt with by the same judge, ensuring consistency in case allocation to a

[108] There are a number of judges who "retire" before their retirement date due to outstanding/accumulated leave.

particular Moveable Judge on a consistent basis is all but impossible to achieve between twenty-three District Court areas.

Apart from the foregoing, from which it can be seen that the Court is struggling to service all scheduled courts every day, there are a number of key issues which add extra strain to the system:

- Outstanding summonses awaiting issue by the Courts Service: there are **87,206 summonses waiting to be issued**. Efforts are being made to reduce the backlog, but the Courts Service estimate that it will take approximately 40 weeks (effectively almost a full year) to address this backlog. This is a largely Covid related backlog.
- Existing cases awaiting hearing dates cancelled due to Covid
- Outstanding fines enforcement cases – **114,000 awaiting issue**, together with those already in the system which were largely adjourned during the pandemic
- Requests for special courts to hear lengthy childcare and family law cases, assist with hearings backlog in districts and, assist with overloaded lists – at present the President is unable to provide judges to deal with such requests.
- Vacancies (one at time of writing and two newly appointed as of 8th September), annual leave, sick leave, Special Criminal Court, training, other bodies (Courts Service Board, Judicial Council Board and committees)

Since April 2021 a shortage of judges has resulted in a number of scheduled sittings (i.e., normal daily sittings) having to be cancelled at short notice. This causes significant inconvenience to litigants, staff, practitioners, Gardaí, witnesses etc., and is simply unacceptable. Separately, there is potential damage to the reputation of the Court, and in some circumstances it may give rise to a financial exposure to the State.[109]

Of perhaps more importance is the impact long delays getting hearings in contested matters has on the parties. Victims of crime have to live with the case until it is concluded, and suffer anxiety and stress while awaiting hearing. Even worse is the position of families and children awaiting hearing dates in private family law matters. Financial

[109] e.g. if a successful Habeas Corpus application arose from a sudden cancellation.

hardship while waiting for maintenance orders, fear of further violence in barring and safety order cases, distress and fear of further alienation in the case of parents and children awaiting access and custody hearings all add greatly to the trauma and distress suffered by ordinary people in their day to day lives. The massive delays in progressing childcare cases is unacceptable, as it leaves children in limbo, often for years, awaiting decisions about where and with whom they are to live, adding to the trauma which brought them into care in the first place. The parents in such cases, who frequently have addiction, behavioural or mental health challenges equally suffer from these delays. Defendants in criminal cases may be in custody for long periods before perhaps being acquitted at the trial, or may face even longer periods if on bail, sometimes to the prejudice of their defence. Creditors in civil debt cases – many of them small businesses – face excessive delays in getting judgement, and even longer trying to enforce them through the District Court. It should be noted that the Enforcement and Court Orders Acts (1940 – 2009) provide that the venue for enforcing orders of **all** courts, including those of the Circuit and High Courts, is the local District Court.

In criminal cases reducing the delays in hearing contested trials has other positive effects:

(a) It can reduce the number of additional charges which can arise while an offender is awaiting trial on earlier charges. S.8 of the Criminal Justice Act 1951 entitles offenders to seek to have other charges "taken into consideration" when being sentenced.

(b) A shorter time between entering a not guilty plea, and the trial date, is likely to encourage guilty pleas at an early stage. Long delays before trial dates incentivise not guilty pleas, as frequently, by the time cases come to trial, witnesses may not turn up, or may have moved and become uncontactable.

(c) It would reduce the total number of court events, thus reducing costs (e.g. less legal aid fees, Garda and Prison Service costs). It would also reduce the number of bench warrants issued, and the consequent delays and extra costs to which these give rise.

Population Increase

The population increase evidence in the 2016 Census figures indicates very clearly an increase in population and the distribution of population in Ireland and it follows that the number of potential litigants in absolute terms has also increased. It is important that this

need is addressed in relevant District Court areas and generally to manage the business of the District Court. The last increase in the number of District Court judges took place in 2008, when the number rose from 61 to 64. Since 2008, the population of the country has increased by **500,000**, and officially stands at 4.9 million people. The CSO projects that over the next ten years, the population will increase to between 5.2m (lowest case scenario) and 5.6m (highest case scenario). Using the same scenarios, the population in five years' time (2026) will be between 5.1m and 5.3m. These increases alone will increase pressure on the courts. Recently, the CSO estimated the population of Ireland to be **5.01 million in April 2021**.

Delays and Backlogs

The consequence of too few judges per capita are delays in accessing the courts for both criminal and civil (including family law and childcare) matters. This has a particular bearing on the District Court as a court of summary jurisdiction, and the court which handles over 80% of all cases coming before courts. Delays in family law and childcare cases cause real hardship for the parties, especially children, who may be affected by domestic violence in the home, financial problems, acrimonious access and custody battles, or who may spend years in interim foster care, awaiting a full hearing for a Care Order. In criminal matters, where delays in obtaining hearing dates can be up to 9 months, hardship and stress is also caused to victims.

Even with over 115,000 summonses listed and scheduled up to July of this year there are still circa 87,206 summonses that have yet to be issued as they were held in abeyance during the pandemic. A substantial number of backlogged summonses have been issued and will be dealt with through extra sittings in the District Court, however dealing with the remaining 87,206 will present significant challenges. A portion of the backlogged summonses will be subsumed into the work of District Courts locally and we are working closely with the Court Service to address the problem in the DMD, however extra resources will be urgently needed to deal with the substantial backlog that will remain. At present rates it will take almost 1.5 years just to clear this backlog.

Backlogged cases arising from Covid-19 are primarily criminal, civil, and non-emergency family law matters. At present, in some District Courts and particularly in the Dublin

Metropolitan District, there is a delay of approximately nine months to a hearing date[110]. This is in addition to the time it would have taken for the case to be set down for hearing in the first place. The delays arise because of the requirement to adjourn cases *en bloc* during the pandemic. To put this time period into context, the vast majority of summary matters in the District Court must come before the court within 6 months of the offence or they are statute-barred. The Constitution of Ireland and the European Convention on Human Rights provides for the right to a fair and expeditious trial, and the Superior Courts have repeatedly opined ,that an expeditious trial is particularly important in summary cases. Volumes of District Court criminal work remain high: there are now **87,206** summonses waiting to be issued; there has been a 50% increase in criminal cases adjourned, and a **38%** increase in the number of cases sent forward for trial, a process which involves several appearances in the District Court before the return for trial can be made. The District Court has sat every single day during the pandemic.

Special Courts are additional Courts in a District to deal with backlog, lengthy childcare and family law matters, and criminal trials or occasions where the permanently assigned Judge may need to recuse themselves. Currently, it is very difficult to grant specials as there is difficulty ensuring that scheduled sittings are covered. Extra judges are required immediately to deal with the backlog of cases that has accumulated as a result of the pandemic and childcare cases that need to be hear urgently. This requires an immediate appointment of ten moveable judges.

Additional Burdens to the Work of the District Court

New Legislation

Since 2008 there has been a dramatic increase in the workload of the District Court. Whenever there are alterations to the monetary jurisdiction of the courts, cases will drop out of the higher courts, but never from the District Court. Also, whenever legislation creates new offences, the vast majority of them are declared to be triable in the District Court. Other legislative changes can have benefits for society, but create additional burdens on the District Court. For example, the Fines (Payment and Recovery) Act 2014 has resulted in significant additional work. The benefit of this legislation is that it has kept many fine defaulters out of prison with a corresponding financial and social saving to the

[110] Priority is being given to the hearing of prosecutions for breach of domestic violence orders.

State. Between its introduction in January 2016 and June 2019, the Act has resulted in the issue of 37,767 enforcement notices (involving 25,474 people). This represents an average of about 10,791 enforcement cases per annum. Special courts had to be scheduled in the Criminal Courts of Justice to deal with this additional work, while in provincial District Courts the assigned judges have simply absorbed the workload. There are more than 114,000 Fines Notices awaiting issue, which at our current capacity would take **ten years** to clear if no new enforcement cases at all came into the system. Clearly this is not likely to be the case, and again is an example of a system that cannot function unless it is provided with adequate resources to meet the demand.

Another socially desirable initiative arises from the provisions of the Victims Directive[111] and the Criminal Justice (Victims of Crime) Act 2017 providing for the use of Victim Impact Statements. This also lengthens criminal proceedings, as cases have to be adjourned following a guilty plea, or a conviction, to allow the victim to make a V.I.S. Reading, and at times hearing the victim in court and taking account of the V.I.S also takes extra time.

Between 2014 and 2019 the number of prosecutions and appeals to the District Court from an increasing number of statutory bodies has risen by **63.6%.** They now arise from taxi-related cases, HIQA prosecutions of the HSE and private care providers, agriculture, wildlife, fisheries, and environmental prosecutions, Medicines Board, Road Safety Authority, and the Workplace Relations Commission[112]. Residential Tenancies Board and property-related cases alone have increased by **15.8%** from 20,524 to 23,759.

We are also seeing a significant increase in Mutual Legal Assistance applications from across Europe principally as the headquarters of so many social media and tech firms and Internet Service Providers are in this jurisdiction. There are significant backlogs **(over 400)** in mutual assistance applications, which give rise to concern on the part of our European neighbours. Given the length of time it takes to hear these cases, this equates to almost a full year's work for a single judge, annually. At present, these cases are fitted in around the very limited availability of judges.

[111] Directive 2012/29/EU

[112] There are 208 bodies and agencies which can initiate prosecutions, the vast majority of which must be brought in the District Court.

Personal Injuries Guidelines/Civil Law:

Over the same period, the number of personal injuries claims has increased by **29.2%** from 864 to 1116. Civil law waiting times have increased by **69%** during Covid, and there has been a **35%** decrease in the number of applications disposed of. The Judicial Council has very recently adopted the new Personal Injuries Guidelines. The result will be that many categories of personal injuries that were previously heard in the Circuit Court will now be heard before the District Court. These include all minor neck, back and shoulder injuries, minor brain damage or head injuries where recovery occurs within two years, minor psychiatric damage, minor PTSD, minor eye injuries, partial hearing loss, impaired taste and/or smell, collapsed lung damage, a wide variety of fractures and soft tissue injuries, mild respiratory conditions, mild organ function problems, uncomplicated hernias, and so on. All of these categories of injuries will now attract damages of less than €15,000 and will require settlement, assessment, ruling, and hearing before the District Court. This development will give rise to an immediate and significant additional workload.

Family Law & Childcare

The ability of the District Court nationally to deal with the increasing demands in family and child law has been at crisis point even before the advent of Covid-19. Between 2014 and 2019 the number of applications for protection, safety, interim barring and barring orders increased by **39.9%** from 14,659 to 20,501 with no corresponding increase in resources to respond to the demand. Last year alone the first four months of the lockdown saw a **17**% increase in applications for protection orders on the same time the previous year. Many Family law litigants are unrepresented which often lengthens matters. A large proportion of lay litigants in Dolphin House are non-nationals who require interpreters which involves additional hearings that often require longer hearing times. Additionally, there has been an increase in eligible applicants for domestic violence orders under the changes brought in the Domestic Violence Act 2018, (e.g., the relaxation/abolition of residency requirements) which has led to an increase in the workload of the District Court. A high proportion of out of hours sittings in the District Court have often been for such emergency domestic violence applications and a more formal structure was introduced in the DMD since the introduction of the Domestic Violence Act 2018. Other requirements introduced by the Domestic Violence Act 2018 increased the complexity of

the workload of a District Court judge (e.g. s.27 report on views of the child) without additional resources. During Covid, waiting times in Family Law have increased by **13%**, and there has been a **7%** decrease in disposal of applications. Pressure has been imposed on District judges working in Family law, both by statute[113] and self-imposed best practice out of necessity.[114]

In recent years the District Court has been tasked with dealing with all cases involving the collection of foreign maintenance arrears which are dealt with in the District Court. These cases can involve EU law and various international conventions. They can be complex and can take a considerable amount of time with no additional judicial resources.

Further judicial time has been taken up with the introduction of the Family Law Relationships Act 2015, particularly s.31 and s.32, which set out requirements that no longer allow matters to be dealt with on one hearing.

During the time of emergency response to Covid-19 this crisis has deepened, particularly outside of the DMD. The waiting times for domestic violence cases to first appear in court has increased in 5 of the 24 districts from between 1 and 12 weeks to 4 and 14 weeks. Waiting times for maintenance and guardianship applications have also increased in eight districts from between 2 and 12 weeks to 8 and 24 weeks. The appointment of additional judges is desperately needed to reduce these waiting times for the families and children who need access to the courts in a timely manner. Judges around the country are working extra hours to address these delays but anecdotal evidence suggests that such delays will only increase in 2021. There are much longer delays in getting hearing dates where such cases are contested. Hearing dates cannot be fixed until all preliminary matters – e.g., financial disclosures, s.20 and s.32 reports, parental capacity assessments, psychological assessments – are dealt with.

<u>Childcare</u>

Between 2017 and 2018 there was an **11%** increase in the number of childcare cases in Ireland. Since then the number of cases has remained steady at about 10,500. However,

[113] E.g., by Statute; the return date within eight working days of interim barring orders where granted, thereby imposing a long and complex hearing onto an otherwise full list

[114] E.g., returns for Production of Infants summons of seven days and Breach of Access summonses of twenty-one days as they are usually critical matters relating to vulnerable situations involving vulnerable children

the number of applications for extensions of interim care orders between 2014 and 2019 has increased by **51.6%** from 2059 to 4251. This area of law has become increasingly complex and hearings typically involve testimony from registered clinical psychologists, social workers, Guardians *Ad Litem* (GALs), gardai and the parties, who are represented by both solicitors and counsel. Extension applications are time-consuming and full care order applications typically take between 1 and 5 days to hear in the District Court and with a significant number of complex cases each year requiring hearings that last much longer, which frequently require the delivery of a written and reasoned decision. Where a full care order hearing is required, which will take longer than one or two days, a moveable judge must hear it, as the permanently assigned judge cannot do so. Often, in an effort to deal with such cases, the resident judge will try to fit the case in on non-scheduled days. This gives rise to the case being heard on a day here, two days there and so on, with the result that the hearing is spread out over several months. This is unsatisfactory and inefficient, but can also lead to further issues arising between such hearing dates, causing the case to take even longer. By way of example, a recent case in a rural district involving an application by a mother to discharge a Care Order made some years ago, commenced hearing in October 2020. Due to the judge's normal scheduled sitting days, and numerous non-scheduled days hearing other cases, the case proceeded over a further eight days, spread out between then and July 2021. Judgement has been reserved until September 2021. The judge in question has to review the eight days of evidence, and the large volume of reports and assessment etc., on his own time, at night and weekends. This is by no means unusual in these types of cases. A sufficient number of moveable judges to allow some of them to be assigned on a regional basis will help to alleviate this problem in the short term.

New Family Division

The Department and the Minister have recognised the need for a new family court structure in response to the pre-existing crisis in family and child law. The Minister for Justice has already made significant strides in this regard. To ensure the immediate success of the family courts as envisaged by the Family Court Bill it is important that there is a smooth transition from the ordinary courts. Backlogs must therefore be avoided or kept to a minimum for the family courts to be a success; an investment in resources now will create an environment where the changes intended by the Family Court Bill can succeed. A cadre of experienced family law judges will be required to ensure the success

of this welcome initiative. The appointment of sufficient additional judges to enable the President assign some to family law and childcare matters on a regional basis would greatly enhance the efficacy of the new division.

Diversion of cases from the District Court

Some less serious, infringement type offences (TV licence/ public transport tickets etc, and offences of strict liability for minor offences) need not always require a Court appearance. The great majority are likely to be uncontested. Other legal jurisdictions (e.g., the U.K.) divert minor road traffic and infringement offences from the courts, allowing payment of a fixed fine to the State. This penalises the misconduct efficiently and spares both the State and the offender the cost of a court appearance. Infringement offences do not carry the stigma of a conviction.

Further Considerations

Non-court work Commitments

Judges of the District Court have statutory duties to be members of various Boards and voluntarily participate in various external review and oversight groups, including those established by the Department. Much of this important work is carried out outside of normal work hours and judges are happy to be involved. This does however become a drain on resources. Involvement with the governance of the Court Service requires the involvement of **five District judges** on a regular basis. The establishment of the Judicial Council and the statutory requirement that judges be appointed to its Board, the Conduct Committee, the Sentencing Committee, the Personal Injuries Guidelines Committee, the Judicial Studies Committee and the Judicial Support and Welfare Committee have already required a considerable availability of **eight judges** of the District Court. When the complaints procedure becomes operational, this will require a further considerable input from several judges on a regular basis on the Complaints Review Committee, to carry out informal resolution duties and to sit on panels of inquiry. Key to the success of this body is the easy availability of judges to fulfil its complex duties in a timely fashion.

Court Facilities

Video link and video conferencing is only available in some court rooms and court districts. The traditional model of adjudication requires the parties to be physically

present in court at most court events and both the parties and all the witnesses must be physically present in court at the trial.[115] All decisions are made in the context of the courtroom. In criminal cases legislative provision is made to provide important support measures for vulnerable witnesses of certain offences. Video Conferencing could be used more frequently for pretrial hearings and these facilities are an essential part of a modern court system[116]. This reduces the security risk and costs associated with the transfer of prisoners to court.

Facilities for hearing "voice of child" directly are lacking. Where it is necessary to ascertain the views of a child through appropriate psychological or mental health professionals to ensure the best interest of the child there is no system available to Judges, unless the parents or those in *loco parentis* can discharge the costs of the service. This creates a dilemma for Judges who must adhere to the obligations set out in Article 42A of the Constitution, legislation and Irish and European Court of Human Rights jurisprudence in every case before the court regardless of the financial ability of parents. The number of cases with an international element has also hugely increased thereby adding an additional level of complexity to family law & child protection cases in the District Court. While highly desirable, the process of hearing the voice of the child has lengthened the time required for the hearing of cases where children are concerned. In many cases it falls to the judge to meet and hear the child directly, and this again lengthens the time taken to deal with the case. This in turn delays the cases waiting behind that case, adding to delays and longer waiting times.

District Courts across the country engaged in widespread use of video conferencing technology. This also increased significantly as new legislation (Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020) expanded the types of proceedings that could be heard remotely. This development should continue across the country with the aim to have all courts equipped with video conferencing technology facilities and resources.

[115] See Council Regulation (EC) No 1206/2001 28 May 2001 on co-operation between Courts of the Member States in the taking of evidence in civil or commercial matters by Video, Audio etc or evidence taken directly in the State.

[116] See Department of Justice, the Committee on Videoconferencing Report, available at http//www.justiceie/en/JEUR/VIDEOen/PDF.

Judicial Training and Professional Development

In order to fully appreciate the requirement for more judges, the Working Group should note that in Ireland, unlike any other country in Europe and any comparable jurisdiction worldwide, judges are required to maintain their skills and constantly update themselves on the law in their spare time. Training events cannot be attended if judges have to manage the current workload without additional resources, as they cannot obtain cover for a course that encroaches on the working day, as most international events do. In recent months, several judges have had to be withdrawn from scheduled training events to provide cover for other judges falling ill. The Irish judiciary will be unable to emulate international best practice in judicial education and development, let alone engage in peer-led training, if the number of judges does not increase.

Account must be taken of the obligation on judges to continue their professional training and development. Judicial education is an ethical requirement, in respect of which legitimate complaint could be made against those who have not taken part in the courses which are offered and yet the system makes it almost impossible for judges to attend.

The international experience suggests that each judge should have five days training/professional development per annum. This is the equivalent of approximately 1.4 extra judges annually.[117]

The European Judicial Training Network principles, adopted by European Network of Councils for the Judiciary, provide that training, in accordance with judicial independence, should be judge-led, judge-designed and primarily delivered by judges. Such training should begin prior to appointment and should be delivered on an ongoing basis as part of the working week. All judges have the right to regular continuous training throughout their careers. Without the facility for judges to attend the training provided, the work of the new Judicial Studies Committee will be in vain.

By way of comparison, all judges in Scotland complete a minimum of five days of training per annum all of which is delivered during work hours, with lists planned to accommodate training. The Judicial Institute has a full-time director, a part-time director (also a sitting judge) and 12 members of staff. New judges in England & Wales have a minimum of five induction days delivered by sitting judges, in addition to ongoing, annual

[117] 64 District judges, at five days training each per annum

training throughout their career. There are certain specialist areas of practice in which a judge may not sit if she has not fulfilled updated training requirements. In Holland, judges undergo 30 hours training, during the working week, annually.

Ongoing judicial education and training must become habitual and this means judges must be released from court duties in order to attend training on a continual, ongoing basis. We can ensure excellent judicial standards by adopting international methods of training, giving judges sufficient working time to attend training and, crucially, to train as trainers and to update pedagogical skills so that judicial training can be sustained and becomes part of the judges' regular working environment. Equally, Judicial training and Continuing Professional Development (CPD) on the sentencing and enforcement process, on domestic violence, resolving parenting disputes, child protection issues, juvenile justice issues etc. should be available on a continuous basis to ensure a core understanding of statutory changes in each area. This would help to achieve a high level of stability and consistency in sentencing, rulings and decisions. This is particularly the case in a criminal law/road traffic law context in the absence of sentencing guidelines or regular data available on sentencing.

It is very difficult at present given judicial shortages to relieve a District Court Judge from a court assignment, to avail of Judicial CPD.

Role of President

Consideration should also be given to legislation allowing the President of the District Court to issue practice directions with applicability across the District Court. Responding to the pandemic has been challenging as the President's directions are only binding on the multi judge districts of the DMD, Cork and Limerick. This has resulted in certain districts adopting different measures. Such a step would bring the role of the President of the District Court in line with the Presidents of the other courts.

The President also has other duties such as meeting with various stakeholders, making assignments every month, dealing with correspondence and attending meetings of numerous bodies and committees. At present the President sits in the Children's Court three days a week and frequently sits on the remaining two days due to sudden illness or unavailability of the assigned judge, as well as in the evening court, the Covid-19 court,

and sometimes the Saturday courts. In recent months, due to the shortage, The President is having to sit to such an extent that it is eroding his availability for the non-sitting aspects of his role, leaving significant amounts of work having to be done in the evenings and weekends. The President also serves on the following Committees:

1. Courts Service Board
2. Courts Service Finance committee
3. Courts Service Modernisation committee
4. Judicial Council Board
5. Judicial Council Conduct Committee
6. Judicial Council
7. Judicial Studies Committee
8. Family Justice Oversight Group
9. High Level Review Group (criminal prosecutions)
10. JAAB
11. District Court Rules committee (chair)
12. Court Presidents group
13. Other ad hoc groups from time to time – e.g., the group engaging with the JPWG and the OECD

The President would spend approximately two hours per day in relation to committees/working groups. The President's work related to committees/working groups could take between 6 – 10 hours a week but could be as much as 10 – 14 hours in weeks where the Finance Committee/Courts Service Board or the Judicial Appointments Advisory Board (JAAB) meet. JAAB is enormously time-consuming. It meets whenever there are vacancies to be filled in any court. There could be anything up to 80 applications for a District Court position. The weekend before every JAAB meeting is fully taken up with reading applications (12 hours minimum if there are appointments to be made to the District Court, Circuit Court and High Court). The President's Committee comprises the Presidents of all courts who meet once a week for approximately an hour. The Judicial Conduct Committee may meet four times a year for approximately two hours per meeting. All other committees would take up no more than four hours per month.

Conclusion

The foregoing are clear reasons why additional judges are required immediately. The benefits of making the additional appointment are obvious. The breakdown of how many judges are needed is as follows:

i. The number of Judges assigned to the DMD needs to be increased by six from 18 to 24. This will allow DMD judges to carry out the work of the DMD on a daily basis, schedule extra courts to deal with additional work arising from the foregoing, to deal with backlogs, and provide headroom to allow for additional courts as needed from time to time – e.g., to hear unusually long cases.

ii. An additional judge should be assigned to each of Cork and Limerick, for the same reasons, as the current workload of each of the judges in these multi-judge districts is unsustainable.

iii. The number of moveable Judges needs to be increased by ten from 20 to 30. This will allow extra courts to be held to address backlogs, deal with lengthy childcare cases, and allow the assignment of a moveable judge to deal with scheduled family law and childcare lists in a number of districts each. A moveable judge could be assigned on an ongoing basis to three or four adjoining districts, to provide more frequent family courts, which would reduce the length of lists and enable cases to be enable cases to be dealt with substantively rather than be dealt with in a rush in overcrowded lists. A significant advantage of such a move is that the same judge would deal with cases in each district on an ongoing basis, providing the continuity and familiarity with the cases and parties necessary in family law and childcare matters, leading to increased efficiency. This would also prepare for the proposed family law division, and build a foundation of experienced family law and childcare judges. It would also increase the availability of moveable judges to provide regionalised support to colleagues in civil and criminal hearings.

iv. In the period covered by the Working Group's review, consideration should be given to reviewing several districts where the caseload is substantially

greater than the average. There are a number of districts where the caseload is substantially in excess of 10,000 cases per annum per judge, which is unsustainable, and which places unrealistic burdens on the assigned judges. This may be addressed in some cases by a reorganisation of the geographic area of districts, and/or the allocation of an additional judge to some of them. (see Appendix A)

Benefits of appointing more judges

These appointments would allow for:

- **waiting times for contested criminal trials to be reduced to approximately two months on average, with similar reductions in waiting times for contested civil and family law matters**.
- **Contested childcare cases to be listed for hearing within three months of being certified as ready for hearing**.
- **Urgent family law and childcare matters to be dealt with without any delay**.
- **Judges to be able to deal with non-court commitments and training.**
- **Sufficient headroom to allow for illnesses or unavailability.**
- **Consistency in the provincial districts by enabling the same moveable judge to deal with family law lists in a number of districts each month**.

The foregoing are necessary to provide support to Districts experiencing the busiest caseloads and/or largest backlogs, to allow for regional support structures to be implemented, to provide necessary support to the DMD and the President of the District Court and to allow judges to carry out their extra judicial duties.

There will be additional cost associated with the appointing extra judges. However, the return in the greater efficacy of the District Court, and the consequent improvement in service for court users – particularly the most vulnerable ones - for the modest investment required will represent very good value.

Any increase in the number of judges will have a consequential effect on the Courts Service in terms of staff to support and operate extra courts, infrastructure to locate them, and technology to support them. However, there clearly is a demand for investment of these resources in the District Court.

The ever-increasing workload, the deepening crisis in family and childcare law and the anticipated additional personal injuries cases coupled with the thousands of criminal matters by way of summons that are imminently about to be introduced into the equation require immediate action. The diminution in the availability of judges and the President, for the reasons stated, are further contributing factors. The ending of pandemic related constraints and the new Family Law Court will be welcome reliefs but, in the absence of the suggested measures herein, will not remedy the difficulties outlined above.

Appendix

Appendix A – Case Count 2019

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
1	Letterkenny	Carndonagh	487	27		15	6		535		11	3	0
1	Letterkenny	Buncrana	716	107		7	12		842		18	4	0
1	Letterkenny	An Fál Carrach	249	26		12	6		293		11	0	0
1	Letterkenny	Letterkenny	4,013	915	37	103	60	1,188	6,316		108	50	25
1	Donegal	Na Gleannta	96	47		5	5		153		10	0	0
1	Donegal	An Clochán Liath	334	29		3	18		384		11	0	0
		Total:	5,895	1,151	37	145	107	1,188	8,523		169	57	25
								Total	8,523			Total	251
													251

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	157	DC Out of hours Sittings
2	Donegal	Donegal	534	78	15	27	33	434	1,121		30	1	0
2	Donegal	Ballyshannon	728	76		13	17		834		19	0	0
2	Carrick-on-Shannon	Carrick-on-Shannon	1,466	388	34	169	71	279	2,407		41	9	50
2	Sligo	Sligo	2,814	610	12	51	53	561	4,101		61	11	46
2	Sligo	Tubbercurry	429	26		5	6		466		8	0	0
2	Sligo	Manorhamilton	200	11		5	17		233		10	0	0
		Total:	6,171	1,189	61	270	197	1,274	9,162		169	21	96
								Total	9,162			Total	286

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
3	Ballina	Ballina	930	181	12	12	48	215	1,398		59	2	1
3	Ballina	Béal an Mhuirthead	128	13		3	11		155		10	0	0
3	Castlebar	Castlebar	2,250	381	13	129	142	816	3,731		84	4	12
3	Castlebar	Westport	256	19		23	41		339		18	0	0
3	Castlebar	Acaill	41	0		0	0		41		6	0	0
		Total:	3,605	594	25	167	242	1,031	5,664		177	6	13
								Total	5,664			Total	196

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
4	Roscommon	Ballaghaderreen	323	36		11	6		376		11	0	0
4	Roscommon	Castlerea incorporating Harristown	695	44		27	10		776		73	2	1
4	Roscommon	Roscommon	991	98	4	28	14	178	1,313		21	27	12
4	Roscommon	Strokestown	324	53		15	16		408		9	1	2
4	Loughrea	Loughrea	1,658	277	12	49	63	232	2,291		36	8	21
4	Loughrea	Ballinasloe	1,925	114		76	27		2,142		31	4	0
4	Galway	Tuam	1,664	150		31	44		1,889		24	2	0
		Total:	7,580	772	16	237	180	410	9,195		205	44	36
								Total	9,195			Total	285

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
5	Cavan	Cavan	3,577	693	14	135	64	553	5,036		63	12	36
5	Cavan	Virginia	1,446	60		72	29		1,607		36	0	0
5	Monaghan	Monaghan	2,387	459	13	63	20	294	3,236		52	18	20
5	Monaghan	Carrickmacross	2,177	98		44	13		2,332		43	1	8
		Total:	9,587	1,310	27	314	126	847	12,211		194	31	64
								Total	12,211			Total	289

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
6	Dundalk	Dundalk	5,351	1,072	67	75	88	872	7,525		96	23	13
6	Dundalk	Ardee	958	82		32	15		1,087		11	1	1
6	Dundalk	Drogheda	4,815	1,008		155	178		6,156		79	10	4
		Total:	11,124	2,162	67	262	281	872	14,768		186	34	18
								Total	14,768			Total	238

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
7	Galway	Galway	8,448	754	35	158	107	3,686	13,188		138	52	53
7	Galway	Doire an Fheich	336	52		5	10	72	475		15	2	0
7	Galway	Clifden	311			20	19		350		10	0	0
7	Galway	Cill Ronain	9	8		0	1		18		1	0	0
		Total:	9,104	814	35	183	137	3,758	14,031		164	54	53
								Total	14,031			Total	271

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
8	Clonmel	Tipperary	1,148	193		49	12		1,402		32	4	11
8	Nenagh	Nenagh	2,502	672	14	105	63	362	3,718		71	39	32
8	Nenagh	Thurles	2,283	330		102	83		2,798		43	7	0
		Total:	5,933	1,195	14	256	158	362	7,918		146	50	43
								Total	7,918			Total	239

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
9	Athlone	Athlone	2,274	397	12	44	39	476	3,242		64	8	29
9	Longford	Longford	4,090	588	8	104	102	157	5,049		61	24	50
9	Mullingar	Mullingar	4,225	525	11	75	74	524	5,434		71	19	32
		Total:	10,589	1,510	31	223	215	1,157	13,725		196	51	111
								Total	13,725			Total	358

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
10	Trim	Meath	8,564	1,696	87	173	222	755	11,497		116	11	20
		Total:	8,564	1,696	87	173	222	755	11,497		116	11	20
								Total	11,497			Total	147

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
12	Ennis	Ennis	4,850	866	3	98	94	704	6,615		118	17	35
12	Ennis	Kilrush	603	0		19	26		648		16	0	0
12	Ennis	Killaloe	381	0		28	21		430		9	0	0
12	Galway	Gort	693	37		19	15		764		16	0	0
		Total:	6,527	903	3	164	156	704	8,457		159	17	35
								Total	8,457			Total	211

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
13	Limerick	Limerick	16,323	2,163	36	355	199	1,737	20,813		299	43	44
13	Limerick	Newcastlewest	2,915	235		59	74		3,283		15	1	1
		Total:	19,238	2,398	36	414	273	1,737	24,096		314	44	45
								Total	24,096			Total	403

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
15	Portlaoise	Portlaoise	6,835	1,315	13	113	122	351	8,749		88	41	8
15	Tullamore	Tullamore	4,863	723	16	149	98	587	6,436		75	4	13
		Total:	11,698	2,038	29	262	220	938	15,185		163	45	21
								Total	15,185			Total	229

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
16	Bray	Bray	4,557	889	23	54	28	596	6,147		73	12	63
16	Bray	Arklow	1,046	236		94	31		1,407		22	0	0
16	Bray	Wicklow	2,378	174		88	33		2,673		23	4	7
		Total:	7,981	1,299	23	236	92	596	10,227		118	16	70
								Total	10,227			Total	204

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
17	Tralee	Tralee	4,656	737	57	102	92	2,398	8,042		68	11	24
17	Tralee	Daingean Uí Chúis	262	25		6	3		296		10	0	0
17	Tralee	Killarney	2,212	238		30	40		2,520		43	13	8
17	Tralee	Killorglin*	167	24		19	10		220		0	0	0
17	Tralee	Caherciveen	392	25		10	18		445		10	0	0
17	Tralee	Kenmare	278	22		14	5		319		11	0	0
17	Tralee	Listowel	1,060	145		30	30		1,265		32	2	8
		Total:	9,027	1,216	57	211	198	2,398	13,107		174	26	40
		*Sitting in Cahirciveen on Cahirciveen days						Total	13,107			Total	240

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
18	Clonakilty	Bandon	1,925	138		12	25		2,100		33	7	6
18	Clonakilty	Macroom	1,086	100		7	7		1,200		14	2	1
18	Clonakilty	Clonakilty	1,060	143	8	12	5	720	1,948		16	3	1
18	Clonakilty	Skibbereen	345	51		7	5		408		9	0	0
18	Clonakilty	Bantry	655	75		8	6		744		15	0	1
		Total:	5,071	507	8	46	48	720	6,400		87	12	9
								Total	6,400			Total	108

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
19	Cork	Cork City	20,029	3,033	218	432	359	3,388	27,459		678	25	70
		Total:	20,029	3,033	218	432	359	3,388	27,459		678	25	70
								Total	27,459			Total	773

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
20	Mallow	Mallow	3,799	666	34	181	99	515	5,294		65	33	52
20	Mallow	Fermoy	2,232	201		54	26		2,513		49	1	0
20	Cork	Midleton	2,741	425		76	51		3,293		76	5	0
		Total:	8,772	1,292	34	311	176	515	11,100		190	39	52
								Total	11,100			Total	281

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
21	Clonmel	Clonmel	2,208	535	18	89	32	374	3,256		52	11	17
21	Clonmel	Cashel	1,825	129		55	14		2,023		33	31	33
21	Mallow	Lismore	327	32		14	6		379		10	0	0
21	Waterford	Carrick-on-Suir	615	119		10	16		760		19	0	0
21	Youghal	Youghal	537	156	4	18	17	283	1,015		21	3	4
21	Youghal	Dungarvan	1,435	124		16	22		1,597		19	5	7
		Total:	6,947	1,095	22	202	107	657	9,030		154	50	61
								Total	9,030			Total	265

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
22	Kilkenny	Kilkenny	5,233	418	27	102	73	1,202	7,055		75	3	28
22	Carlow	Carlow	3,688	935	25	99	122	706	5,575		75	39	16
		Total:	8,921	1,353	52	201	195	1,908	12,630		150	42	44
								Total	12,630			Total	236

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
23	Wexford	Wexford	5,960	850	58	186	112	872	8,038		84	21	82
23	Wexford	Gorey	5,030	813		69	89		6,001		67	6	45
		Total:	10,990	1,663	58	255	201	872	14,039		151	27	127
								Total	14,039			Total	305

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
24	Waterford	Waterford City	7,882	1,190	25	227	90	984	10,398		190	17	62
	Youghal	Dungarvan		44		2	2		48				
		Total:	7,882	1,234	25	229	92	984	10,446		190	17	62
								Total	10,446			Total	269

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt With	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
25	Naas	Naas	11,569	1,205	23	224	204	949	14,174		132	9	16
25	Naas	Athy	1,258	183		51	29		1,521		20	0	0
25	Naas	Kilcock	1,192	64		39	21		1,316		15	0	0
		Total:	14,019	1,452	23	314	254	949	17,011		167	9	16
								Total	17,011			Total	192

District No	Admin Office	District Area	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt with	Summary Judgment Decrees issued	Licensing Business	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
DMD	DMD	AUD	13,780	13,900	482	2,336	5,276	15,356	51,130		449	1	0
DMD	DMD	Dun Laoghaire	6,934		51	41	116		7,142		222	0	0
DMD	DMD	Swords	3,609	1,205	976	109	265		6,164		142	0	0
DMD	DMD	Blanchardstown	26,847						26,847		442	0	0
DMD	DMD	Cloverhill	7,996						7,996		189	0	0
DMD	DMD	CCJ	56,168						56,168		1,251	0	103
DMD	DMD	Children's Court	2,194						2,194		231	0	0
		Total:	117,528	15,105	1,509	2,486	5,657	15,356	157,641		2,926	1	103
								Total	157,641			Total	3,030

Year	Criminal Offences	Family Law Business Cases dealt with	Small Claims dealt with	DC Civil Cases Dealt with	Summary Judgment Decrees issued	Licensing Business Dealt with	Total business		DC Scheduled Sittings	DC Special Sittings	DC Out of hours Sittings
2019	332,782	46,981	2,497	7,993	9,893	43,376	443,522		9,412	729	1,234
2018	326,688	44,012	1,623	8,945	8,899	41,691	431,858		9,612	585	1,200
2017	320,100	54,320	1,561	9,860	7,400	46,448	439,689		9,942	662	1,188
2016	313,893	42,383	1,722	10,380	7,989	47,221	423,588		9,354	670	1,091
2015		44,574		10,872	9,156						
2014		44,210		11,228	8,203						

Appendix B – Out of Hours Sittings January – December 2020

Office	Scheduled	Special	Out of Hours	Sch + Out of Hours	Total
Athlone	61	3	3	64	67
Ballina	67	4	2	69	73
Bray	166	15	82	248	263
Carlow	50	43	28	78	121
Carrick on Shannon	40	2	61	101	103
Castlebar	97	15	22	119	134
Cavan	102	13	27	129	142
Clonakilty	150	9	24	174	183
Clonmel	105	53	55	160	213
Cork	734	49	55	789	838
Donegal	72	0	0	72	72
Dundalk	181	43	15	196	239
Ennis	132	23	71	203	226
Galway	207	35	57	264	299
Kilkenny	56	3	19	75	78
Letterkenny	126	56	51	177	233
Limerick	368	55	36	404	459
Longford	63	22	77	140	162
Loughrea	66	7	18	84	91
Mallow	147	58	41	188	246
Monaghan	89	6	11	100	106
Mullingar	71	17	59	130	147
Naas	13	3	0	13	16
Nenagh	136	20	20	156	176
Portlaoise	91	29	9	100	129
Roscommon	89	19	22	111	130
Sligo	78	16	64	142	158
Tralee	160	27	25	185	212
Trim	140	6	27	167	173
Tullamore	83	20	20	103	113
Waterford	227	23	96	323	346
Wexford	155	11	19	174	185
Youghal	20	6	3	23	29
Dublin	3387		144	3531	3531
Total 2020	7729	701	1263		9639
Total 2019	9264	834	1209		11307
Difference	-1535	-133	54	-4464	-1614

Appendix C – Contested hearings: Waiting Times

Region	Waiting Times for Contested Family Law cases	Waiting Times for Contested Childcare cases	Waiting Times for Contested Criminal cases
Eastern Region			
Waterford	4 weeks	8 weeks	8 – 12 weeks
Wexford & Gorey	12-16 weeks	4 – 8 weeks (Judge requests additional sittings when required)	24 weeks
Carlow	8 weeks	12 weeks	8 weeks
Kildare	24 – 28 weeks (Naas) 22- 25 weeks (Athy)	*Specials arranged with President's Office as required	20-24 weeks
Laois	34 weeks	7 weeks	37 weeks
Kilkenny	8 - 12 weeks	Dealt with in Carlow	8 weeks
Wicklow	8 weeks	4 weeks	8 – 12 weeks
		* All new CFA matters are given dates immediately . However the length of time for each CFA case depends on the parties involved and its complexity . The full care order dates can take some time before they are requested by the parties in which the office then contacts the President's office for a special to be assigned.	
Western Region			
Letterkenny	12 weeks	*All new CFA matters are given dates immediately. However, the length of time for each CFA case depends on the parties involved and its complexity. The full care order dates can take some time before they are requested by the parties in which the office then contacts the President's office for a special to be assigned.	40 weeks

Donegal	4 weeks	4 weeks	4 weeks
Sligo	4-6 weeks	*	14 weeks
Ballina	4 weeks	*	24 weeks
Castlebar	26 weeks**	26 – 28 weeks	30 weeks
Galway	12-14 weeks**	12- 16 weeks	10 - 12 weeks
Loughrea			
Ennis			
Roscommon			
Carrick-on-Shannon	12 weeks	8 weeks	20 weeks
Western Region Key	*Dependent on Additional Judge	** DV matters and Interim Care Orders Next sitting	***Lengthy contested cases require additional judge
Southern Region			
Cork	14 – 16 weeks	24 – 26 weeks	22 – 24 weeks
Tralee	8 – 12 weeks	6-8 weeks	12 weeks
Mallow	10 – 15 weeks	10 – 15 weeks	10 – 15 weeks
Youghal	Next sitting	Next sitting	8 – 12 weeks
Limerick	20 – 22 weeks	10 -12 weeks	34 weeks
Nenagh	20 – 22 weeks	22 – 24 weeks	22- 24 weeks
Clonmel	20 – 24 weeks	10 weeks	12 weeks
Clonakilty	Next sitting	4 – 8 weeks	12 weeks
North Midlands			
Trim	14 weeks	14 weeks*	37 weeks
Tullamore	26 weeks	26 weeks (8 – 12 weeks if a special sitting is requested)	32 weeks
Monaghan	38 weeks	22 weeks	44 weeks
Longford	12 – 15 weeks	18 weeks	12 weeks
Cavan	12 – 16 weeks	12 – 16 weeks (up to 2 hours) 24 – 30 weeks (cases over 2 hours)	8 weeks (less than 1 hour) 12- 16 weeks (longer than 1 hour) Cases requiring a day have not yet been assigned hearing dates due to shortage of judges
Mullingar			
Dundalk	26 weeks	36 weeks	45 weeks
DMD			
Blanchardstown			37 – 46 weeks*
Dun Laoghaire			47 weeks
Swords	11 weeks		19 weeks
Dolphin House	25 weeks		
Children's Court			22 weeks
Childcare		30 weeks (urgent cases take priority)	
CCJ 1			34 weeks
CCJ 2			36 - 38 weeks
CCJ 3			30 weeks
CCJ 4			34 weeks
CCJ 8			28 – 30 weeks

CCJ 18			35 – 37 weeks
Tallaght			18 – 20 weeks

Appendix Two: Submission of the President of the Circuit Court

1. The Circuit Court Bench comprises of the President of the Circuit Court and such number of Ordinary Judges as may from time to time be fixed by an Act of the Oireachtas. The number of Ordinary Judges of the Circuit Court is now fixed at not more than 37 by the Courts and Court Officers (Amendment) Act 2007 (further amending the 1995 Act).

2. In 2013 six Specialist Judges of the Circuit Court, within the meaning of Part 6 of the Personal Insolvency Act 2012, were appointed to deal with Insolvency applications but that number has reduced as appointments of Specialist Judges to Ordinary Judgeships have been made and no additional Specialist Judges have been appointed when retirements have taken place. There are now only 2 Specialist Judges in the Circuit Court. Two other former Specialist Judges were appointed as Ordinary Judges but still continue to sit to deal with Insolvency matters for a number of weeks of each term. I would envisage that these two Specialist Judges would not be replaced when they retire and that Insolvency matters would be dealt with by Ordinary Judges which would increase the workload of the Ordinary Judges of the Circuit Court.

3. There are 8 Circuits, namely the South Western, South Eastern, Eastern, Western, Midland, Dublin, Northern and Cork. Ten Judges are permanently assigned to Dublin, three Judges permanently assigned to Cork and one Judge permanently assigned to each of the other six Circuits.

4. Before 2016 there was only one Special Criminal Court which did not sit continuously, but since 2016 there are two Specialist Criminal Courts which sit every term for the whole term. Consequently, two Judges of the Circuit Court are required to sit on the Special Criminal Court each term, leaving the Circuit Court without two Judges available to sit for other Circuit Court matters. This was not the case pre 2016.

5. The Covid-19 pandemic and the consequent Public Health Regulations introduced have resulted in a backlog of cases especially in Criminal Jury Trials, contested

Family Law matters and Civil matters. Many Circuit Court cases cannot be dealt with remotely, even where cases can be dealt with remotely, facilities are not there to do so e.g. Tralee Courthouse does not have video-link facilities.

6. The complement of the Circuit Court is 38 Judges including the President. Currently, the Judges are assigned as follows:

South Western Circuit	5 Judges
South Eastern Circuit	5 Judges
Eastern Circuit	4 Judges
Western Circuit	2 Judges
Midland Circuit	3 Judges
Dublin Circuit	14 Judges
Northern Circuit	1 Judge
Cork Circuit	3 Judges

One Judge then sits between the Eastern Circuit, the Northern Circuit and the Midland Circuit when needed.

At present there is 1 Judge on extended leave who does not appear in the above list.

7. Below is a tabular representation of the Circuits, the venues on the Circuits and the population of each Circuit.

Circuit	**County**	**Venues**	**Population**	**Total for Circuit**
Dublin	**Dublin**	Criminal Courts of Justice Phoenix House Four Courts	1.35 million	**Dublin Circuit 1.35 million**
Midland	**Sligo**	Sligo	65,500	
	Laois	Portlaoise	84,700	
	Longford	Longford	40,900	

	Offaly	Tullamore	78,000	
	Westmeath	Mullingar Athlone	88,800	
	Roscommon	Roscommon	64,500	**Midland Circuit 422,400**
South Western	**Limerick**	Limerick Newcastlewest	194,900	
	Clare	Ennis Kilrush	118,800	
	Kerry	Tralee Killarney Listowel	147,700	**South Western Circuit 461,400**
Western	**Galway**	Galway City Loughrea Clifden	258,100	
	Mayo	Castlebar Ballina	130,500	**Western Circuit 388,600**
Eastern	**Kildare**	Naas	222,500	
	Louth	Dundalk Drogheda	128,900	
	Meath	Trim	195,000	
	Wicklow	Bray	142,400	**Eastern Circuit 688,800**
Northern	**Cavan**	Cavan	76,200	
	Monaghan	Monaghan Carrickmacross	61,400	
	Leitrim	Carrick-on-Shannon	32,000	

	Donegal	Donegal Letterkenny Buncrana	159,200	**Northern Circuit 328,800**
South Eastern	**Waterford**	Waterford Dungarvan	116,200	
	Wexford	Wexford	149,700	
	Tipperary	Clonmel Thurles Nenagh	159,600	
	Kilkenny	Kilkenny	99,200	
	Carlow	Carlow	56,900	**South Eastern Circuit 581,600**
Cork	**Cork**	Cork Bandon Clonakilty Fermoy Macroom Mallow Midleton Skibbereen Youghal	542,900	**Cork Circuit 542,900**

8. The legal year is divided into four terms. Judges of the Circuit Court are available to provide Court sittings as needed including weekends and evenings. Emergency arrangements are made with the local Court offices to ensure that there is cover at all times. The normal sitting time for the Circuit Court in Dublin is from 10am to 4 or 5pm. For Circuits outside Dublin, the sitting time is considerably longer, often from 10am or 10.30 am to 8pm. These lengthy sittings are required as the Court may not be sitting again at the venue to hear that type of case e.g. a family law matter for a period of months. Many Judges in the Circuit Court sit on Circuits

far from their home necessitating them to stay on the Circuit during the week returning home late on Friday evening or Saturday morning.

9. The work of the Circuit Court can be divided into 3 main categories – criminal, family law and civil cases. The President, in consultation with the assigned Judges on each Circuit, and the office managers on each Circuit, schedule the sittings on each Circuit for the year. The process involves deciding how many weeks can be allocated to criminal, family law and civil matters on each Circuit. The President assigns a Judge temporarily to a Circuit. At present, on the Dublin Circuit, there are 5 Judges presiding over criminal trials in the Criminal Courts of Justice, 1 sentencing Judge, 1 dealing with District Court Appeals, 2 in the Special Criminal Court, 3 in Family Law and 2 dealing with civil matters, leaving the balance to cover the 7 other Circuits. There is never a full complement available at any one time for a variety of reasons. Two of the ordinary Judges who were Specialist Judges spend approximately eight weeks a year dealing with insolvency matters together with the two Specialist Judges.

10. I have not calculated the number of Judges required immediately by reference to the population on each Circuit because e.g. the number of indictable prosecutions in Limerick is higher than Cork even though the population of Cork is higher than Limerick. Neither have I calculated the number of Judges required immediately by reference to the number of indictable prosecutions or the number of family law and civil cases being heard on a Circuit. The reason being, criminal trials, particularly in Dublin, could last 4-6 months or even longer and that would count as just one indictable prosecution. Further, for example, on the Midland Circuit recently a human trafficking case lasted for approximately 6 weeks and that would, in any criminal trial list, count as just one trial. This would not accurately reflect the volume of cases and the time needed for the disposal of same.

11. I have consulted with the Assigned Judges throughout the country, who have consulted in turn with the office managers, resulting in the submission that 8 additional Judges are required immediately. Below is a tabular representation of

how many Judges are assigned to each Circuit at the moment, how many are required immediately to deal with present demands.

Circuits	No. of Judges Assigned	Extra Judges Required
Dublin	14	.5
Midland	3	1
South Western	5	2
Western	2	.5
Eastern	4	2
Northern	1	1
South Eastern	5	1
Cork	3	0

12. During the Covid-19 pandemic, the Circuit Court has continued to hear matters remotely where possible, and physically where not, subject always to Public Health Guidelines. The backlogs on each Circuit would be far longer if this had not been done.

13. In civil claims Circuit Court Judges sit alone to hear cases. A Circuit Court Judge may only exercise jurisdiction in the Circuit to where he/she is assigned. In addition to its civil jurisdiction, the Circuit Court exercises jurisdiction in respect of the trial of serious crime with the exception of murder, rape, aggravated sexual offences, cognates of such offences, and certain other offences, divorce and judicial separation, and ancillary family law proceedings. The monetary jurisdiction of the Circuit Court is limited to €60,000 in personal injuries actions and €75,000 in all other civil claims. The recent adoption of the Personal Injuries Guidelines is likely to see a sharp increase in the number of such cases coming before the Court.

14. The following is a non-exhaustive list of disputes in respect of which the Circuit Court exercises first instance jurisdiction. The Circuit Court has exclusive jurisdiction to determine applications relating to claims for new leases.

15. The Circuit Court has exclusive jurisdiction to deal with certain types of applications under the Personal Insolvency Act, 2012 as amended by the Personal Insolvency (Amendment) Act 2021 viz. applications in relation to debt relief notices. The Circuit Court also has exclusive jurisdiction to hear applications concerning Debt Settlement Arrangements where the total value of the unsecured debts does not exceed €2.5million.

16. The Circuit Court has jurisdiction, concurrently with the High Court, to hear applications to appoint an examiner to a company, applications to restore a company to the register of companies and applications for the appointment of inspectors to investigate the affairs of a company.

17. The Circuit Court has exclusive jurisdiction in respect of certain types of proceedings brought by mortgagees seeking orders for possession of land which is the principal private residence of (a) the mortgagor or (b) such other person(s) without whose consent a conveyance of that land would be void by reason of the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and where the mortgage in question was created prior to 1st December 2009.

18. The following is a breakdown of what is required per Circuit, from my own knowledge and the opinion of the Assigned Judges and the data available. I enclose as Appendix 1.

(a) South Western Circuit (5 sitting Judges + 1 required)

19. The South Western Circuit comprises of the counties of Kerry, Limerick and Clare. Even pre Covid-19 there was a considerable backlog of criminal jury trials in Limerick city and Limerick county. The number of indictable prosecutions has increased massively on that Circuit, particularly in Limerick, in the last five years. Due to Covid-19 restrictions imposed that backlog has increased. The only way to clear the backlog is to have two Judges sitting in Limerick to deal with jury trials

on a continuous basis. There was also a backlog in civil and family law matters. It is necessary to have consistency in family law cases. It is preferable that the same Judge, if possible, in a particular venue on a Circuit, would deal with family law matters on a regular basis.

20. There is also a backlog in Kerry due to the fact that there is not a Courthouse in Kerry suitable for jury trials given the public health guidelines as regards social distancing in Courtrooms. Consequently, Kerry jury trials have to be heard in Ennis or Limerick which causes further delays. Therefore, it is imperative that one extra Judge be assigned to the South Western Circuit as a matter of urgency. Limerick Courthouse has the facility to enable two jury trials to proceed at the same time. The third Judge assigned to Limerick would preside over family law and civil cases to ensure consistency, particularly in family law.

21. For some weeks in each term, the Central Criminal Court sit on a venue in Munster e.g. Waterford, Cork or Limerick. Consequently the Circuit Court would not have a Courtroom available to them when the Central Criminal Court sit in those venues.

(b) South Eastern Circuit (5 sitting Judges +1 required)

22. The South Eastern Circuit comprises of the counties of Carlow, Wexford, Waterford, Tipperary & Kilkenny. Even pre Covid-19 the South Eastern Circuit had backlogs especially in criminal jury trials in Wexford. The venues on the South Eastern Circuit include Carlow, Waterford city, Dungarvan, Wexford, Thurles, Nenagh, Clonmel and Kilkenny. There is an adequate number of Courthouses available to allow for increased sittings. It is necessary, given the volume of work, that one extra Judge is appointed as increased sittings are needed to deal with criminal, family law and civil matters in all venues and to ensure consistency in family law cases throughout the Circuit.

(c) Eastern Circuit (4 sitting Judges +3 required)

23. In effect, the Eastern Circuit is divided between the northern part of the Circuit (Louth & Meath) and the southern part of the Circuit (Kildare & Wicklow). Louth has two Courthouses which post Covid-19 could deal with jury trials, i.e. Drogheda and Dundalk. The Eastern Circuit requires two extra Judges to deal with trials throughout the Circuit and one extra Judge to deal with family law in the southern part of the Circuit. Jury trials, at the moment, can only be heard in Drogheda and Trim due to Covid-19 restrictions. The number of indictable prosecutions in Louth has increased dramatically in the last number of years. It would be hoped to allow three Judges preside over criminal jury trials on a continuous basis i.e. two sitting in Trim, Drogheda and Dundalk and the third in Naas and Wicklow, leaving four Judges to preside over family and civil cases, two in the northern part of the Circuit, i.e. Meath and Louth and two in the southern part of the Circuit i.e. Kildare and Wicklow. Therefore, this would mean consistency in family law cases throughout the Circuit.

(d) Western Circuit (2 sitting Judges +.5 required)

24. The Western Circuit comprises of the counties of Galway and Mayo. Pre Covid-19 there was adequate judicial resources to cover the Circuit. Due to the backlog caused by Covid-19 and the restrictions imposed, it is necessary to run criminal jury trials continuously in Galway for a period of time to clear the backlog. Extra criminal sittings are also required for Mayo. The total requirement would be a Judge for a limited period of time until the backlog of criminal trials in Galway is cleared. That Judge could then be assigned elsewhere to hear lengthy cases, as required.

(d) Midland Circuit (2 sitting Judges +1 required)

25. The Midland Circuit comprises of the counties of Longford, Westmeath, Roscommon, Offaly, Sligo & Laois. There are 2 judges sitting on this Circuit at the moment but there is a necessity for one extra Judge to deal with all matters. In particular, as on all Circuits, there are lengthy childcare cases appealed from the District Court. These cases occupy Court time for a lengthy period which interferes with the family law lists on a Circuit.

(e) Dublin (14 sittings Judges + .5 required)

26. I sit in the CCJ presiding over the criminal jury trial list and presiding over criminal jury trials. At present there are 5 trial Judges, 1 sentencing Judge, 2 Special Criminal Court Judges, 1 District Court Appeals Judge, 2 Civil Judges and 3 Judges in Family Law. There is a need for another Judge for approximately half of the legal year to deal with lengthy childcare matters and lengthy civil matters. While jury criminal trials in Dublin were unable to proceed as a consequence of the restrictions imposed by the Covid-19 pandemic, an extra Judge to deal with criminal jury matters is required, but unfortunately there is not a Courtroom available in the CCJ. In criminal matters, if a defendant is in custody on the matter before the Court only, his/her trial will get priority and will be heard immediately, if possible. My colleagues throughout the Circuits deal with the trial of a person in custody on the matter before the Court only, in a similar manner. Priority is also given to sexual assault cases, particularly where there is a child complainant, historic sexual abuse cases and where there is a vulnerable witness involved in a case.

(f) Northern Circuit (1 sitting Judge +1 required)

27. The Northern Circuit comprises of the counties of Donegal, Leitrim, Cavan & Monaghan. One extra Judge is required on the Circuit. It would be my intention if one extra Judge was assigned, that one Judge would deal with criminal matters and the other Judge would deal with family law and civil matters. The sittings would have to be structured in such a way as to have a sitting in Cavan when there

is a sitting in Donegal and a sitting in Monaghan when there is a sitting in Carrick on Shannon etc. so that the practitioners are available. I have taken this into consideration the availability of practitioners when deciding on the sittings, the length of time of the sittings and the locations of the sittings in all Circuits, except Dublin and Cork.

(g) Cork Circuit (3 sitting Judges)

28. There are three Judges permanently assigned to Cork Circuit. Extra judicial resources are not required at this time.

29. I have carefully considered that venues are available on the Circuits for extra sittings if a Judge was available to do so immediately. The very minimum required is the appointment of 8 extra Judges immediately, to ensure the speedy and proper administration of justice.

30. The Circuit Court in Dublin sits five days a week during term times. Outside of Dublin when there are criminal sittings many Circuits including Cork, Limerick, the South Western and the Midlands sit on Mondays if trials are proceeding. Some do not sit on Mondays due to the unavailability of practitioners on Mondays. In Circuits outside Dublin Judges sit routinely on Mondays to hear urgent matters, to finalise cases or to return to a venue to finalise a case.

31. Circuit Court Judges do not routinely receive transcripts of the evidence in cases. In long criminal jury trials, if transcripts are requested by the Judge, they are made available but often there is a considerable delay in receiving them. Judges outside Court hours spend a considerable amount of time in criminal matters preparing rulings and their charge to the jury. In civil and family cases particularly in long and complex cases a considerable amount of time is spent preparing rulings and

judgments. This for the most part is done without the benefit of a transcript of the evidence or submissions.

32. There are a number of legislative changes which would increase the efficiency of the Circuit Court. One is to amend legislation to allow juries sit in a county from which they were not empanelled e.g. if evidence has to be given by way of video-link and the video-link breaks down, it is not possible to move that jury to another county to hear the evidence as the legislation prohibits this.

33. Section 26 of the Courts Supplemental Provisions Act 1961 provides that a Circuit Court Judge may transfer the trial of a criminal issue to any other place in his/her Circuit, and the trial shall be held with a jury from the *"jury district"* (that means county) where the Court is sitting. Also Section 5(4) of the Juries Act 1976- *"every issue that is triable with a jury shall be triable with a jury called from a panel of jurors drawn from the jury district in which the Court is sitting."*

34. This could lead to a delay in a trial or even its collapse.

35. A recent OECD adult skills survey shows that 17.9% or about 1 in 6 Irish adults are at or below level 1 on a 5 level literacy scale. The reality is that many of these persons are vulnerable and fall into a socio economic group which finds it difficult to afford legal aid. In the absence of civil legal aid in most cases, this vulnerable cohort of people have to resort to lay advocacy groups or else have to appear in Court in person. Access to justice requires that the Courts furnish sufficient time to a lay litigant to present his/her case.

36. There are at present eight Circuits, the Family Courts Bill 2020 envisages the creation and alteration of Circuit Family Law Circuits. It would be preferable that the Circuits remain as is until the details of the proposed changes in the Circuit Family Law Circuits are known.

37. There are 19 Judges by government assigned to the Circuits, the remaining are unassigned, and are temporarily assigned to the Circuits, by the President of the Court. Some unassigned Judges sit permanently on Circuits, others sits on different Circuits to hear family law matters to ensure consistency. Others have to travel long distances from Circuit to Circuit during a term. Often Judges, at very short notice, have to travel long distances to a Circuit when an assigned Judge is unavailable. Again the introduction of the changes proposed in the Family Court Bill will change these assignments.

38. When Judges are unable to sit, arrangements are made to ensure that their lists are dealt with, where possible by other Judges. The response of the system if a Judge cannot sit would depend on the reason for the absence.

39. In this submission the needs of the Circuit Court, both immediately and in the immediate term are set out. A five year review to address the needs of the Court could be introduced.

40. If a number of Judges were appointed immediately to meet the immediate demands of the Court, it would be seen how efficiencies were achieved, how delays and costs would be reduced.

41. The establishment of the Judicial Studies Committee has seen a number of training sessions being arranged in late August and September of this year including a week long Irish course in Donegal. It is practically impossible given the lack of judicial resources for such courses to be attended during term time, as this would lead to the cancellation of lists. It is a development that is very much welcomed by the Court.

42. There are vacation sittings in Dublin fortnightly in August and September and on Circuits outside Dublin on various dates to deal with urgent matters. The Judges are on call in Dublin for a number of weeks during the long vacation as well as being required to sit for vacation sittings. Local arrangements are put in place

outside Dublin and the Judges assigned permanently or temporarily assigned usually to that Circuit, sit during vacations to hear matters and are on call for periods of time.

43. The Circuit Court sits regularly during vacations in order to continue a hearing commenced before the vacation. Further, the President of the Circuit Court may, in accordance with the powers conferred on him/her by Section 10 of the Courts of Justice Act, 1947, fix sittings to be held in any Circuit during the month of August or September where such additional sittings are, in the view of the President of the Circuit Court, necessary or desirable. The President makes such Orders on a regular basis and there are sittings on Circuits during vacations.

    The members of the Circuit Court serve on a number of Committees. The following list is not exhaustive.

    (i) Judicial Council (the President and one other member of the Court)
    (ii) Committees of the Judicial Council Personal Injuries Guidelines, Judicial Conduct, Sentencing Guidelines, Educational and Wellbeing
    (iii) Courts Service Board (the President and one other member of the Court)
    (iv) Committees of the Courts Service Board – Finance, Building Committee, Modernisation
    (v) Judicial Appointments Advisory Board (President)
    (vi) Judicial Liaison Covid Committee (President)
    (vii) Circuit Court Rules Committee (President and two other members of the Court)
    (viii) Complaints Referee
    (ix) Benchers Kings Inns
    (x) Hammond Lane Project Board
    (xi) Family Law Court Development Committee
    (xii) Council of King's Inns
    (xiii) Audit Committee
    (xiv) Irish Legal Terms Advisory Committee

(xv) Annual Circuit Court Conference Committee

(xvi) Annual National Conference Committee

(xvii) Library Committee

(xviii) Courts Martial Rules Committee

(xix) Criminal Justice Strategic Committee

(xx) Association of Judges

(xxi) Working Group to report on University Research

These Committees obviously sit outside Court sitting times. There are also ongoing meetings between Circuit Court Judges and Office Managers, County Registrars, State Solicitors, representatives of the legal profession and other stakeholders.

Criminal Matters

44. As set out in the Courts Service Annual Report 2020, there is an 11% increase of new serious cases in the Circuit Criminal Courts, 18,275 new serious cases in 2020 up from 16,487 in 2019. This is up from 13,974 such cases in 2016 – an increase in serious crime of 31% over four years.

45. There is a huge backlog throughout the country in criminal jury trials. For example, in Limerick there are approximately 474 jury trials waiting to be heard. In Louth there are approximately 209 criminal jury trials waiting to be heard, and there are considerable backlogs in Wexford on the Midland and Northern Circuits. Most jury trials in the Circuit Court last 3-4 days, but many last considerably longer, for weeks or even in excess of six months. There is no way one Judge could deal with such a list on a Circuit. It is necessary, therefore, to assign a second Judge on a Circuit to preside over criminal trials on an extended basis. If there is more than one Judge, there will be more pleas as the defendants know that there is a

strong likelihood that their case will proceed, and they will lose the value of entering a plea.

46. On the Dublin Circuit, there are approximately 1,200 cases listed for trial in the next two years. In the Easter term of 2021, which comprises of 6 weeks, because there were 5 Judges sitting hearing criminal jury trials, 70 cases were disposed of whether by pleas, the State entering a nolle prosequi or completed trials. I give this as an example of how a list can move if Judges are available.

47. Below is a tabular representation of the number of prosecutions sent forward for trial before the Dublin Circuit Criminal Court.

Year	**Number of Circuit Court Proceedings**
2021 (to date)	1288
2020	1542
2019	1308
2018	1262
2017	1171
2016	1148
2015	1119
2014	1023

48. The increase from 2017-2020 represents a 31.6% increase in prosecutions before Dublin Circuit Criminal Court. The number of prosecutions sent forward for trial so far this year, if it were to continue, would represent an increase of up to 40% between 2020 to 2021.

Family Law

49. The Circuit Court deals with the majority of applications for separation, divorce and annulments. It also deals with interim applications for, inter alia, custody, access and maintenance. The number of lay litigants has grown substantially in recent years, which lengthens the hearing times. It is desirable that there is consistency in family law, i.e. the same Judge hearing the case from beginning to end, including the interim motions. This can be achieved on some Circuits in some venues, but due to a shortage of Judges, cannot be achieved in others. This leads to lengthier hearings causing delays in finalisation of matters and unnecessary costs. Appeals from the District Court in childcare matters can be very lengthy, sometimes lasting weeks if not months in some cases. Such a long case has to be specially fixed as the ordinary family law sittings could not accommodate such a lengthy case.

50. The Programme for Government contains a commitment to enact a Family Court Bill to create a new dedicated Family Court within the existing Court structure and provide for Court procedures that support a less adversarial resolution of disputes. The overall aim is to change the culture so that the focus of the Family justice system meets the complex needs of people who needs help with family justice issues. It is intended that the Circuit Family Court will deal with complex or contested family law cases.

51. The jurisdiction of the Courts under the Childcare Act of 1991 would be changed to allow more complex childcare cases to be brought to the Circuit Family Court.

52. The District Family Court will be able to transfer complex or lengthy cases to the Circuit Family Court and it will also be open to the Circuit Family Court to transfer proceedings to the District Family Court, if it considers that the District Family Court is a more appropriate Court in such circumstances.

Impact on the Circuit Court

53. If more complex childcare cases are brought before the Circuit Family Court further judicial resources will be required throughout the Circuits to deal with same.

Civil

54. There are now only 2 Specialist Judges to deal with insolvency matters and 2 ordinary Judges who were Specialist Judges also dealing with insolvency for a period of weeks throughout the year. It is anticipated that the insolvency work will be dealt with by ordinary Judges as part of their workload. As in family law, the number of lay litigants has increased considerably in recent years, particularly in claims for possession and sale of premises arising out of mortgage arrears.

55. The Personal Insolvency (Amendment) Act 2021 amends the Personal Insolvency Act 2012 principally to facilitate those who are affected by the Covid-19 pandemic in accessing mechanisms under that Act. The requirement that the mortgage has been in arrears on 1st January 2015 is removed.

56. The Circuit Court also deals with employee matters such as appeals under the Equality Status Acts and applications for example, under the Protected Disclosures Act 2014 to protect employees who reasonably believe there is a serious wrongdoing within the workplace and Commercial Company law matters such as Examinerships, formerly dealt with by the High Court.

57. As previously mentioned it is envisaged that there will be a sharp increase in the number of Personal Injuries cases coming before the Circuit Court as a consequence of the new Personal Injuries Guidelines.

58. The Circuit Court has a particular jurisdiction concerning capacity issues which has been increased with the Assisted Decision Making (Capacity) Act 2015, not yet commenced, bearing in mind the demographic age groups in Ireland and in the

absence of a Court of Protection [such as in the UK] this requires additional Judges as there are many complex financial and welfare issues.

The Assisted Decision Making (Capacity) Act 2015

59. The Assisted Decision Making (Capacity) Act 2015 creates a comprehensive reform of the outdated 19th century legislation on mental capacity based on the Lunacy Regulations (Ireland) Act 1871. It replaces the Wards of Court system with a modern decision making framework and updates the Powers of Attorney Act 1996 to provide better safeguards in line with best practice in addition to extending the scope of an attorney's authority to include healthcare decisions.

60. It was enacted to comply with Ireland's obligations under the United Nations Convention on the Rights of People with Disabilities (UNCRPD). The Act sets out Guiding Principles to apply to all persons including the Court in making an intervention with a person whose decision-making capacity is at issue.

61. The Court as defined in the Act (s. 2) as the Circuit Court. The Court will also be an *"intervener"* for the purposes of the legislation and the Guiding Principles will apply to the Court. The jurisdiction of the Court is set out in the Act.

Impact on the Circuit Court

62. Originally it was envisaged in the draft legislation that because of the substantial increase of workload in the Circuit Court, that Specialist Circuit Judges would be provided with this work. This was in addition to their Insolvency work. The legislation provided for eight Specialist Circuit Court Judges of which six were appointed. Three of the Specialist Judges were appointed Ordinary Judges of the Circuit Court and one specialist Judge has since retired, this leaves two Specialist

Circuit Court Judges. It is accepted that the Specialist Circuit judicial model should be replaced with ordinary Circuit Court Judges. It is therefore submitted that when the Act commences, the increase of workload to the Circuit Court will have the equivalent impact of requiring 4-6 additional Circuit Court Judges to deal with this new work.

Data Protection

63. An appeal to the Circuit Court under Section 26 of the Data Protection Act 1988 as amended provides:

    1. An appeal may be made to and heard and determined by the Court against
        (a) A requirement specified in an enforcement notice or an information notice,
        (b) A prohibition specified in a prohibition notice,
        (c) A refusal by the Commissioner under section 17 of this Act, notified by him under that section, and
        (d) A decision of the Commissioner in relation to a complaint under section 10(1)(a) of this Act, and such an appeal shall be brought within 21 days from the service on the person concerned of the relevant notice or, as the case may be, the receipt by such person of the notification of the relevant refusal or decision.

Impact on the Circuit Court

63. Cases have increased and it is anticipated this increase will continue under this legislation. It is envisaged that the increase in workload is equivalent to approximately two additional Circuit Court Judges.

The Residential Tenancies Act 2004

64. The Residential Tenancies Act 2004 has been affected by the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 and also by statutory instruments up to and including the Rent Pressure Zone orders. In relation to the Circuit Court for example, applications to the Circuit Court to confirm or refuse decisions and impose sanctions, for example on Landlords, is a frequent application to the Circuit Court (part 7a of the Act).

Impact on the Circuit Court

65. It is envisaged that the increase in workload is equivalent to approximately two additional Circuit Court Judges.

64. Briefly, and to summarise, 8 Judges are required immediately with a further 8-10 required as set out above. At present, the Circuit Court is sitting throughout the country hearing criminal, family law and civil cases on a staggered time basis per public health guidelines. It is also using remote technology where available to hear applications particularly callovers and consent appearances, but much of the Circuit Court work cannot be carried out remotely. It is imperative that 8 judges be appointed immediately and consideration be given to a further 8-10 appointments at least in early course.

CIRCUIT COURT APPENDIX 1

Midland Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Longford	2017	4	2	4
	2018	5	2	5
	2019	8	2	4
	2020	4.5	1.5	1.5
	2021 up to 31st July	4.5	1	1.5

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Tullamore	2017	8	3	4
	2018	8	3	3
	2019	8	3	3
	2020	7	2	2
	2021 up to 31st July	3	0	1

Venue	Year	Criminal Weeks	Family Law & Civil Weeks
Mullingar	2017	10.5	11
	2018	11	9
	2019	13	8
	2020	19	9
	2021 up to 31st July	9	6

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Portlaoise	2017	7	4	4
	2018	11	4.5	3.5
	2019	10	3	3
	2020	9	4.5	4.5
	2021 up to 31st July	7	1	1

Venue	Year	Criminal Weeks	Family Law Weeks Civil Weeks
Sligo	2017	11	6
	2018	10	6
	2019	9	6
	2020	9	6
	2021 up to 31st July	7.5	4.5

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Roscommon	2017	6	3	3
	2018	8	3	3
	2019	6	3	3
	2020	6	3	3
	2021 up to 31st July	5	2	2

South Western Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Limerick	2017	31	13	15
	2018	22	11	23
	2019	26	11	17
	2020	36	10	7
	2021 up to 31st July	22	6	4

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Ennis	2017	15	7	8
	2018	15	7	8
	2019	15	6	8
	2020	8	4	6
	2021 up to 31st July	3	1	2

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Tralee	2017	15	10	17
	2018	20	9	12
	2019	17	7	11
	2020	12	8	15
	2021 up to 31st July	5	4	8

Northern Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Cavan	2017	4	3.5 + 52 day CFA case	3.5
	2018	5	2	2
	2019	5	4	4
	2020	7	3	3
	2021 up to 31st July	3	1.5	1.5

Venue	Year	Criminal, Family Law & Civil Weeks
Monaghan	2017	7.5
	2018	7.5
	2019	7
	2020	9.5
	2021 up to 31st July	6

Venue	Year	Criminal, Family Law & Civil Weeks
Carrickmacross	2017	2
	2018	3
	2019	3
	2020	2
	2021 up to 31st July	2

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Letterkenny	2017	11	4	6
	2018	11	4	6
	2019	13	4	6
	2020	15	4	6
	2021 up to 31st July	6	3	3

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Carrick on Shannon	2017	2	2	2
	2018	2	1.5	1.5
	2019	4	2	2
	2020	4	1.5	1.5
	2021 up to 31st July	3	2	2

South Eastern Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Waterford	2017	24	8.5	8.5
	2018	31	9	9
	2019	29	10.5	10.5
	2020	19	8	7
	2021 up to 31st July	9	4	3

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Wexford	2017	20	8	15
	2018	23	7.5	9.5
	2019	22	9	8
	2020	20	7.5	7.5
	2021 up to 31st July	13.5	4.5	3

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Clonmel	2017	20	6	6

	2018	19	6	8
	2019	19	4	7
	2020	6	4.5	5
	2021 up to 31st July	5	3	4.5

Venue	**Year**	**Criminal Weeks**	**Family Law Weeks**	**Civil Weeks**
Nenagh	2017	14	4	4
	2018	14	4	3
	2019	16	5	4
	2020	7	4	3
	2021 up to 31st July	6.5	1	.5

Venue	**Year**	**Criminal Weeks**	**Family Law Weeks**	**Civil Weeks**
Thurles	2017	0	0	3
	2018	0	0	3
	2019	0	0	3
	2020	0	0	3
	2021 up to 31st July	0	0	1

Venue	**Year**	**Criminal Weeks**	**Family Law Weeks**	**Civil Weeks**
Kilkenny	2017	15	6	5
	2018	16	6	7
	2019	14	7	7
	2020	12	7	7
	2021 up to 31st July	10	5	4

Venue	**Year**	**Criminal Weeks**	**Family Law Weeks**	**Civil Weeks**
Carlow	2017	12	4	4
	2018	14	3.5	3.5
	2019	12	4.5	4.5
	2020	8	4	4.5
	2021 up to 31st July	5	1	1

Western Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Galway	2017	23	17	5
	2018	25.5	14.5	5.5
	2019	26	14.5	6.5
	2020	20	12	7
	2021 up to 31st July	17	3	7

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Castlebar	2017	11	7	7
	2018	11	6	9
	2019	11	7	7
	2020	12	4	5
	2021 up to 31st July	5	1	1

Eastern Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Trim	2017	20	4	4
	2018	23.5	8	7.5
	2019	20.5	8	9.5
	2020	24	7	8
	2021 up to 31st July	13	3	4

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Naas	2017	24	7	8
	2018	25	9	7
	2019	26	8	8
	2020	30	14	12
	2021 up to 31st July	16	7	6

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Dundalk	2017	21	8	7
	2018	29	7	12
	2019	24	6	9
	2020	18	5	8
	2021 up to 31st July	10	8	5

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Bray	2017	20	8	9
	2018	19	7	7
	2019	19	8	8
	2020	10	8	8
	2021 up to 31st July	6	6	4

Cork Circuit

Venue	Year	Criminal Weeks	Family Law Weeks	Civil Weeks
Cork City	2017	32	23	38
	2018	32	23	38
	2019	32	23	38
	2020	13	20	13
	2021 up to 31st July	10	15	21

- Country venues in Cork do not deal with Family Law they only deal with DCAs and Civil business. The country venues are broken down into days and not weeks.

Venue	Days each year	DCAs days	Civil days
Bandon	6	3	3
Bantry @ Skibbereen	3	1.5	1.5
Clonakilty	4	2	2
Fermoy	6	3	3
Macroom	6	3	3
Mallow	16	8	8
Midleton	6	3	3
Skibbereen	3	1.5	1.5
Youghal	2	1	1

Dublin Circuit

5 trial Judges, 1 sentencing Judge, 2 Special Criminal Court Judges, 1 in District Court Appeals for approximately 22 weeks per year, 3 Judges in Family Law and 2 Judges in Civil.

Appendix Three: Submission of the President of the High Court

Part 1 – PRELIMINARY

I. INTRODUCTION

This report is submitted to the Judicial Planning Working Group ("the Working Group") for its consideration to determine what judicial resources are required by the High Court over the next 5 years or more.

The purpose of this report is to give the Working Group an insight, from a judicial perspective, into the workings of the High Court and in particular as to the extent and nature of additional judicial resources required. As will be set out in the chapters that follow, current and future demand upon the resources of the High Court is such that decisive action is required to ensure that the rights of litigants to timely and effective access to justice are met.

The High Court engaged extensively with all of its judges over the last 3 months to investigate and determine with rigour where and what kind of additional resources are required. Furthermore, in addition to highlighting where additional judges are required, all judges were asked to review current practices and, where appropriate, make suggestions as to how the administration of justice could be made more efficient and effective otherwise than by increasing the number of judges. In reporting upon these suggestions, we understand that the terms of reference of the Working Group are constrained and that the improvements identified, even if considered desirable, cannot be achieved within the current process.

As emphasised on a previous occasion, the court has given its assurance that the number of judges requested by the High Court in this report is no more than is truly required. To reinforce this promise, this report sets out to explain the reasons underlying the request for additional resources and to place the Working Group in a position to make a fully informed decision as to what additional resources should be recommended.

To form an understanding of the resource requirements of the High Court it is important to have some knowledge of the working practices and procedures of the court. Delays and backlogs build in a myriad of ways and to understand how these may be solved and what impact, in particular, additional judges would have, some level of appreciation in that regard is useful. Accordingly, Part 2 of this report will give an introduction to the practice and procedure of the High Court. Then, building on Part 2, Part 3 will explain how delays develop at various stages in court proceedings and will endeavour to address the resources needed to reduce these delays. In order to fully appreciate the requirement for more judges, the Working Group should note that in Ireland, unlike any other country in Europe and any comparable jurisdiction worldwide, judges are required to maintain their skills and constantly update themselves on the law in their spare time. Training events cannot be attended if judges have to manage the current workload without additional resources, as they cannot obtain cover for a course that encroaches on the working day, as most international events do. The Irish judiciary will be unable to emulate international best practice in judicial education and development, let alone engage in peer-led training, if the number of judges does not increase.

The judges of the court have also engaged extensively with the OECD in its assessment of judicial resources. 20 judges, chosen so as to ensure that all aspects of the work of the High Court is represented, have begun filling out daily time-sheets to provide the OECD with data regarding the time spent by them each day on the differing aspects of their work. The time-sheet exercise, although it will not be completed until October 2021, has nonetheless informed the conclusions reached in this report and will undoubtedly influence the report being prepared by the OECD for the consideration of the Working Group.

Although an attempt was made to include in this report empirical data relevant to court delays and the resources required, regrettably this data was not always available from the Courts Service. And, where it was available, it was at times contradictory. Indeed, in relation to some international surveys such as the EU Justice Scoreboard, Ireland has often not submitted any data because of the manner in which the Courts Service collects its data. It may well be that the reason for the unavailability of relevant data is the Courts Service's own a lack of resources, and in particular its wholly inadequate IT system which

has suffered for a decade or more from underinvestment. This has made it difficult to obtain relevant and accurate data on the functioning of the court system and to propose targeted responses. The court wishes to express its regret in this regard and asks the Working Group to rely upon such data as it has been possible to provide in this report, supplemented by the expert views of the judiciary as detailed below.

We sincerely hope that the report will be of assistance to the Working Group in its deliberations. And, it is hoped that before the Working Group reaches any conclusions based upon submissions of third parties, the High Court will be afforded an opportunity to respond to any criticism or suggested change or innovation.

Naturally, if at any stage the Working Group has questions it feels need to be answered, or issues it considers require clarification, the judges of the High Court would be only too pleased to appear before the Working Group to assist it with its deliberations or address in writing any queries posed for their consideration. We are looking forward to a fruitful engagement with the Working Group.

II. EXECUTIVE SUMMARY

The work of the High Court

The work of the High Court encompasses all of the most important and complex civil and criminal cases litigated in the State. The court is primarily concerned with trials which involve the court hearing evidence from witnesses, as distinct from, for example, a hearing of an appeal on a point of law where no evidence will be heard. For this reason, trials are the most onerous and most complex form of litigation. Trials require judges to marshal large amounts of evidence in addition to considering complex legal issues. Having regard to the fact that the High Court also produces and publishes written judgments in respect of most of the cases that come before it, the High Court is unique amongst the courts of Ireland in that its judges both preside over trials and also produce written judgments in relation to them. Because of this, High Court litigation requires considerable judicial resources.

Having regard to the onerous and time-consuming nature of High Court work, the court's present caseload has put the court's resources under significant strain. Not only has the caseload of the court increased, but it has also changed dramatically in complexity. As far back as 2013, Richard Posner, a judge of the United States Court of Appeals for the Seventh Circuit, stated that it was a matter of "urgent concern" to establish how judges would cope with the increasing complexity of litigation and in particular the burdensome challenges imposed by reason of the dizzying pace of technological advances.[118]

As a result of the growing numbers of claims being commenced in the High Court and their overall complexity, the number of judges originally envisaged for the court, and only ever incrementally adjusted, is wholly insufficient to deal with the number of cases which require adjudication within an acceptable timeframe. In essence, the increase in workload has not been met with a corresponding increase in the number of judges.

In addition to having diaries which are filled with court cases which must be tried, High Court judges are burdened with significant additional commitments such as membership

[118] Richard A. Posner, *Reflections on Judging* (Harvard University Press, 2013).

of committees, working groups, and tribunals. Furthermore, as will be discussed later, upcoming changes in the law will impose significant additional responsibilities on the court's members and no account has been taken of the obligation on judges to continue their professional training and development. Judicial education is an ethical requirement, in respect of which legitimate complaint could be made against those who have not taken part in the courses which are offered and yet the system makes it almost impossible for judges to attend.

Consequently, significant backlogs of cases have been building and will continue to build causing delays which are prejudicial to those seeking to vindicate their rights through the courts. Timely access to justice is a fundamental entitlement under the Constitution and the European Convention on Human Rights, an entitlement currently often denied to the people of Ireland.[119]

Backlogs

Backlogs, insofar as they relate intimately to a lack of resources, arise primarily at two stages of court proceedings. First, they arise after a trial is ready for hearing, all pre-trial steps having been concluded, if there is a delay in allocating a case a hearing date. It is the large number of cases ready to be heard at any given time and the scarcity of judges to hear them, that is responsible for this type of delay.

Second, once a case has been heard, the judge needs to find time to write the judgment. If the judge does not have time to write the judgment close to the hearing date, as is invariably the case in the High Court, finalisation of the case is often delayed for a further significant period. Regrettably, either type of delay will likely cause considerable hardship to the litigants involved.

[119] See *McFarlane v Ireland* [2010] ECHR 1272 a case in which the applicant, Brendan McFarlane, brought a case against Ireland to the European Court of Human Rights alleging unjustified delays in the criminal proceedings brought against him. The Court found that there had been a violation of Article 13 (right to an effective remedy) and Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention on Human Rights.

That said, and as elaborated upon below, delays arise also prior to a case being ready for hearing.

As far as criminal trials are concerned, there is a delay of approximately 18 months in getting a trial date where the accused is in custody and 2 years or more where the accused is on bail. On the civil side, the extent of the delay that litigants face in getting a hearing date very much depends upon the type of case being pursued.

Delay causes unfathomable hardship for victims of crime, accused persons, small businesses, families, individuals and anyone who finds themselves involved in High Court litigation. Suffice it for the moment to say that the delays in the administration of justice across the High Court are unacceptable in light of the State's obligation to provide timely access to justice for its citizens.

The backlogs must be addressed to make the High Court fit for purpose.

Judicial Studies and Professional Development

The European Judicial Training Network principles, adopted by European Network of Councils for the Judiciary, provide that training, in accordance with the principle of judicial independence, should be judge-led, judge-designed and primarily delivered by judges. Such training should begin prior to appointment and should be delivered on an ongoing basis as part of the working week. All judges have the right to regular continuous training throughout their careers. Without the facility for judges to attend the training provided, the work of the new Judicial Studies Committee will be in vain.

By way of comparison, all judges in Scotland complete a minimum of 5 days of training per annum all of which is delivered during work hours, with lists planned to accommodate the training. The Judicial Institute has a full-time director, a part-time director (also a sitting judge) and 12 members of staff. New judges in England & Wales have a minimum of 5 induction days delivered by sitting judges, in addition to ongoing, annual training throughout their career. There are certain specialist areas of practice in

which a judge may not sit if she has not fulfilled updated training requirements. In Holland, judges undergo 30 hours training, during the working week, annually.

The Judicial Studies Committee has adopted Socrates' comment: "*We are what we repeatedly do. Excellence then is not an act, but a habit*". Ongoing judicial education and training must become habitual and this means judges must be released from court duties in order to attend training on a continual, ongoing basis. We can ensure excellent judicial standards by adopting international methods of training, giving judges sufficient working time to attend training and, crucially, to train as trainers and to update pedagogical skills so that judicial training can be sustained and becomes part of the judges' regular working environment.

Resources required

The court requires a significant number of additional judges to meet its obligations to those who need access to justice to vindicate their rights.

It should be noted at the very outset that in this report no account has been taken of the 5 judges provided for in the Civil Law (Miscellaneous Provisions) Act 2021. This is to give the Working Group an accurate picture of the situation as it pertains at present.[120]

The situation is that 24 additional judges are needed to meet current demand, reduce backlogs, reduce court delays, implement improved, streamlined and fairer practices and procedures and to enable every judge to undertake continuing professional development. However, by the time the Working Group reports, due to the effects of the Assisted Decision Making Capacity Act, 2015 and the Schengen Agreement (later mentioned), at least 27 will be required.

The judges of the High Court continue to explore and revise the court's practices and procedures to create efficiencies wherever possible. And, where third-party approval is

[120] Also, it should be noted that Mr. Justice David Barniville who is referred to in this submission as a judge of has now been appointed as a judge of the Court of Appeal. His duties referred to in this submission will now need to be taken over by another judge of the High Court.

necessary to introduce those efficiencies, such approval is pursued. However, freeing-up judicial time through the implementation of such measures often produces only limited benefit. There is simply no escaping the fact that more judges are required to deal with the ever increasing number of High Court cases, a significant percentage of which are more complex than ever before.

Lastly, regarding the appointment of additional judges, the assumption is often made that their appointment imposes a significant additional cost on the taxpayer. Whilst it is true to say that the appointment of judges entails significant expenditure, appointing judges also generates additional income for the State. That expenditure and what it achieves for citizens who need timely access to justice must be considered in the context of the overall justice budget. The total justice sector budget is €2.9 billion while judicial pay amounts to a modest €0.030 billion, i.e. approximately 1% of the budget. Relevant also is the fact that every case heard generates income via court fees, income tax and VAT on the fees charged by legal practitioners. In other words, the appointment of additional judges will generate additional income. Furthermore, an efficient legal system benefits the economy as a whole. A speedy and efficient determination of legal disputes is an incentive for domestic and foreign investment. More importantly, justice is not a product to be considered under purely economic headings, but a fundamental right. If it is inadequate or delayed, society suffers in numerous ways, not least in economic terms.

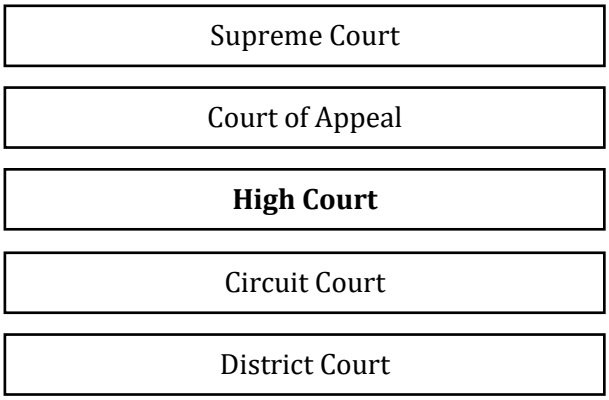
For the reasons offered in this report, the judges of the High Court recommend a root-and-branch review of the number of judges and other resources available to support the court.

Part 2 – INTRODUCTION TO THE HIGH COURT

I. JURISDICTION AND ORGANISATION

The High Court is established under Article 34 of the Constitution. In the hierarchy of courts, it sits above the Circuit Court, which in turn sits above the District Court, but below the Court of Appeal and the Supreme Court. In effect this means that the High Court hears more serious cases than the Circuit and District Courts but that its decisions can be appealed to the Court of Appeal and, in certain circumstances, to the Supreme Court.

Figure 1 - Court structure



Jurisdiction

It is not necessary for the purpose of this report to set out the exact boundaries of the jurisdiction of the High Court. Suffice it to say that the High Court only deals with the most important criminal cases, i.e. murder, attempted murder, rape and other serious offences. A civil claim, other than a personal injury claim, may be brought in the High Court if the damages claimed exceed €75,000. A personal injury claim should be worth in excess €60,000 for it to be commenced in the High Court. And, where a claim is made in respect of a particular real property, that property ought to have a value of in excess of €3,000,000, to justify the claim being pursued in the High Court. The High Court is also the court in which applications for judicial review are first brought, i.e. applications where the legal validity of a decision of a public body is contested. The High Court also

hears constitutional challenges to legislation i.e. where a party seeks to argue that legislation enacted by the Oireachtas is contrary to a provision of the Constitution.

Besides hearing cases of the type mentioned above, because they fall within the court's jurisdiction, the High Court also has an appellate function. It hears appeals against decisions made in civil cases in the Circuit Court and appeals from other official decision-makers such as the Intellectual Property Office and the Tax Appeals Commission. It also hears cases stated from the District Court.[121]

Organisation and type of work

The High Court comprises 39 ordinary judges in addition to the court's President. Besides dealing with her own cases, the President is responsible for the organisation and management of the High Court's business. Most cases are heard by one judge or by a judge sitting with a jury but, where the President so determines, a case may be heard by three or more judges. The High Court is a superior court of record which means that it produces written and published judgments in respect of the cases it resolves. However, where appropriate, a judge may give an oral judgment known as an *ex tempore* judgment, e.g. in respect of short and less complex proceedings.

The legal year is divided into four terms and judges are rostered so that the court is available 365 days a year. There is no day when an appropriate application cannot be brought before the High Court.

The High Court spends most of its time hearing cases and making decisions in proceedings which involve significant amounts of contested evidence and complex legal issues. The court may have to hear significant numbers of witnesses, each of whom will have to be examined and cross examined after which the court will consider "submissions" (this term refers to oral and written arguments by the lawyers regarding the facts and the law in support of their case, and is to be distinguished from the 'evidence' which will be either oral if given in person by a witness, or in written form if given in the form of a sworn affidavit). In giving judgment, the judge will have to resolve all conflicts

[121] A case stated is an unresolved question of law asked by a lower court to a higher court so that the question can be settled authoritatively.

of fact and give his or her decision on all legal issues. This is why cases in the High Court may last several days or weeks and are therefore heavy on judicial resources when compared to appeals in the Court of Appeal or Supreme Court which can normally be heard in the course of a single day.

Likewise, judgment writing is an exceptionally time-consuming exercise, particularly in complex cases. In their judgments, judges are obliged to explain how they resolved all legal and factual issues. They must do so for many reasons. It is particularly important for the unsuccessful party to litigation to understand why they lost their case. Furthermore, given that almost all unsuccessful parties to High Court litigation have a right of appeal, in order that the decision of the High Court judge can be reviewed, the appellate court must be in a position to understand from the judgment the reasons the High Court judge reached each of their conclusions. A failure by a judge to fully support a decision with detailed reasons can have very serious consequences for litigants and the court system as a whole. Such a failure often results in the appellate court directing a retrial, which has the effect of causing the parties further delay and expense and requiring the allocation of more court time. As it is the High Court judge who marshals all the evidence and establishes the facts of a case in addition to resolving questions of law, subject to what is stated below concerning the benefits of cases management, there is little that can be done to shorten the time judges spend hearing cases or writing judgments. This is the principal reason why a substantial number of additional judges is required for the High Court.

Importantly, although the trial itself generates a significant workload for judges, a lot of work also arises in the period between the commencement of proceedings and the trial. A party may, for example, seek documents from the other side (known as “discovery”) or may seek an order that the other side should provide more details regarding the claim or defence they are advancing. Those pre-trial applications are usually shorter in duration, involve written as opposed to oral evidence and can be disposed of in many cases by an oral judgment. Work also arises after the main proceedings have concluded, in particular in relation to who should pay the costs of the proceedings. Again, these can often, but not always, be disposed of by a short hearing and with an oral judgment.

Appeals heard in the High Court can take many different forms. Some appeals involve a full rehearing of the evidence heard in the court below. Others are not as extensive and are confined to legal argument based upon the evidence taken in another court or tribunal.

Although sitting in Dublin primarily, the High Court also hears cases at venues around the country. In respect of Crime, the court currently sits in Cork, Limerick, Waterford, Castlebar and Kilkenny. When additional judges are appointed, in order to maximise current resources, the court intends to hold criminal sittings at venues countrywide. On the Civil side, the High Court sits twice a year in Cork to hear non-jury cases. It also sits to hear personal injury actions and circuit court appeals at Cork, Galway, Limerick, Letterkenny, Sligo, Dundalk and Waterford. In addition, the High Court hears Circuit Court appeals in Naas. Usually, but not always, two High Court judges sit at these venues. For at least half of the year, two judges from the civil divisions will sit at provincial venues rather than in the divisions to which they are customarily assigned.

Court offices and court staff

The business of the High Court is primarily administered by the Central Office. It keeps court files, accepts documents from the parties, carries out certain administrative procedures and prepares the court's diary amongst many other things. There is also the Examiner's Office, which supports the court with regard to bankruptcy matters, and the Office of Wards of Court which supports the court in its handling of affairs of those who lack capacity and cannot manage their own affairs.

Registrars sit in court with a judge and manage the running of the list, i.e. they call the cases and make sure the lawyers are ready to proceed. While judges assign hearing dates to all cases, registrars are otherwise responsible for the court's diary. They also draw up court orders following a judgment or a short ruling. In addition, they liaise with the parties to a case in advance of a hearing to arrange the exchange of papers and clarify other issues in the lead up to a court appearance.

Judges who do not type their own judgments tend to dictate their judgments which are then typed up by secretaries attached to a secretarial pool. Judges are also supported by

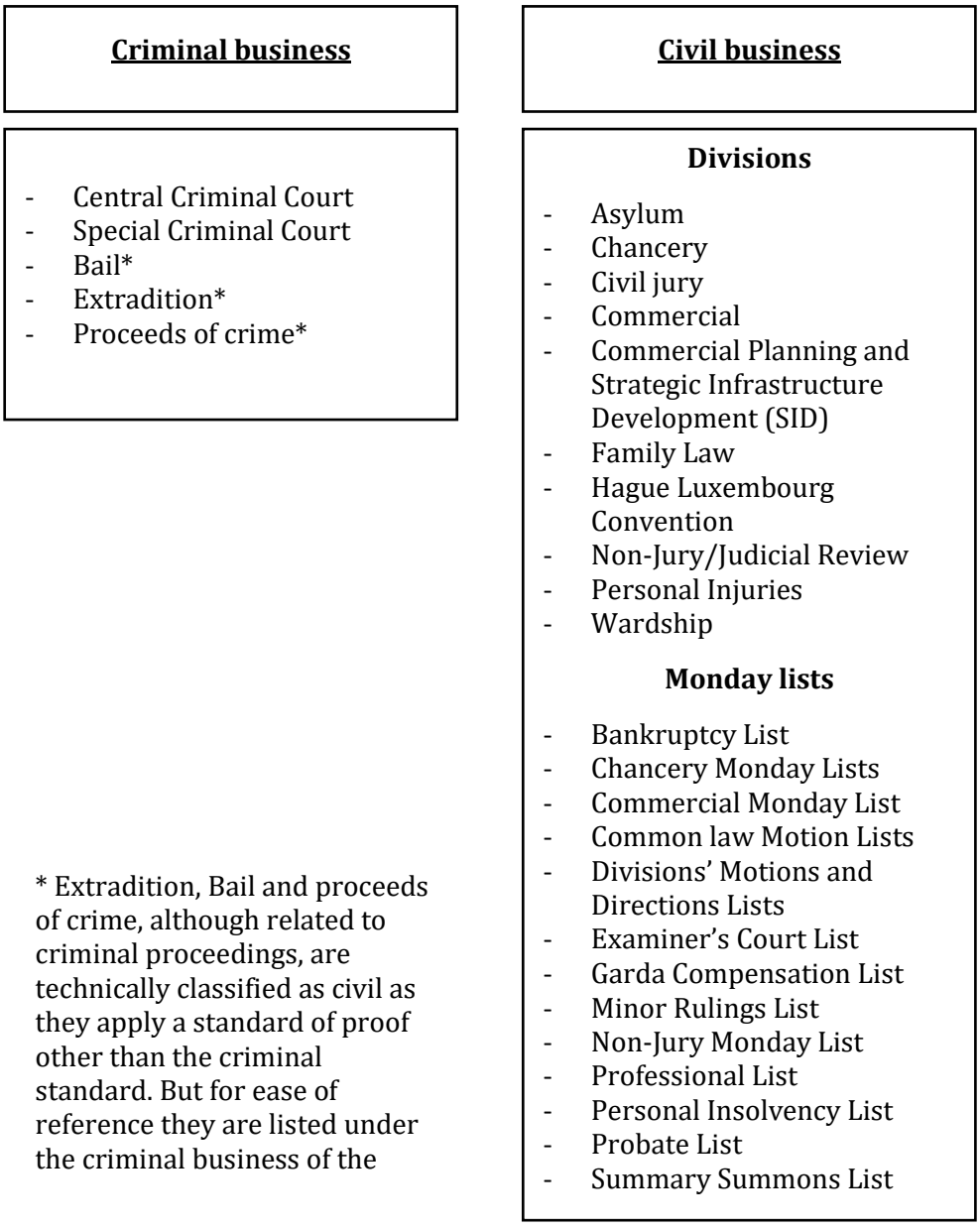
judicial assistants (recent law graduates) who carry out legal research and provide other assistance to the judge.

HIGH COURT DIVISIONS AND LISTS

A. Introduction

Because the workload of the court is very diverse, the business of the High Court is divided into various divisions and lists where cases belonging to a related subject matter are listed together (see Figure 2 below). For example, in the family law division all matters to do with family law, including divorce, judicial separation, custody disputes etc. are listed before the same judge. A division has at least one judge permanently assigned to it. Where there are multiple judges assigned to a division, there is a judge presiding

Figure 2 - Divisions and lists of the High Court



over the division, the head of the division, who manages the division and assigns cases to

the other judges sitting on the division. The President of the High Court determines who sits on each division and who is head of each division.

On Mondays, the court deals with shorter applications in civil matters. In essence, there are three types of Monday lists. First, judges in the various divisions sit to give directions regarding cases which will be heard at a later date in that division. Second, there are general lists, not necessarily attached to a particular division, where the judge will be asked to rule on pre-trial applications such as those which may seek access to certain documents (discovery) or further details regarding a claim or defence. Third there are lists which deal with more administrative applications which are unlikely to require a long hearing, e.g. the approval of a strike-off from the register of medical practitioners, applications regarding wills or the administration of estates etc. That said, some matters which are listed on a Monday may turn out to be more complex than expected, in which case they will be assigned a different hearing date (Tuesday-Friday), usually in the same legal term.

On Tuesdays to Fridays, the civil divisions deal with substantive hearings, i.e. trials and lengthy pre-trial applications that because of their complexity could not be accommodated on a Monday. In most of the divisions, the head of the division will convene a 'call over' at 10.30am when he or she will enquire of the legal teams representing the parties whether the cases listed are proceeding, have been settled or for some other reason need to be adjourned. This process takes approximately half an hour. The head of the division will then allocate each case to one of the judges assigned to the division. In respect of some of the more complex cases, a judge may have been assigned to such a case at an earlier date.

Substantive claims are usually heard between 11am and 1pm and 2pm and 4pm. However, judges routinely sit at 10am, 10.15am or 10.30am to deliver judgments and deal with short applications, such as the precise wording of a final order to be made in a case in which judgment was recently delivered, how costs should be awarded in light of the court's judgment and whether a stay should be granted on the court's order pending appeal. Judges also regularly sit beyond 4pm in order to finish the evidence of a witness whose cross-examination may be coming to a close or in order to complete a case which

might otherwise overrun its estimated duration and impact upon a case scheduled for hearing the following day.

Judges are assigned to at least one division, but may sit in multiple divisions, and are almost always responsible for a Monday list.

It is hoped that what follows will give the Working Group a brief overview of each division and list.

Criminal business

Central Criminal Court

The High Court when sitting to hear criminal trials, other than those tried in the Special Criminal Court (see below), is called the Central Criminal Court. It holds trials in relation to murder, attempted murder, rape and other offences such as treason and piracy. Criminal trials in the Central Criminal Court are heard by a judge sitting with a jury. The trial will involve the examination, cross-examination and re-examination of witnesses. It is the judge's obligation to ensure that the evidence is presented fairly and to decide any legal issues that need to be determined in the course of the trial in the absence of the jury, e.g. the admissibility of evidence. It is for the jury to decide whether an accused person is innocent or guilty, having first been instructed by the trial judge in relation to the relevant legal principles. Judges are responsible for the imposition of a sentence when a jury finds an accused guilty of any offence.

Special Criminal Court

The Special Criminal Court holds trials in relation to specific indictable offences (i.e. serious offences), where a trial in the ordinary courts could not be reliably achieved, e.g. because of the apprehension of jury intimidation. The court was initially set up to deal with offences relating to proscribed organisations, but currently deals primarily with organised crime. In a trial before the Special Criminal Court, there is no jury. Instead three judges sit to consider the guilt or innocence of the accused. The High Court judge, who is the senior judge on the court, will deliver a written judgment in respect of every case heard in the Special Criminal Court.

Bail

The Bail List deals with bail applications, appeals in respect of bail applications, applications for a warrant of arrest in respect of a person who has not complied with bail conditions and other related applications.

Extradition

The Extradition List deals with all aspects of the extradition process. The process includes applications for the endorsement of incoming and outgoing warrants, execution hearings, bail applications, the hearing of substantive extradition applications and applications for leave to appeal the decision of the High Court. The court also exercises an inquisitorial function by liaising with issuing authorities in other participating countries.

Proceeds of Crime

The majority of applications in this list are applications made by or against the Criminal Assets Bureau in respect of property seized by the Bureau on the basis that it is or is considered to be the proceeds of crime.

Civil business

1. Divisions

a) Asylum

The Asylum Division deals with judicial review applications challenging the decision-making process of administrative bodies in relation to refugee and asylum status. It also deals with injunctions seeking to prevent deportation and Article 40 (of the Constitution) applications where persons are detained as a consequence of their documented status.

The vast majority of cases are applications for judicial review of decisions of the International Protection Appeals Tribunal in which an order is sought to quash a decision refusing the applicant international protection. Other cases may relate to claims of human trafficking or claim relief with respect to decisions concerning asylum, subsidiary protection, immigration, freedom of movement, naturalisation, citizenship or marriage status.

b) Chancery

The Chancery Division deals with a broad spectrum of complex cases. It is concerned with cases where the primary remedy sought is "equitable" (i.e. originating in the "equity" jurisdiction which historically arose as a complementary jurisdiction to the common law courts), e.g. applications for injunctions or claims seeking specific performance of agreements. It also deals with matters relating to the Companies Acts, succession, employment law disputes, revenue matters, landlord and tenant disputes, matters relating to real property and constitutional challenges amongst others. While some cases can be resolved on written evidence and submissions, the majority of cases in this division require oral evidence. As the reader will appreciate, given that it is this division which deals with injunctions (e.g. applications to stop the dismissal of an employee or to restrain the sale of a property), many of the applications and proceedings in this list must be determined as a matter of urgency.

c) Civil Jury

The Civil Jury Division deals primarily with defamation and assault cases. They are dealt with by a judge sitting with a jury. The jury makes findings of fact and decides the amount of damages to be paid to the plaintiff as compensation for any wrong committed, whereas the judge presides over the proceedings and resolves issues of law. The Civil Jury Division sits for about 8-9 weeks per year. Due to the Covid-19 pandemic, it was not possible to organise jury sittings until relatively recently. As a consequence, there is a significant backlog of cases awaiting a hearing date.

d) Commercial

The Commercial Division, officially called the Commercial Court, deals with a wide variety of commercial disputes including property disputes, breach of contract cases, company law matters, judicial review, intellectual property and applications for summary judgment. Importantly, matters seeking to enter the Commercial Division must ordinarily have a value of not less than €1,000,000. A full list of matters which can be entered in the Commercial Division can be found in Order 63A, rule 1 of the Rules of the Superior Courts. The Commercial Division was established in 2004 as a fast-track procedure to have certain high value disputes resolved more expeditiously than would otherwise be the

case if they were listed in any of the other High Court divisions. Uniquely, the Commercial Division rigorously case-manages all cases in its list.

e) Commercial Planning/SID

The Commercial Planning and SID division consists of (a) challenges to planning permissions granted by An Bord Pleanála[122] (i.e. not by a local authority) in respect of strategic infrastructure and strategic housing developments, and (b) all other commercial planning cases that have been admitted to the division at the discretion of the division head. Applications are routinely heard on the basis of written evidence and written and oral legal submissions.

f) Family Law

The Family Law Division deals with matters relating to family law, including divorce, judicial separation, guardianship disputes, custody disputes, maintenance disputes, surrogacy applications, adoption matters, childcare matters, family law appeals from the Circuit Court and related matters. Most of the cases in the Family Law Division require oral evidence as well as legal submissions.

g) Hague Luxembourg Convention/child abduction

This division concerns cases of international child abduction. Generally, the child is removed from another jurisdiction and brought to the Republic of Ireland without the required parental consent. However, some cases relate to children who have been removed from this jurisdiction. In most cases, the applicant is the parent who is seeking the return of the child with the other parent, who has removed the child, being the respondent. The matters are, by their very nature, always urgent. Applications in this division are usually, but not always, heard on the basis of written evidence supported by written and oral submissions. The Hague Division cases often involve complex factual scenarios and therefore almost invariably result in detailed judgments.

[122] An Bord Pleanála is a statutory body (i.e. a body set up by statute) established in the Local Government (Planning and Development) Act 1976 which hears appeals in respect of planning permission decisions made by local authorities and applications for strategic infrastructure and housing developments.

h) Non-Jury/Judicial Review

Judicial Review mostly concerns challenges to decisions made by administrative bodies where it is maintained that the decision should be considered defective for a range of reasons, which include that a body exceeded its powers or did not apply procedures that were fair. Non-Jury cases cover a wide range of common law causes of action, including breach of contract, debt collection, non-personal injury tort actions, commercial type cases (usually with a value less than €1 million), building contract cases and appeals from the Circuit Court (other than personal insolvency appeals and family law appeals). In addition, issues such as applications to dismiss for delay, preliminary issues on the Statute of Limitations and lengthy discovery matters in common law cases are all heard in the Non-Jury Division. While judicial review matters are generally heard on written evidence only, but with oral submissions, non-jury actions usually involve oral evidence in addition to oral and written submissions.

i) Personal Injuries

The Personal Injuries Division deals with cases where damages in respect of personal injuries negligently inflicted are sought. These cases include straightforward actions for negligence (such as road traffic or workplace accidents) and much more complex actions in respect of clinical negligence. All pre-trial applications in relation to personal injuries proceedings are dealt with on Mondays with substantive claims being heard on Tuesdays to Fridays. Personal injuries cases always involve the giving of oral evidence by the parties and their witnesses followed by legal submissions. While in the more straightforward cases the presiding judge may give an oral judgment on the day the case concludes, or possibly the following day, those that do require a written judgment are often complex.

j) Wardship

The Wardship Division is concerned with the management of the affairs of persons who permanently or temporarily lack capacity and are of unsound mind. The work consists primarily of applications by a third party to take a person into wardship, urgent applications to detain a person or to approve medical treatment, the giving of directions to the "committee" (i.e. the legal guardian) of the ward, applications to review continued detention and treatment and other orders that impact upon a person's liberty or other

constitutional rights. The division also deals with matters in relation to the Powers of Attorney Act 1996, e.g. disputes in relation to the registration of enduring powers of attorney. The vast majority of cases and applications can be resolved based on written evidence and submissions.

Monday lists

a) Bankruptcy List

The Bankruptcy List deals with petitions by debtors seeking to be declared bankrupt, petitions by creditors seeking to make debtors bankrupt and applications that arise in the course of the bankruptcy process. These applications are usually short in duration and can almost always be resolved on written evidence and submissions alone. On occasion it may be necessary to examine a witness, e.g. the bankrupt as to his or her means. Despite the fact that applications are short, a large number require the delivery of a written judgment.

b) Chancery Monday Lists

There are three Chancery Monday lists, viz., (1) the Chancery 1 List, taken by the head of the Chancery division which deals with short applications, (2) the Chancery 2 list, which deals with applications relating to company law, e.g. petitions to wind up a company and appoint a liquidator, petitions to restore a company to the register of companies, applications to sue a company in liquidation, applications to extend time to register a charge against a company amongst others and also deals with succession matters and (3) the Chancery Special Summons List which hears applications relating to the repossession or sale of real property.

c) Commercial Court Motions List

The Commercial Court deals with applications to enter cases into the Commercial List; it also deals with the ongoing case management of cases which have previously been admitted into the List. In addition, it deals with short applications (capable of being heard in less than an hour) for pre-trial orders relating to discovery and further particulars.

d) Common Law Motion Lists

Very large numbers of motions in common law actions are listed for hearing each Monday. As a consequence, there are four motion lists, each assigned to an individual judge. These motion lists deal with a large variety of pre-trial applications such as applications for discovery and judgment in default of defence or default of appearance. They also include applications to dismiss proceedings for delay or to join additional parties to the proceedings.

e) Examiner's Court Lists

There are certain instances in which the High Court will take control of property and supervise its sale and the later distribution of the proceeds of sale. The function of adjudicating on claims against such properties and other administrative functions associated with these processes are delegated to the Examiner's Office. Certain of the functions of the Examiner and certain contentious issues arising from the exercises of its functions, require orders of the court. The Examiner's Court List deals with these matters.

f) Garda Compensation List

The Garda compensation list deals with a statutory compensation regime set out in the Garda Compensation Acts 1941-2003. It provides for compensation for personal injuries or fatal injuries sustained in the course of duty by members of An Garda Síochána. Claims are made against the Minister for Justice. Here, the court will read the medical evidence submitted in advance of the hearing and will normally only hear brief evidence from the claimant garda and any submissions as may be made by the parties' legal representatives.

g) Minor Rulings List

Where a minor (person under 18 years) or a person of unsound mind is party to a personal injury or fatal injury claim and it is proposed to settle such a claim by agreement, the court must approve the settlement on behalf of the minor or person of unsound mind. The judge sitting on this list approves or rejects settlements on their behalf.

h) Non-Jury List

The court deals with contested applications that are not short enough to be dealt with in the Common Law Motion List but which can be dealt within one hour. These applications

generally consist of applications for summary judgment, applications for discovery, short applications to dismiss for want of prosecution and preliminary issues on the Statute of Limitations, applications for security for costs and applications to compel replies to notices for particulars. In addition, appeals from the Circuit Court that can be dealt with within one hour will also be listed for hearing.

i) Professional List

The President of the High Court has a regulatory role in relation to a number of professions, including doctors, nurses, pharmacists, veterinary surgeons, dentists, solicitors etc. Where the relevant disciplinary body has decided that a practitioner should be struck off the relevant register or have their practice suspended or their registration retained subject to conditions, the approval of the High Court is required. The court also hears appeals by practitioners in respect of decisions made by their disciplinary bodies to suspend them or strike their names from the relevant register by reason of proven misconduct. Applications to approve a sanction are heard on written evidence and are dealt with on Mondays, while appeals requiring a full oral hearing will be assigned a hearing date, other than a Monday.

j) Personal Insolvency List

The Personal Insolvency List is concerned with approving personal insolvency arrangements whereby a debtor agrees a regime of resolving his or her debts with his or her creditors. Usually, this involves the writing off of some unsecured debt while secured debt is restructured. Even where creditors refuse to approve a personal insolvency arrangement, the arrangement can nonetheless be imposed by the court in cases where (a) certain statutory criteria are met and (b) the family home of the debtor would otherwise be at risk. The vast majority of cases in this list comprise appeals from the Circuit Court. There are also some cases (above a certain value) which originate in the High Court. Appeals from the Circuit Court and cases which originate in the High Court are both heard on the basis of affidavit evidence and legal submissions.

k) Probate List

The Probate List generally deals with applications in relation to wills and the administration of estates of deceased persons.

l) Summary Summons List

The Summary Summons List deals with applications for judgment in debt cases where it is claimed the defendant can no bona fide defence. The court hears short applications on Mondays while longer applications are transferred for hearing to the Non-Jury Division. These applications are heard on the basis of affidavit evidence and the task of the court is to determine whether the plaintiff's claim is sufficiently clear to enable judgment to be given or whether the defendant has established an arguable defence, in which event, the case will be sent forward for trial in the Non-Jury List on the basis of oral evidence.

Part 3 – JUDICIAL RESOURCES REQUIRED

II. DELAY AND JUDICIAL WORKLOAD

B. Introduction

It is a truism that justice delayed is justice denied. This principle is reinforced by the provisions of Article 6.1 of the European Convention on Human Rights which states that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law" (emphasis added).

Naturally, litigation always takes time. Before a case comes to trial, the parties are entitled to explore the nature and sustainability of the claim made by the plaintiff and also the nature and sustainability of the defence advanced by the defendant. But, where the time it takes for legal proceedings to be concluded is extended by delays within the court system, that is a denial of justice. Furthermore, where such delay is so long that it has serious adverse consequences for the litigants, victims of crimes, their families or accused persons, the situation is simply untenable.

Many factors which cause delay in litigation will be explored later in this report. However, there are three main areas in which delay may occur. First, there is delay in pre-trial preparation (stage 1 delay). Delay at this stage of the process is usually caused by the delay in getting a hearing date for a pre-trial application such as a motion for discovery or a motion for judgment in default of appearance or defence. Second, delay in obtaining a hearing date for the case itself (stage 2 delay). Finally, delay in the delivery-of judgment (stage 3 delay). The elimination or significant reduction of all of these delays can only be achieved by judges, which in turn requires sufficient judicial resources.

Perhaps the most significant factor when it comes to delay is delay caused by "backlogs". There are two different types of backlogs. There are backlogs of pre-trial applications (motions) which must be heard before a case can be given a trial date. Then, when cases are ready for hearing, there are backlogs of cases awaiting hearing dates. These two different types of backlogs are caused by the insufficient number of judges available to

hear both pre-trial applications and cases which are ready for hearing. The result of the shortage of judicial resources is that the ultimate hearing date assigned to cases in most divisions is significantly and unacceptably delayed. Delay in litigation puts justice to the hazard in that justice is withheld from innocent parties whilst wrongdoers can manipulate delays in the system to their advantage. Delay obstructs the rights of parties who are entitled to have their rights vindicated in a process that is both timely and effective. Whilst some of the delays in the litigation process are capable of being improved upon by removing certain inefficiencies, as will be explored later, there is simply no getting around the fact that the majority of avoidable delay arises as a result of a lack of judicial resources which can only be remedied by the provision of a significant number of additional judges.

Current backlogs of cases awaiting hearing dates, as opposed to cases waiting a date for a pre-trial application, are kept to a minimum by judges sitting to hear cases back to back i.e. without any time off between cases to write even a skeleton draft of how the case they have just completed should be resolved. They immediately move into the next case. However, this has the knock-on effect of inevitably creating delay for the litigant at the next stage of the process, namely in the time taken to deliver the judgment. In most instances, complex judgments can only be completed during a vacation period, even if the judge may get started on his or her judgments during the term in which the case was heard. And, it goes without saying that it is the date upon which judgment is delivered that is relevant to the litigant rather than the date upon which a case is heard. An early hearing date but a delayed judgment is a futile exercise. For example, what good is it having a complex dispute over the custody of children heard in early course, if it takes six or nine months before the judge has the time to prepare the judgment?

It is also important to understand that the backlogs in many divisions have been building for a considerable amount of time. Whilst the Covid-19 pandemic has exacerbated delays in some divisions, the principal cause of the present crisis is the ever increasing number of serious criminal trials and ever greater number of more complex civil claims which can only be heard by the High Court and its Central Criminal Court.

The former President of the High Court, Mr. Justice Peter Kelly, advised the Government some four years ago that twelve additional judges were needed at that time to meet demand on the civil side of the court alone. In circumstances where that request was not accepted, and in light of the continued increase in the volume of criminal and civil work, it is unsurprising that the situation has worsened to the point of crisis. Of particular concern is the substantial pent-up demand in the system due to Covid-19 moratoriums imposed on repossession, debt and revenue claims which, once ended, will be heaped on top of the court's normal annual caseload of these types of cases.

As it stands, the High Court is in a critical situation and it is routinely claimed that the State is in breach of its constitutional and international obligations by reason of delay in certain areas of litigation. Urgent, rigorous and comprehensive action is required to make the High Court fit for purpose for the foreseeable future.

This chapter will focus upon the difficulties that arise for litigants due to inadequate judicial resources and judicial numbers, whilst the next chapter will discuss in greater detail how these difficulties can and should be addressed. To illustrate how the lack of judicial resources has affected High Court proceedings, this chapter first discusses - very briefly - why delays are a pressing issue for litigants, the State and the wider economy. Then, the chapter will focus upon the types of delays that arise in High Court proceedings before addressing present delays and the reasons for them. Finally, reference will be made to the delays encountered by litigants seeking access to justice in individual divisions and lists.

C. Why are delays a problem?

Perhaps the single most important point in relation to the delay of court proceedings is that it is much more than a mere inconvenience. It has severe consequences for real people. The aphorism "justice delayed is justice denied" is not just a phrase but something that encapsulates the reality of all too many court users today. Notwithstanding the fact that the Working Group has already been provided with some insight into the serious consequences for litigants arising from court delays, a few observations regarding delay nonetheless bear repeating and further highlighting.

Delay causes significant hardship to parties. In criminal proceedings, the victim of a serious crime or their family is often unable to find closure until the trial a verdict has been reached. Equally, an accused person refused bail, despite being presumed innocent, is likely to spend something between a year and 18 months in prison awaiting trial. In civil proceedings, delay causes significant financial hardship, stress and anxiety. For example, a person with a valid claim may lose their home or livelihood while waiting for their case to be determined.

The ability of parties to prosecute or defend proceedings is also adversely affected by delay. Evidence may be lost or become otherwise unavailable and the recollection of crucial witnesses may wane, making it difficult or impossible to successfully litigate or defend a case. There are cases in which delay alone may alter the outcome. For example, and as will be addressed below, in many asylum applications the applicant challenging a deportation decision, by the time the matter comes before the court, may have formed much stronger links with the community than when their application was originally determined, thus impacting the ability of the State to enforce immigration rules.

Furthermore, wrongdoers may seek to exploit delays in proceedings to their advantage. Where a wrongdoer knows that their opponent will have to wait a long time to have their case decided, they might withhold an offer that would have been made if the trial was imminent, knowing that hardship caused by delay will potentially drive the claimant to settle for ever reducing sums the longer the process can be drawn out.

All delays encountered by parties in getting a hearing date for a motion or for the hearing of the action are caused by the shortage of judges available to hear the volume of applications and cases ready for hearing. Then, once any civil case is heard, other than perhaps a straightforward personal injury action, there may be a further significant delay before judgment will be delivered. And, while the delays described below in respect of obtaining a hearing date or in the delivery of a judgment may not seem significant to a person not personally connected with that litigation, for those involved in the litigation they can be life-changing.

Parties to personal injury claims are exposed to particular hazards in terms of delay. This is because, although their case is assigned a hearing date, cases in that division are often not heard on their assigned date due to the large number of personal injury cases listed for hearing on any given day and the small number of judges available to hear them. In every other division of the High Court, a case will be assigned a hearing date on the basis that there will be a judge available to hear the case that day. And, save in rare circumstances, such as where some very urgent case must be facilitated at the expense of the case earlier listed for hearing, the case will be heard as scheduled.

Let us look at how the unavailability of judicial resources impacts on the administration of justice in just a couple of different types of claims.

Take for example a carpenter who brings a personal injuries action because he lost his fingers using a table saw due to the negligence of his employer. He has a wife and three children. He is also the sole breadwinner and has substantial mortgage payments to make. While awaiting the outcome of his proceedings, in which he will seek to recover his lost earnings, he must rely on social welfare payments to make ends meet. He needs his case determined expeditiously to avoid the bank repossessing his home.

Approximately 15 personal injuries cases are listed for hearing every day of the week (Tuesday -Friday) i.e. approximately 60 cases. There are six judges assigned to the Personal Injuries Division, one of whom is permanently absent through illness. On any given day a number of these judges will be busy because they will be hearing cases which started on an earlier date. Customarily, there may be two or three judges free on any given day. Because there are so many cases listed, cases are allocated by lottery. If a case is not fortunate enough to be allocated on the day when it is first listed, it is carried over to participate in all subsequent lotteries later in the week. All cases not allocated by the end of the week are given fresh hearing dates, approximately three months away, when the case will be subjected to similar perils that presented on its first listing.

It is therefore not surprising that there is such a substantial settlement rate in the Personal Injuries Division. And, there is nothing at all laudable about the settlement rate and less still about a system which, it is suspected is causing cases to be settled for

reasons unconnected with the case itself but rather as a result of the uncertainty attached to the listing process.

In our example, the carpenter's case was listed for hearing on a Tuesday but had still not been allocated a judge by the Thursday of the same week. Having waited and worried about his case for three days, his lawyers were not able to give him any assurance that his case would be heard by the end of the week and advised him that his case would probably be rescheduled for hearing in a few months' time. It would not be surprising if, in such circumstances, he felt compelled to settle his claim for a sum substantially less than he was earlier advised his case was worth, because he dared not risk a further postponement of his case in circumstances where his home was under threat of repossession.

Unfortunately, for all too many people awaiting an award of compensation in a personal injuries case, they are left injured, without income and in need of medical treatment or care of a type which they simply cannot afford. And, as the reader will appreciate, clinical outcomes are usually very much better where medical treatment is carried out in a timely manner. Currently, due to litigation delay, many plaintiffs have to wait a long time to get the medical treatment, care or support they need due to delays in getting their cases heard. And, it is important to remember that, contrary to the impression often created, a very substantial proportion of personal injuries claims involve life changing injuries and the court sees every day, at first hand, the indignity and hardship experienced by those plaintiffs who, until their cases are heard, have been denied any quality of life.

Equally, a defendant faced with a less than meritorious personal injuries claim may wish to contest that claim. However, for each day a case is not heard, costs continue to escalate because expert witnesses must be paid to be on standby to attend the hearing. Fearing that the case may be adjourned and might suffer the same fate when next listed, a defendant will at times feel compelled to settle the case that it might have successfully defended if there had been a judge to hear it on the day it was first listed.

To take a different example, where judicial separation or divorce proceedings drag on because of differing but avoidable types of delay, irreparable damage is often caused to

children caught in the crossfire. Importantly, the outcome of custody disputes is often influenced, if not determined, by delays in litigation given that it is difficult for the court to remove children from a parent who has had custody for a lengthy period of time. And, children are often left without the financial and other supports they need while litigation is pending. It is important to emphasise that these types of issues, which so fundamentally impact on children caught up in family law disputes, are not isolated occurrences in the Family Division where cases cannot be heard in a timely and effective manner due to the shortage of judicial resources.

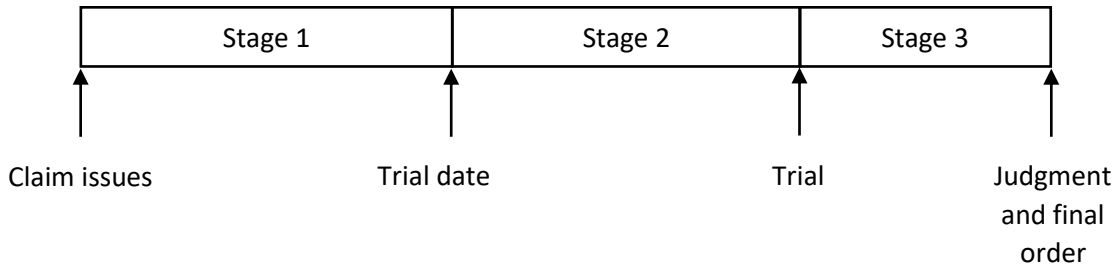
Naturally, the Working Group will have heard from stakeholders who will have provided further detail as to how delay in High Court litigation has caused them hardship and prejudice. However, it is important to emphasise that judges are acutely aware of the prejudicial consequences of delay and do all in their power to mitigate such consequences. And, if given the opportunity by the Working Group, the High Court would welcome an opportunity to expand upon the dreadfully unjust impact that long-lasting litigation has on all classes of claimants and defendants.

If delays of the type just mentioned were isolated incidents, it might be possible to justify or deem them acceptable. However, these delays are endemic and without a significant increase in judicial numbers are here to stay.

D. Types of delay

Before examining in detail why delay arises, and in order to fully understand delay in civil proceedings, it is important to differentiate between three different 'types' of delay, which may arise at different stages in the proceedings.

Figure 3 - Types of delay in civil proceedings



Delays that arise at Stage 1 of the proceedings relate to the time taken to get a case ready for trial. During this period the parties commit their respective positions to paper in formal legal documents, obtain such documentary evidence as may exist to support their assertions, obtain statements from potential witnesses and engage such experts as they may consider necessary. Thus, some of the delays at Stage 1 of the proceedings are not entirely avoidable.

However, some delays at this stage are linked directly to the lack of judicial resources. During this period the court may also have to resolve minor disputes between the parties such as the entitlement of one of the parties to sight of certain documents or further detail of their opponents claim. Regrettably, these pre-trial applications lead to significant delays for litigants. For most pre-trial applications, the waiting time for a hearing date is currently about seven weeks, with the most common type of pre-trial application, a common law motion, having a waiting time of about 10 weeks. This is in addition to a further delay of six weeks as will arise if the party opposing the application wishes to file a reply. Until relatively recently, applications would have been adjourned for only a very short period, such as two weeks, to allow such a reply to be filed. However, due to the demand on the court lists there are delays in the ability of the court to reschedule such applications. Thus, a single pre-trial application, because of a shortage of judicial resources, will likely delay proceedings by something in the region of three and a half months. And, it is important to consider this delay in circumstances where it is clear that in order that the court can meet its obligation to provide parties with timely access to justice, pre-trial applications should be heard with relatively immediate effect. They should not delay proceedings in any significant way. That this is so is abundantly clear from the Rules of the Superior Courts which provide that a party who wants to bring such an application is only required to give their opponent four days' notice of their intentions. The court ought to be in a position to deal with all contested pre-trial applications within four weeks of the date upon which a pre-trial application issues. It should be possible to obtain a hearing date within two weeks of the issue of the motion and to have the motion heard two weeks after it was first listed following an adjournment of two weeks to allow for the filing of a reply.

It is estimated that in cases in the Non-Jury Division two such applications are issued in any given case, and two in cases in the Personal Injuries Division Two motions add a further seven months to the overall time it takes to get the case heard. Due to the delays in hearing such applications, significant and unnecessary delays are created. On any given Monday around 220 cases are listed in the four general pre-trial application lists (Common Law Motion Lists), meaning that around 220 cases are or have been delayed by about seven weeks in any given week.

Stage 2 delays are delays between the date when a case is ready for trial and the date upon which it is heard. The extent to which a trial date will extend beyond the date upon which the case is ready for hearing will depend solely on the number and availability of judges in a particular division. Accordingly, this type of delay is intimately bound up with judicial resources. Trial dates can only be allocated having regard to the number of judges available to hear them.

Stage 3 delay relates to the delay between the date upon which a case concludes and the date upon which judgment is handed down. It is crucial to appreciate the significance of this type of delay. From the point of view of the parties to a dispute, what matters most is when the judgment is pronounced. It is at this point that the parties have certainty as to their rights and liabilities and, until then, the dispute is not resolved. From the litigant's perspective, it is no consolation to get a relatively prompt hearing if they are not to receive judgment for a further six or nine months. Worse still from the litigant's perspective is to have delay both in the allocation of a hearing date and in the delivery of judgment.

Because judges need time to write judgments, Stage 3 delay arises invariably due to a lack of judicial resources. As detailed below, judges almost never get time to write judgments after the conclusion of a case as they are routinely scheduled to hear another case once the case at hearing concludes. Judgment writing is therefore postponed until a later date, often to the next vacation, when the time taken to write the judgment will be significantly greater than it would have been had the judge had even a short time free to write a detailed memo or first draft immediately following the hearing while the issues, the evidence and the legal submissions were all fresh in the judge's mind.

Not all forms of delay neatly fit into the above categories. Delays may also arise where the outcome of other cases, such as test-cases, are awaited from an appellate court or the Court of Justice of the European Union ("CJEU"). For example, in the Asylum Division, a significant number of cases were recently delayed for an extended period pending the outcome of a Supreme Court appeal. Similarly, in the Extradition List, extradition cases to the UK and Poland have, at times, been stalled due to awaited rulings of the CJEU.

E. Current delays and the reasons for them

As the following will show, the demands placed upon judges of the High Court are enormous. When the supply of new cases and other demands outstrip the work courts can get through, even the best run divisions and the hardest working judges build up backlogs of work causing delays for court users. First, an overview will be provided regarding delays and lack of resources for the individual divisions and lists. Then, a few overarching and systemic points will be addressed and discussed.

It is vital to acknowledge that the below delays must be viewed in context of the litigation as a whole. Most important in this regard is that in the vast majority of cases, the parties are entitled to an appeal. This often further extends the time it takes to dispose of a case by many months or years. An appeal can arise not only at the conclusion of a case but also with respect to pre-trial applications, meaning that the time it takes to get to the trial is inflated further, in addition to what is stated below. Nevertheless, even when one discounts this factor, the delays are plainly not acceptable, leading to the prejudice of the kind detailed above.

2. The divisions and lists

CRIMINAL

A) Central Criminal Court

Stage 1 delay (Case preparation delay)	**Stage 2 delay (Listing delay)**	**Stage 3 delay (Judgment writing delay)**	**Current judges**	**Additional judges**

N/A	Where the accused is on bail, 2 years minimum; where the accused is in custody, one year for a short trial and 18 months for a longer trial.	**N/A**	**6**	**4**

As detailed above, the Central Criminal Court deals with only the most serious crimes. Most trials are held in Dublin, but others are held at provincial venues. Murder trials usually last 3-4 weeks or longer and rape trials 2-3 weeks, thereby placing extreme pressure on the six judges assigned to deal with these extremely serious offences. The judges also deal with pre-trial applications, such as the disclosure of evidence, arraignments, i.e. the pleas of accused persons and sentencing hearings in addition to trials. Because of the lack of judicial resources for the Central Criminal Court, where a trial overruns or a judge becomes otherwise unavailable, cases listed for hearing have to be adjourned to another date, often many months away, exacerbating the backlog.

There is a huge backlog of criminal trials. Arrears have grown steadily over the last four years and the numbers of serious criminal cases commencing in the Central Criminal Court is increasing year on year as the table below makes clear.

Year	Bills of Indictment
2017	139
2018	130
2019	144
2020	205
2021	84 to June 30th

Delay in the allocation of trial dates has been severely exacerbated by Covid-19 because for approximately 4 months in 2020 and early 2021 it was not possible to have jury trials due to public health restrictions.

Figure 4 shows the number of cases awaiting trial, according to the year they have been issued, i.e. the date of the bill number. Importantly, the table also shows what number of cases involve persons currently in custody awaiting a trial date. There are currently 80 persons in custody awaiting trial. Of these, 19 have been in custody since 2019 and 7 since 2018. This is nothing short of grossly unacceptable. It is a matter of real concern that a number of rape trials scheduled for hearing in September 2021 started with bills of indictment which issued as far back as 2017. And, needless to say the offences were allegedly committed a number of years before the indictments were preferred.

Figure 4 - Backlogs in the Central Criminal Court

Cases with a Bill Number of 2021	**Cases with a Bill Number of 2020**	**Cases with a Bill Number of 2019**	**Cases with a Bill Number of 2018**	**Cases with a Bill Number of 2012-2017**
Total of unresolved cases				
79	**170**	**48**	**33**	**6**
Unresolved case by offence				
Rape/Att Rape/Sex Off: 64 Murder/Att Murder/Cap Murder: 15	Rape/Att Rape/Sex Off: 145 Murder/Att Murder/Cap Murder: 25	Rape/Att Rape/Sex Off: 39 Murder/Att Murder/Cap Murder: 7	Rape/Att Rape/Sex Off: 30 Murder/Att Murder/Cap Murder: 3	Rape/Att Rape/Sex Off: 4 Murder/Att Murder/Cap Murder: 2
Unresolved case by custody status of accused				
Bail: 63 Custody: 16	Bail: 132 Custody: 38	Bail: 29 Custody: 19	Bail: 28 Custody: 5	Bail: 4 Custody: 2

As a result of the backlogs, from the time investigations are complete and a matter is first listed in the Central Criminal Court, the hearing date, where an accused is on bail, will on average be two years and three months away and where the accused is in custody 12 to 18 months, depending upon the likely duration of the trial.

These delays place the administration of justice at risk. First, the point has now been reached where it can be, and is, argued that these delays are in breach of the court's obligations under the Constitution and the European Convention on Human Rights, both of which require trials to be held with reasonable expedition. Furthermore, delays have the potential to lead to an acquittal where a conviction might have been secured if the trial had proceeded expeditiously. Having regard to the egregious nature of the offences tried by the Central Criminal Court, this situation is unacceptable. Over time, evidence may be lost and delay provides an increased opportunity for interference with evidence or witnesses, as well as the very real possibility of witnesses being unable to recall what happened with sufficient accuracy to withstand cross examination of the account they give of events that occurred many years earlier.

The consequences of delay for victims of serious crime cannot be underestimated. The effect of delay on the physical and mental health of victims of sexual offences is particularly significant. Criminal proceedings dominate a victim's life until the trial is concluded. They often live in the same community as the accused. And, they live in fear that they will forget material facts knowing well that their account of events will be vigorously challenged at the trial and that any lapse or inconsistency in their evidence will lead to an acquittal. For victims of this type of crime they simply cannot get on with their lives until such time as the trial is over and substantial delay, at times, causes victims who cannot cope with the ongoing stress that an upcoming trial imposes, to withdraw from the trial process and refuse to engage further.

Delays are severely damaging for young complainants. Teenagers or young children who are victims of crime spend a long period of their youth waiting to be cross examined about horrific experiences in their short lives. A young person who alleges that they have been

sexually abused or raped will be told of their trial date and that they must be available to give their evidence on that day. It is crushing to be told that the trial will not proceed because there is no judge available to hear the case. A very high degree of mental strength and effort is required and expected of complainants by the criminal justice system in reliving these events in front of total strangers and facing cross-examination of the most intrusive and personal kind. It is clear from victim impact statements and from reports post-trial that the process itself and delay in particular adds significantly to the pain endured by victims. They have to prepare afresh. All the effort put into steeling themselves for the trial is wasted. In detailed post-trial interviews with complainants conducted on behalf of the Judicial College of England and Wales, delay was one of the most common criticisms made in respect of the trial process and delay was cited as one of the reasons why many victims would not go through the trial process again and would not advise others to make a complaint if they were raped or sexually assaulted.[123]

Likewise, the effects of delay on the families of murder victims cannot be underestimated. Day in day out, judges in the Central Criminal Court, when sitting to impose sentence, hear of the effects of delay on victims and their families conveyed to the court in heart rending victim impact statements.

Of equal importance is the fact that an accused person is presumed innocent until proven guilty beyond a reasonable doubt. Yet, accused persons in this country can find themselves in custody for eighteen months awaiting trial, or, if on bail, an accused could be waiting two or more years for their trial. In the meantime, they stand to lose their jobs, their homes, their family and social life and invariably suffer mental health difficulties as a result. One might have less sympathy for those who are convicted and given a custodial sentence but for the innocent accused, this is a lengthy nightmare and one which awaits any person unjustly accused of a serious offence in this jurisdiction.

Delay causes significant prejudice in cases involving an accused who is under eighteen years – a child under the Children Act 2001. If the child has allegedly committed the offence when under eighteen years but due to delay caused by insufficient resourcing of the Central Criminal Court will be over eighteen when tried for the offence, he/she will

[123] Nina Burrowes conducted the interviews on video, which were made available to the Judicial Council, by kind permission of the Judicial College of England and Wales.

face an entirely different sentencing regime and will be treated and sentenced as an adult. An accused over eighteen will lose the benefit of reporting restrictions, a mandated probation report and the application of the mandatory and child focussed sentencing principles provided for in the Children Act 2001. He/she will be sentenced as an adult. Where an accused, perhaps aged fifteen/sixteen commits a murder and due to delay and inadequate resourcing is not sentenced for that offence until he or she is over eighteen the mandatory life sentence will apply.[124]

Present delays are simply unacceptable and undermine the foundational principle of the presumption of innocence, Furthermore, delay in and of itself causes further delay because there is no incentive for accused persons on bail to plead guilty if they can remain in the community on bail. Guilty pleas often come on the day the trial is due to start. Meanwhile the victim has endured a stressful and oftentimes wholly intolerable existence.

It should be noted that the High Court strongly supports the legislative reform (Criminal Procedure Act 2021) introduced with a view to streamlining and shortening the duration of criminal trials, particularly those where there it is anticipated that there will be a dispute regarding the admissibility of certain evidence. And, when the Criminal Procedure Act 2021 commences, because many evidential difficulties may be ironed out in the course of pre-trial applications, it is expected that the length of those trials in which such pre trial applications may be heard will indeed be reduced. However, the 2021 Act will require judges in the Central Criminal Court to engage more directly at an earlier stage with each case in order to administer the new statutory provisions and this will require significant judicial time as will the hearing of all of the pre trial applications provided for in the legislation. For that reason, it is not expected that there will be much overall saving of judicial time as a result of the introduction of the Criminal Procedure Act 2021. However, it will streamline some of the more complex jury trials given that disputes that would normally have to be resolved during the trial will be heard in advance of its commencement. Perhaps the most important aspect of the 2021 Act, from a judicial resource's perspective, is that because some evidential issues will soon be decided pre

[124] See O'Malley, *Sentencing Law and Practice* (3rd edn 2016 Round Hall).

trial, this may bring about an increased number of guilty pleas that might not otherwise have been forthcoming, or conversely may result in a decision by the prosecution to enter a *nolle prosequi,*[125] thus releasing valuable time back to the court to deal with the demands of other cases. This would be greatly welcomed.

Regardless of any efficiencies that might be achieved as a result of the commencement of the Criminal Procedure Act 2021, six judges simply cannot manage all of the work that falls within the jurisdiction of the Central Criminal Court. Four additional judges are required.

b) Special Criminal Court

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
N/A	**9-10 months**	**N/A**	**2**	**0**

There are currently two Special Criminal Courts. The second of the two courts was established in 2016 to deal with the court's ever increasing workload. By the end of this month (July 2021), and influenced by the fact that trials in the Special Criminal Court on average last 6 weeks, the diary of both courts will be full until July 2022. While this is very regrettable, the court's heavily burdened divisions and lists cannot be resolved by additional judicial resources given that only two such courts are provided for by statute. Hence no additional resources are sought in respect of the Special Criminal Court.

c) Bail

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges

[125] The entering of a *nolle prosequi* by the Director of Public Prosecutions means that he/she is not pursuing the prosecution of the offence.

None	**None due to constitutional imperative to hear these applications immediately**	**N/A**	**1**	**0**

Bail applications are heard five days a week, whereas before 2018 when lesser numbers of applications were made, these were heard only three days a week. Indeed, this increase since pre-2018 from three hearing days to five hearing days for bail (a 66% increase), is perhaps the best illustration of the fact that there has been a massive increase in the workload in the criminal division in the past few years – this 66% increase in the allocation of judicial resources to bail was imperative (notwithstanding the negative effect on the other workload of the court) because of the constitutional importance of a citizen's liberty. One judge is assigned to this list each day. It is not always the same judge. According to the statistics provided in the Courts Service annual report for 2020 (p.54) bail applications increased by 37 % between 2019 and 2020. It is expected that the number of applications will be much the same this year as they were in 2020. It should be noted that this percentage increase is not consistent with the quarterly Courts Service figures supplied to the court's President which identified a 61% increase in bail applications over the same period, a figure which may have been included in earlier documentation supplied to the Working Group. Worryingly the most recent figures provided by the Courts Service as of 31st July, 2021, show that 1,025 bail applications have already issued this year in the first seven months and this is to be contrasted with the total number of bail applications made in 2019 which was only marginally less at 1,177.

Notwithstanding the increase in bail applications in recent times, one judge sitting five days a week is sufficient to manage current demand but if the number of bail applications was to increase in any significant way, additional judicial resources would be required given the unique importance and urgency of a court's decision on the liberty of a citizen.

Figure 5 - Bail applications 2020-2019

Incoming Bail Applications		Resolved Bail Applications			
2020	2019	2020		2019	
1,898	1,390	By court	Out of court	By court	Out of court
		1,829	5	1,279	0

d) Extradition

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current High Court judges	Additional judges
None	**None**	**4 weeks**	**1**	**1 for now and a 2nd by 2023**

In dealing with European Arrest Warrant ("EAW") applications, Ireland has found itself in breach of its international obligations. Irish Courts are taking many months longer than permitted to deal with extradition applications. The delays are systemic with the result that in October 2020, the EU Commission called upon Ireland to comply with the time limits in the Framework Decision 2002/584.

As with other lists and divisions, the number of EAW applications has been rising in recent years. In 2020, the number of applications increased 17% on the 2019 figure. Then, in March of this year, Ireland became party to the Schengen Agreement (Schengen Information System II - SIS II). This is an agreement pursuant to which Irish authorities are notified of all European Arrest Warrants issued in other EU States. Ireland now has access to the 40,000 alerts on the system as it stands. It is expected that in the next year, the number of EAW applications will likely double on the numbers made in 2018. Already, between 1st March, 2021 and mid-July, 2021 86 arrests have been made, compared to 27 arrests in that same period the previous year. With loosening of travel restrictions, arrests are likely to increase even further as the year continues.

Figure 6 – Extradition-related arrests by month and year

	2019	2020	2021, to 15 July 2021	In 2021 of which SIS Arrests
January	14	13	12	-
February	23	9	14	-
March	7	12	26	*13*
April	16	4	29	*21*
May	12	7	14	*11*
June	8	11	23	*9*
July	14	13	20	*7*
August	9	14	-	-
September	16	10	-	-
October	11	17	-	-
November	21	10	-	-
December	11	24	-	-
Totals	**162**	**144**	**138**	***61***

The judge that has been managing this list for the last year has been working hours that are simply unacceptable in order to meet current demand. This judge sits to hear cases every day and must deliver a written judgment in each case. As only 10% of extradition applications are dealt with on consent (where the individual agrees voluntarily to return to the country that issued the warrant), this means that the judge attached to the list has extraordinarily high judgment writing obligations.

Furthermore, any judge assigned to extradition matters has a very substantial additional administrative workload to deal with. He or she is obliged to draft applications under section 20 of the European Arrest Warrant Act 2003 seeking additional information from the requesting state, and when that information arrives, must check it and write a further request if it is incomplete. When all information from the requesting state is received the judge is required to write up a report on that information so that it can later be incorporated in the court's written judgment. Because the judge assigned to the extradition list sits every day, the judge has to prepare all further information requests

and write his or her judgments around the judge's court sitting time with the result that judgments are not delivered for several weeks after cases are completed. Apart from the intolerable burden placed upon the judge assigned to this list, a delay of up to 4 weeks in the delivery of judgments is not acceptable in circumstances where approximately 40% of those the subject matter of extradition proceedings are in custody and the additional delay routinely results in the court failing to meet its international obligations. The extradition list should be managed so that any judge assigned to that list would only sit on alternate days, managing their administrative and judgment writing obligations on non-sitting days.

Post Brexit, applications to extradite persons to the UK have become legally more complex and are giving rise to additional disputes. These disputes are imposing further pressure on the division in that the number and duration of hearings in this category of application are increasing. And, a substantial backlog in this list is building in circumstances where 60 cases involving extradition to the UK and Poland are awaiting the result of cases pending before the European Court of Justice.

At this time, two full time judges are required to meet demand. With the prediction that applications will increase, as earlier discussed, by reason of the Schengen Agreement, a third judge will be required by this time next year or at latest the start of 2023.

CIVIL

a) Asylum Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	**8 Months**	**1 month**	**1**	**2 (for two years thereafter one judge)**

The swift determination of asylum applications is essential, not only because of the intrinsic importance of the rights at issue but also because the decision under review will normally follow at least one lengthy first instance process before a relevant Government department and in some cases hearings before International Protection panels. Applicants are severely prejudiced by delay encountered in bringing cases of this type before the court. While their proceedings are caught up in litigation delays they are building up ties in the community. They may marry or have Irish born children during these periods. Similarly, delay is of great significance to the Minister given that the greater the applicant's ties to the State the greater the influence that those facts must rightly have on any decision to be made by the Minister on deportation, even if such a course would have been open to the Minister and in accordance with State policy at an earlier stage.
According to the Courts Service Annual Report for 2020, there was a 4% decrease in incoming asylum related judicial review claims.[126] These figures contrast with the quarterly Courts Service figures furnished to the court's President on 24th August, 2021, which show that incoming asylum claims were up 19% in 2020 on 2019 figures. Of great concern also is the fact that in the seven months up to 31st July, 2021, the court has received 273 claims (91% of the total claims received in 2019).

Even more concerning than the growth demonstrated by the aforementioned figures is the fact that the Immigration Service Delivery section of the Department of Justice, which has responsibility for applications for citizenship, immigration permission and border entry as well as applications for international protection (including asylum), was closed to the public for a considerable period due to Covid-19 considerations. The effect of the closure was that hundreds of applications were either not made or not determined. It is a matter of enormous concern to the High Court that, in the week commencing 16th August, 2021, the Courts Service was advised by the Asylum Legal Services that several hundred applications have recently be determined and that there are 650 **negative decisions** due to be notified to applicants in the coming weeks. It is to be anticipated that the majority of these decisions will become the subject matter of applications for judicial review. And, as the Rules of the Superior Courts provide that judicial review applications of the type under discussion here must be commenced within 3 months, these negative

[126] See Courts Service, *Annual Report 2020* at 52 para 13.

decisions are likely to result in a tidal wave of new claims which will arrive at the shores of the asylum list starting in October 2021. These claims will drive the asylum list into a state of arrears which has never before been experienced. It needs to be stressed that these 650 decisions will be in addition to the normal ongoing number of decisions expected to issue in respect of ongoing applications. And, applications of this nature cannot be settled. All must proceed to a hearing and each requires a written judgment.
Currently one judge is assigned to the Asylum Division. In light of the information recently received regarding the number of negative decisions about to be notified to applicants, two additional judges are immediately required to meet the current and anticipated increase in claims in this division for the next 24 months at least. If the claims arising from the 650 negative decisions earlier mentioned could be met head on with immediate effect by three judges for a period of 24 months, it is anticipated that thereafter the Asylum List could be managed by two judges.

It had been anticipated that one of the additional 5 judges to be appointed pursuant to the Civil Law (Miscellaneous Provisions Act) 2021 would be deployed to deal with asylum claims. On that basis the court brought forward, by at least two months, all of the hearing dates which had previously been fixed for asylum cases, a fact which demonstrates the extent to which additional judicial resources impacts favourably on delays and on the administration of justice generally. However, with the tidal wave of claims anticipated as a result of the most recent information from the Department of Justice, what is crystal clear is that those seeking to challenge immigration and asylum decisions will face delays of a type never before experienced.

Finally, in light of the fact that one of the judges currently assigned to the Personal Injuries Division will be unavailable until April of next year at the earliest due to ill health, it may not be now possible to assign one of the five additional High Court judges full time to this division as had been anticipated when the dates mentioned in the preceding paragraph were allocated. It is becoming ever more likely that one of the additional five judges will have to be assigned to the Personal Injuries List because of the growth of clinical negligence claims arising from the State's CervicalCheck Screening Programme. It may be that one of the five additional judges will have to be shared between the Asylum Division and the SID/ Commercial Planning Division on a term on, term off basis. This would be

hugely regrettable in terms of backlogs in the Asylum Division and SID and Commercial Planning Division, but there may be no other option.

b) Bankruptcy List

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	**A few weeks for shorter matters, 2 months for longer matters**	**No data**	**1**	**0**

There is currently a very considerable pent-up demand in bankruptcy proceedings. Creditor applications fell by 77% as a result of the Covid-19-related restrictions, see below. Bankruptcy matters generally short and can usually, but not always, be accommodated on a Monday. However, they almost always require a written judgment and are therefore more resource-intensive than other Monday applications. Nevertheless, it is not expected that the list will require an additional judge even if applications return to pre-Covid-19 levels. Bankruptcy in general is light on judicial resources.

Figure 7 - Incoming Bankruptcy Applications 2019/2020

	2020	**2019**
Bankruptcy summonses	25	108
Bankruptcy petitions (creditors)	26	75

c) Chancery Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
6 weeks waiting time for a hearing date for a pre-trial application.	Chancery 1 pre-trial applications – three months; Chancery 2 - four weeks for shorter matters and three months for longer matters; Long chancery applications five months	**2-3 months**	**6**	**2**

This division, to which 6 judges are assigned, deals with a very broad range of complex cases which have been earlier described. Cases can take anything from a number of hours to several weeks. Currently there are delays due to the lack of availability of hearing dates and also delays in the delivery of judgments. These problems are due to a shortage of judges and the fact that judges are not assigned non-sitting days to write judgments.

The Chancery Division also suffers from the fact that one of the judges assigned to the division is also assigned to the CervicalCheck Tribunal – which has reduced his availability. What availability he will have in the upcoming years will very much depend on the number of claims that may be lodged with the Tribunal. While the Tribunal has less than 10 cases currently listed for hearing, the judge assigned to the Tribunal cannot guarantee his availability to the High Court with the result that he can only be deployed to short matters such as bail applications or short personal injury cases at provincial

venues which only hear cases that can be dealt with in 2 days or less. It is important nonetheless to stress that the High Court Judge which has been assigned to the CervicalCheck Tribunal is effectively working full time for the High Court albeit not in the Chancery Division because of the limited types of cases which he is in a position to hear. The full effect of his loss to the overall work of the court will be very significant if and when claims start to be heard before the Tribunal. Accordingly, it should not be assumed that if this judge was released from the Tribunal, the overall situation in the High Court would be any better than it currently is.

Unfortunately, the statistics available in relation to the Chancery Division are far from satisfactory. In the quarterly figures furnished to the court's President, the numbers of declaratory actions, injunctions and specific performance claims were all stated to have increased, whereas the Courts Service Annual Report for 2020 shows the incoming numbers of cases for the Chancery Division down from 1,624 in 2019 to 1,552 in 2020. Assuming that incoming claims reduced by 4.6%, as the Annual Report for 2020 suggests, it is likely that this reduction was due to Covid-19 considerations and is indicative of a pent-up demand which will need to be dealt with by the court once restrictions ease in addition to a caseload equivalent to if not greater than that which it faced in 2019. Even in 2019, there were significant delays for litigants seeking to obtaining hearing dates in the Chancery Division and there was also delay in the delivery of judgments.

Worryingly, the statistics in the Courts Service Annual Report for 2020 show that in 2019 only 371 cases were resolved by settlement or court hearing and only 325 in 2020. These figures are to be contrasted with incoming numbers of claims for 2019 (1,624) and 2020 (1,552). The overall impression created is that very large numbers of claims are being commenced in this division and that the court is not able to clear anything close to half of the numbers of incoming cases. It would seem to follow that there must be an ever-increasing number of Chancery claims "in the pipeline" and that when these are ready for hearing they will severely exacerbate the existing backlog which will continue to grow exponentially unless the numbers of judges assigned to this division are significantly increased.

It should also be noted that the type relief often sought in cases in the Chancery Division is of a nature that requires a case or an application to be heard as a matter of great urgency e.g. applications for various types of injunctions.

Having regard to (1) current and expected demand due to high case numbers, (2) current and anticipated delays in obtaining hearing dates (3) delays in the delivery of judgments and (4) the fact that certain Chancery matters must be determined swiftly to avoid a denial of justice, an additional two judges, at least, are required to support the work of this division.

d) Civil Jury Division

Stage 1 delay (Case preparation delay)	**Stage 2 delay (Listing delay)**	**Stage 3 delay (Judgment writing delay)**	**Current judges**	**Additional judges**
None relevant	2-4 years	**None as issues of liability and quantum are determined by the Jury at the conclusion of the proceedings.**	**1**	**2 (for 2 years) thereafter 1 judge.**

Historically, two judges sat for two weeks in the shorter legal terms and three weeks in the longer terms to deal with civil jury actions (18 weeks of hearings). Since 2018 it has only been possible to assign one judge to this division even though it has been backlogged for several years. The backlog has been compounded by the advent of Covid-19. The sessions planned for April, June and November 2020 had to be adjourned, likewise the session scheduled for February 2021. It was only possible to safely recommence hearing civil jury trials in July 2021.

There are now almost 58 defamation/civil assault cases ready for hearing. A small number of these (approximately 10) have been ready for hearing for four years. Another

modest number (approximately10) have been ready for hearing for more than two years, a wholly unacceptable situation. The rest have been ready for hearing for 2 years. Most importantly, in the context of judicial resources, is the fact that, at a minimum, the vast majority of these cases, if they proceed to hearing, will take in excess of four days and in many instances several weeks. A further 114 cases of historic alleged sexual assault have recently been added to the backlog of cases in this division due to a ruling of the Court of Appeal. These are cases which by their nature are likely to be hotly contested and involve lengthy hearings and are exceptionally burdensome on judicial time.

Various strategies have been deployed to reduce the burden of these cases on the court's limited resources. For example, all plaintiffs have been asked to consider electing to have their case heard without a jury (trials without a jury are heard more quickly) on the basis that their case could be offered a much earlier hearing date. And, the cases awaiting a trial date are listed for mention before the court on a regular basis in order to stimulate possible settlement.

The pent-up demand is - and has been for a long time - immense. According to the Courts Service Annual Report 2020, in 2020, 156 new defamation and 164 new assault cases were filed. In the same year only 25 defamation and 15 assault cases were resolved, including out of court settlements. In 2019, 157 new defamation cases and 89 new assault cases were filed whereas only 46 defamation actions and 29 assault actions were resolved including out of court settlements.

Worryingly, the above-mentioned figures show that there was an 84% increase in incoming assault claims in 2020. Based on current demand, these figures are expected to hold for 2021. One might reasonably ask how one judge, sitting 9 weeks a year, could possibly be expected to bring at least a hundred cases of this nature to a conclusion in any given year in a manner which was fair and just to the parties? Anecdotally, it is believed that a significant percentage of the cases in this division that settle only do so because there is no possibility of them being heard within any reasonable period of time. This is not access to justice as mandated by the Constitution and by the European Convention on Human Rights.

It is important to highlight that experience shows that very few assault or defamation actions are settled until a judge and jury are ready to start the case. And, for this reason it is perhaps not surprising how few cases have been resolved since the commencement of Covid-19. This factor has been taken into account in the court's assessment of its need for additional judicial resources. What is incontrovertible is that the current backlog will continue to grow unless the judicial resources assigned to this division can be radically increased.

Figure 8 - Civil Jury cases 2019/2020

	Incoming		**Resolved**	
	2020	**2019**	**2020**	**2019**
Defamation	156	157	By court: 16 Out of court: 9	By court: 12 Out of court: 34
Assault	164	89	By court: 10 Out of court: 4	By court: 18 Out of court: 11

The only way the backlog in this list can be reduced to an acceptable level is to assign two judges to this division on a full-time basis for a period of at least two years. The backlog will continue to increase if this division is only manned part-time throughout the year, as is the case currently. And, the backlog will continue to worsen in light of the existing and expected numbers of assault and defamation claims. Even allowing for the settlement of approximately 50% of cases at the "door of the court", it will take two judges the greater part of 2 years sitting full-time to bring arrears to an acceptable level. It has to be remembered that while trying to eat into the backlog the court will also have to deal with all of the new claims that will continue to be issued and will be added to the backlog as they become ready for hearing.

The system currently operated for hearing jury actions is fundamentally flawed and has been so for at least a decade. There was a time when two judges sitting for two weeks three times a year was sufficient to deal with the number of civil jury claims being instituted each year. And, because the pressure on other civil lists, and in particular the

personal injuries list, was not as it is now, it was possible, without adverse consequences, to take two judges from other divisions for two weeks three times a year to hear jury actions.

However, when all other civil divisions are also backlogged, the idea of taking one or more judges from those overburdened divisions to hear jury civil actions is simply unsupportable. When the number of claims commenced in any division in a given year exceeds the number of cases that one judge might be expected to hear (allowing for the likely settlement rate) it is impossible to justify anything less than the assignment of one full-time judge to work of that type. It would be intolerable, for example, if it was decided that, regardless of the number of claims in the pipeline ready for hearing, family law claims (or criminal trials) would only be heard at intervals four times a year, and civil jury claims should not be treated any differently. It is obvious from the table above that this division, with its present judicial allocation, cannot "clear" even half of the number of incoming cases in any given year.

Based upon the statistics set out above, two full time judges should be assigned to this division as soon as possible for a period of two years after which one full-time judge should be capable of dealing with the number of cases which require a hearing.

e) Commercial Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	**Long matters: 4-6 months Short matters: 2 weeks**	**2-6 months**	**4**	**2**

The division operates with four judges. However, each of these judges have commitments to other lists and committees. For example, Barniville J. is the designated arbitration judge and deals with all arbitration related cases in the High Court. McDonald J. has a range of other responsibilities, including his role in liaising with the OECD team. Quinn J.

is also the judge dealing with the Examiner's List and the list dealing with restrictions on directors. Barniville J., McDonald J. and Quinn J. are also the judges designated to hear examinership applications. O'Moore J. is the designated judge dealing with all cases involving challenges to mandatory hotel quarantine under the Covid-19 regulations. He also has a range of other responsibilities including taking the Chancery (2) Motion List. All judges are members of numerous committees.

One of the principal issues in relation to the delay in the Commercial Division is the time it takes to deliver judgments. Cases in the Commercial Division are often exceedingly complex, a complexity evidenced by the vast amount of documentation to be read prior to trial, the duration of the hearing and the length of the written judgments delivered. By way of example, the action arising out of the collapse of the Bernard Madoff empire was listed for 24 weeks. Similarly, the *Western Buildings* case was listed for 14 weeks. Regarding judgment writing and pre-reading obligations, the recent case heard by Barniville J. in *Facebook v Data Protection Commission* [2021] IEHC 336 took only 5 days to hear but resulted in a judgment which runs to 197 pages. Producing such a judgment is not a creative writing exercise but rather requires the judge to carefully consider the facts, make findings in relation to them and then analyse issues of law which may involve both domestic and European law, as was the case in the *Facebook* decision. Writing such a judgment is invariably preceded by the reading and consideration of numerous box-loads of materials and legal authorities. This all takes time. However, because judges in this division move from one case to the next without respite and have numerous other obligations, much of the required pre-reading and judgment writing is done during weekends and vacation periods, delaying the delivery of judgments.

The problem with delay in the Commercial Division is somewhat circular in nature. Because the court is so backlogged with cases, judges sit to hear cases back-to-back with no non-sitting days to allow for either the pre-reading of trial papers or judgment writing. And, because the time set aside for each case is fixed on the basis that the trial judge will have pre-read all of the papers, unless another cases settles thereby creating a writing window, they have little or no time to write judgments during the term. The result is that even if cases in this division manage to get a reasonably proximate hearing date, which is

regrettably no longer a feature of the court, judgment is often postponed for many months to the prejudice of the parties.

The Commercial Court/Division is not operating to the standard of efficiency achieved at the time of its establishment in 2004. There is a delay, often significant, in cases being allocated trial dates and in the delivery of judgments, delays which are unacceptable having regard to the objectives of the court when established and the expectation of litigants who have paid a premium to obtain access to a fast-track system for the hearing and determination of important high value commercial litigation.

In 2019, 172 cases commenced in the commercial court. That figure increased to 185 in 2020. The court had only 203 cases on hand as of 1 January 2016 but had 437 on hand on the same date in 2020. These figures show just how great the additional demands on the court and its members are now in comparison to what they were five years ago.

	2020	**2019**	**2018**	**2017**	**2016**
Cases on hand: 01/01	437	360	315	245	203
Incoming	185	172	161	193	157
Resolved[127]	133	95	116	123	115

The fact that consistently over the past 5 years the court has had a greater number of incoming cases than the number of cases that have been resolved demonstrates that the court is not able to meet current demand and suggest that backlogs will continue to build. Looking at what lies ahead, Brexit is expected to cause an increase in the number of cases which parties will seek to have determined by the Commercial Court, one of the main objectives of the Ireland for Law Project, a project supported by the Government and the judiciary. The Ireland for Law Project is chaired by former Taoiseach John Bruton and is actively promoting the Commercial Court as a venue for international dispute resolution. The Chief Justice and others have publicly recognised that more resources will be required to enable the commercial court to handle the increased numbers of cases consequent on Brexit. Of significance also is the fact that data protection cases, as yet in their infancy in terms of numbers, are expected to increase significantly given the role of

[127] Includes out of court settlement. Only 51 cases were able to be heard in 2020, 44 in 2019 and 58 in 2018.

the Data Protection Commissioner as regulator for several of the largest technology companies in the world.

Furthermore, the recommendations of the Review of the Administration of Civil Justice Report, once implemented, will likely lead to more work for the Commercial Court and its judges. In a rule change implemented in June 2021, an Intellectual Property and Technology sub-list was established which will undoubtedly encourage the use of the Irish Commercial Court to resolve international disputes of this nature.

Consequently, the current complement of four judges (which is all that can be made available at the moment) is grossly insufficient to meet the division's obligations. In this context, it is important to bear in mind that many cases in the Commercial Court require significant hearing time. Hearings frequently last two weeks or more and sometimes very substantially more. Once such a hearing starts, the judge assigned to that case is unavailable for any other work. If a four-week hearing starts in week one of a term and a three-week hearing starts in week two, that means that the complement of judges available to hear other cases is reduced to two for at least a three week period. If a two-week case starts in week three of the term, that leaves only one judge available to deal with other matters for two weeks of that term. It is important to note that, in addition to hearings of this kind, the Commercial Court must also be able to allot time to all of the shorter hearings lasting from half a day to three or four days including injunction applications, cross-border mergers, corporate reorganisations, insurance portfolio transfers, applications for summary judgment in claims of more than €1,000,000 and other interlocutory applications. This has the capacity to create very real problems and, if it is allowed to continue, will inevitably lead to trial dates having to be vacated on the basis that no judge is available to hear the case. This is the antithesis of what was envisaged when the Commercial Court was established. One of the features of the Commercial Court which has been constantly promoted (including by the Ireland for Law Project) is that it can provide certainty that a case listed for hearing on a particular day will proceed on that day. Regrettably, given the fact that no more than four judges can currently be assigned to the Division, the reputation for certainty that the Commercial Court has earned is now in jeopardy. Two additional judges would allow the division meet

present demand within acceptable time limits and ensure that the court could continue to provide certainty to litigants in relation to trial dates.

As an aside, and as will be discussed in greater detail below, the practices of the Commercial Division have established just how effective case-management can be in reducing the hearing time that needs to be allocated to complex cases. As the *Facebook* case discussed above demonstrates, hearing time can be greatly foreshortened if issues are narrowed in the course of case management. And, not only does this make more time available for other cases, but it greatly reduces the cost of the litigation to the parties. Nevertheless, regardless of the efficiency with which any case can be managed and heard, a significant delay in the delivery of the judgment will nonetheless potentially cause very significant damage to one or other party. Due to the lack of resources, the Commercial Division currently suffers from this deficit.

f) Commercial Planning and SID Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	**At least 4 months and that is on the basis that the division will have an additional judge from October 2021 (from the 5 provided for in recent legislation)**	**1-2 months**	**1**	**2**

For the past year, one judge has been assigned to this relatively newly created division. Most cases take three to four days to hear. Routinely, the paperwork submitted to the court will run to thousands of pages per case. Similar to the Commercial Division, the factual and legal complexity of cases in this division imposes immense pre-reading and judgment writing obligations on any judge assigned to the division.

As of the date of this report, the court's diary is full to December 2021. And, it is full on the basis that from the start of the Michaelmas term (as a result of the provision of five additional judges for the High Court) a second judge will be assigned to this division. Had a second judge not been assigned to the division the court's diary would have been full for the upcoming nine months. As stated earlier, if the court is not in a position to assign one of the expected five additional judges as provided for in the Civil Law (Miscellaneous Provisions) Act 2021 to this list, for the reasons earlier explained, the dates assigned to many of the cases listed for hearing between October and December 2021 will have to be cancelled and new dates assigned to these cases sometime in 2022.

As is perhaps clear from the statistics set out below, with one judge, the court only had sufficient resources to determine 12 sets of proceedings since 1/10/20 with 12 other claims having been settled or adjourned. This shows how resource-heavy all cases in this division are. There is a low settlement rate because of the nature of the issues under consideration. It would appear that even with two full-time judges, as is expected to be the case from October 2021, the division will remain under-resourced. And, while cases may obtain a hearing date within four months of being ready for trial, that is hardly an acceptable delay in this type of litigation. In addition, there will likely be delays in the delivery of judgments, even if it proves possible to assign two judges to this list with effect from October 2021. This is because the current demand will mean that neither will benefit from writing weeks or time off following the hearing of a case for the preparation of their judgments, unless a third judge is made available to this division.

Figure 9 - Commercial Planning and SID cases

Fully determined (including any consequential matters) since 1/10/20	Heard but awaiting post-hearing submissions	Settled/Adjourned generally since 1/10/20	Not yet substantively determined
10	**2**	**12**	**34**

The delay in the availability of trial dates and delivery of judgments in cases of this nature has very significant adverse consequences not only for the parties but for the economy and society as a whole. It should be noted that, when the concept of strategic infrastructure was first introduced into the planning system in 2006, the long title to the relevant Act specifically stated that it was being enacted in the interests of the common good in respect of developments of strategic importance to the State and that it was intended to make provision for the expeditious determination of applications for such development. The will of the Oireachtas as expressed in the long title is being undermined by the lack of judicial resources to permit these complex cases to be dealt with speedily. The High Court needs 3 judges to meet current demand.

g) Family Law Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
On average parties take circa 18 months to have their cases ready for hearing. All family law cases should be case-	**Six months (but impacted by Covid-19)**	**Approximately 3 months**	**2**	**1**

managed from the outset to ensure they are ready for hearing within 6 months of commencement. **A delay of 6 weeks applies to obtaining a hearing date for pre-trial applications.**				

As the Working Group will know, the system of family law in this jurisdiction is due to experience radical change in the medium-term. It is proposed to change the jurisdiction of the courts in judicial separation, divorce and dissolution of civil partnership proceedings, as well as cases taken by cohabitants, to enable jurisdiction to be exercised by the district family court and the circuit family court. It is intended that the circuit family court will deal with many of the complex cases currently falling within the High Court jurisdiction. The Family High Court will retain jurisdiction over adoption, child abduction and special care cases as well as dealing with cases stated and appeals from the circuit court. And, the fact that such widespread reform is envisaged bears testament to the need to streamline family law litigation so that it can become more efficient, less costly and user-friendly with emphasis on the need to move away from an adversarial system to one which will favour alternative dispute resolution.

All of that said, it seems likely that the High Court's current jurisdiction will remain as is for the next four or five years and only then will the demand on its resources begin to reduce. In the meantime, the High Court must itself do all that it can to make litigation

more efficient and less costly, bearing in mind that all delay has the potential to cause very significant personal and financial damage.

Demands on the resources of the High Court continue to grow as the figures below will demonstrate. There was a 100% increase in the number of divorce applications made in the High Court in 2020 whereas claims for judicial separation reduced by only 20%. This is attributed to a change in the law, reducing the time married persons need to live separately before divorce will be granted. Overall, therefore, a total of 65 claims were made for either divorce or judicial separation in the High Court in 2020 in comparison to 46 in 2019 an overall increase of 41%. It follows that it is difficult to foresee any reduction in the demands that will be placed upon the court's limited judicial resources at least in the short-term.

	2020	**2019**
Divorce	46	23
Judicial Separation	19	23
Total	65	46

There has also been a significant rise in applications under the Adoption Act 2010 with 41 applications in 2020 as opposed to 24 in 2019, an increase of 70%. Important in this regard is that applications of this nature can never be settled and require detailed and sensitive hearings in every case. And, as is perhaps obvious, in a division supported by a maximum of two judges, an additional 17 cases to be heard in any given year imposes a significant additional burden on the court's already strained resources.

Because of the demand on the Family Law Division's resources, once a case is ready for hearing it will not receive a hearing date for approximately six months. Delay of this nature is unacceptable, particularly in cases involving the custody and financial support of children. Importantly, the listing delay must be viewed in the context of any other delays. It is easy for a recalcitrant party to slow down the proceedings, thereby imposing significant hardship on their spouse/partner /children when cases are not case managed, and the court only becomes involved once a case reaches the door of the court. What is of prime importance, in these immensely sensitive cases, is how long the entire case takes to complete i.e. the interval between the date upon which the case is commenced and the

date upon which judgment is delivered. Currently it is only the exceptional case that will be resolved within a period of two years.

As already touched upon, delay can have devastating personal consequences for those involved in family law cases. It can deny children the financial support they need for their development and security and force them to live in arrangements so uncertain that they experience unconscionable fear and anxiety while waiting for the court's decision on issues of custody and adoption. And, as already stated delay may impact upon the court's ultimate decision, particularly in matters of custody. This division deals with the realities of peoples' lives and in cases where children may already be traumatised, delay and uncertainty are severely detrimental and prevents families from moving on with their lives. Case management would abridge the entire process apart from making it significantly less expensive than it currently is.

All cases in this list should be case managed. This means that as soon as the initial exchange of paperwork is complete, which should be within about three months from the issue of the summons, the judge would convene a meeting between the parties. At that meeting, the judge would seek to refine the issues to be determined at trial, give directions regarding the exchange of documentation and evidence, fix a timetable for compliance and assign a hearing date. In other words, the judge would take control of the timetable and the manner in which the case will proceed. Case management invariably results in cases being heard much earlier and over a greatly reduced number of days.

Another important feature of case management is that it provides the opportunity, before the parties become severely entrenched in the litigation, to consider settling their differences or referring proceedings to mediation. This is vitally important in circumstances where only 20% of current cases settle before the trial commences. Another 30% settle during the trial. Substantial legal costs could be saved if 50% of all family law cases could settle at case management stage. Furthermore, very significant cost savings could be achieved if the more complex cases, which currently take between six and seven days, could be dealt with in half of that time, as would hopefully be the case if the issues were refined in advance. And, it probably goes without saying that, if cases

are shorter and more discreet, judgments will be less complex and delivered earlier as a result.

An additional judge assigned to this division would allow the court to introduce case management in all cases. This would result in cases being determined within 18 months of their commencement, an outcome that would cause much less damage to the parties and more importantly their children, particularly in cases where custody is concerned. It would also allow the cases to be heard in half the number of days that they currently take, thus preserving the family's often modest assets rather than causing them to be expended on avoidable legal costs.

h) Hague Luxembourg Convention Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	**There are some delays in the listing of these cases but what is important is the overall time it takes to deliver the judgment which is usually within 8-12 weeks of commencement**	**1-2 weeks**	**1 (part-time)**	**1**

Council Regulation No. 2201/2003 requires that judgment be delivered within six weeks from the date on which an application under the Convention is lodged. Due to a shortage

of judges available to this division, it is taking between eight and twelve weeks to deliver judgment and this is notwithstanding the fact that the court's caseload in 2020 (due to Covid-19 travel restrictions) was half that which it was in 2018. The judge dealing with these cases always has another assignment. The judge assigned to this list is either the second judge assigned to the family law list or a judge working only part time due to her part time position as the judge responsible for judicial training.

Regrettably the time taken to complete Hague Convention cases will increase substantially once travel restrictions ease when it is predicted that there will be a significant increase in child abductions with consequential pressure on the court's scarce resources.

There is currently one judge assigned to this division part time. One full time judge with a second judge to assist is required in order that the court can comply with its Convention obligations.

i) Non-Jury and Judicial Review Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
4 weeks waiting time for a hearing date for a Non-Jury pre-trial application.	**4 Months**	**2-4 months**	**6**	**3**

There are six judges assigned to this division. In addition, in each term the division will be short a judge due to the fact that they will be assigned to work at a provincial venue. Unfortunately, two days a week one member of is required to support the Wardship Division and another member has commitments to the Law Reform Commission. Further, given the number of written judgments required in this division, each judge has a "writing

week" being two weeks in the longer legal terms and one week in the shorter legal terms. It should be noted that a "writing week" consists only of four days as the judge involved has to sit on a Monday to deal with their assigned Monday lists. This, in effect, means that there are no more than four judges available on any one day. A case which is ready for hearing will not get a hearing date for at least four months, and after a case is heard there will likely be a further delay of several months for the delivery of judgments because of the courts' workload. The workload is particularly burdensome given the nature of the claims. Judicial review applications listed for hearing have a very low prospect of settlement as if the matter is settled this will take place at a preliminary stage. Non-jury matters have a higher rate of settlement, though this is limited.

The judicial review side of the list has to frequently deal with urgent, time sensitive applications. For example, in the past year a number of significant challenges to the Covid-19 regulations had to be heard and determined as a matter of urgency. There were challenges concerning the Leaving Certificate of 2020, travel regulations and other regulations which had to be heard, and detailed written judgments delivered well within a period of eight weeks. Also, this division deals with Article 40 applications (*habeas corpus*), which have to be heard and determined on an urgent basis. These applications are often difficult and complex, particularly where the detention of an individual is under the Mental Health Acts. All of these matters are accommodated, but often at the expense of other actions that have already been listed for a number of months with the added burden of having to prepare a written judgment for the judge involved.

The list is currently managed as best as is possible within current resources. The majority of applications and proceedings in this list take between one and three days to hear. About 10% to 15% of cases will take more than three days. In order to increase efficiency and make best use of the available court time, no case is listed that will take in excess of three days without going through a case management process. The benefits of cases management are set out in more detail later in this paper.

Judicial review applications and, only to a lesser extent, non-jury cases require written judgments. It is probably fair to say that judges in this division have perhaps the greatest judgment writing burden on the civil side of the High Court. In the year 2020, when there

was a reduction in cases heard due to Covid-19 restrictions, some 196 written judgments were delivered.

Judicial review proceedings in the High Court increased by 17% in 2020. There will be a similar increase in 2021. This is a very significant increase in the courts' workload, particularly in circumstances where one might have expected a significant reduction in applications for judicial review given that many tribunals and regulatory bodies whose decisions become the subject matter of judicial review proceedings were not making anything close to the same number of decisions in 2020 as a result of Covid-19 considerations. The number of judicial review claims in 2021 has already increased and it can be anticipated that there will be a further increase in 2022 when tribunals and regulatory bodies are back working at pre Covid-19 capacity and, perhaps, even clearing their own backlogs. The Working Group will have had a preview of the consequences for the courts of the clearing of backlogs when reading of the 650 delayed decisions due to issue in asylum matters.

As can be seen for the table above, delay in the non-jury/judicial review division is caused by a combination of the delays encountered in obtaining hearing dates, the requirement to deal with urgent applications, and the delay in the delivery of judgments. In order to allow cases to be heard and judgments delivered within an acceptable timeframe, three additional judges are needed to support this division.

j) Personal Injuries Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
Significant in clinical negligence claims but not otherwise.	**currently 7-8 months**	**2-3 months, where relevant**	**6**	**3**

However, regarding pre-trial applications the waiting time for a hearing date is 10 weeks.				

There are six judges assigned to the Personal Injuries Division. One of these judges is also in charge of civil jury trials and for that reason is unavailable to the Personal Injuries Division for approximately eight-9 weeks a year. Another of the division's six judges is suffering from significant health issues and will not be available to return to work until April 2022, at the earliest. Cases can take anything from half a day to many weeks depending on their complexity.

The greatest burden imposed on this division comes from the ever increasing number of clinical negligence claims being pursued. These cases take much greater time to hear than ordinary negligence cases and always require a written judgment, often dealing with complex legal and financial issues. This is perhaps highlighted by the fact that the total amount awarded in terms of damages in clinical negligence claims for 2020 was €183,128,023[128]. Thus, any increase in the numbers of claims issued will impose a disproportionately significant burden on judicial resources. Claims of this nature increased by almost 48% between 2019 and 2020, a fact which perhaps ought to have been highlighted in the Courts Service Annual Report for 2020. Those numbers are likely to increase substantially due to the fact that there are 650 potential CervicalCheck claims which were expected to go to the CervicalCheck Tribunal but the majority of which now appear destined for the High Court. Even if these cases were to go to the CervicalCheck Tribunal, the claimant under the relevant legislation enjoys a full right of appeal to the High Court. Accordingly, even if the majority of CervicalCheck cases were heard by the Tribunal, the workload of the High Court would nonetheless increase substantially. In

[128] See p 43 of the Courts Service Annual Report 2020.

addition, there are another possible one thousand women, 480 of whom have cancer, who are not currently entitled to make a claim to the CervicalCheck Tribunal who must, if they wish to pursue a claim, pursue it in the High Court.

When the CervicalCheck Tribunal was established, the Government saw fit to nominate three judges to deal with the anticipated 650 claims. It is inconceivable that the High Court can deal with these complex, urgent and sensitive cases without any additional judicial resources. In fact, due to the illness of one of the judges assigned to this division, the court will, at best, at any given time, have five judges available to deal with all personal injuries claims. And, even if one of the additional five new judges instead of being assigned to the Asylum Division or the Commercial Planning and SID Division is to be assigned to the Personal Injuries Division, that only takes the division back up to its normal complement of six judges. The division cannot be expected to deal with the projected increase in clinical negligence claims without very significant additional resources.

Not only are the numbers of clinical negligence cases likely to increase significantly on the numbers of claims commenced in 2020, most of those cases will need to be heard urgently in circumstances where the plaintiffs will have cancer and may be at an advanced stage of their illness, making the expeditious handling of their matters a matter of human dignity and importance. This calculation takes account of these implementation of the measures proposed in the ensuing paragraphs.

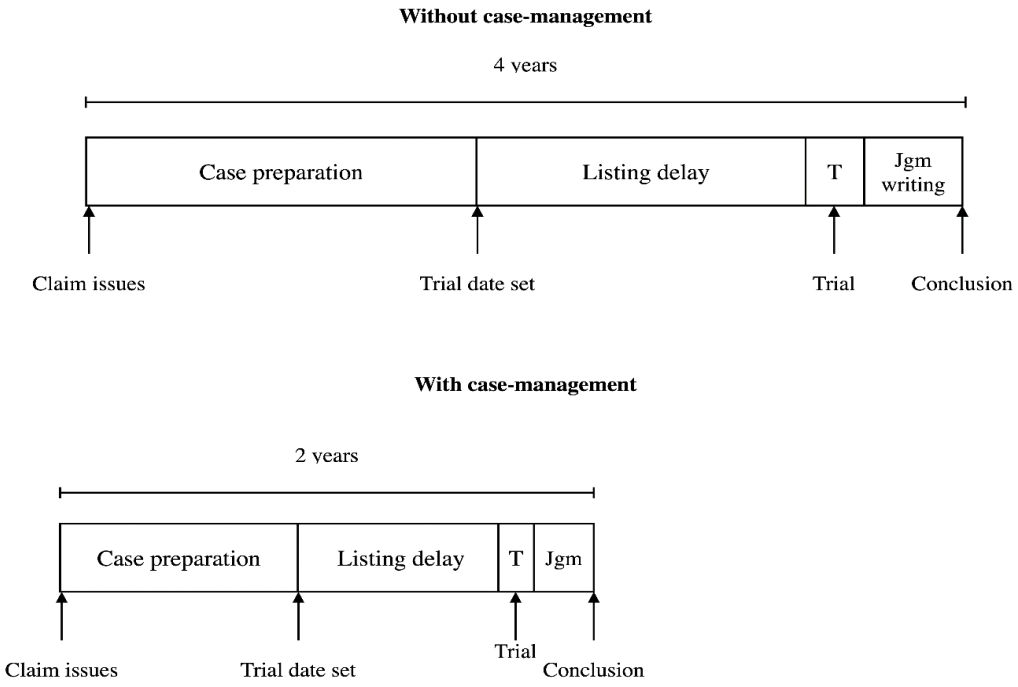
In order to make the Personal Injuries Division more efficient, pre-action protocols and new rules of court are required to ensure that cases are managed expeditiously. These pre-action protocols and proposed new rules, which will provide for case management, the meeting of expert witnesses and a range of other measures designed to provide for complete transparency and greatly foreshortened hearings, have been available in draft form since 2010. However, in order to implement these, Section 32 A of the Civil Liability and Courts Act 2004, as inserted by the Legal Services Regulation Act 2015 needs to be commenced.[129] The benefits of case management have already been explained in the section above dealing with family law cases and will not be repeated here.

[129] *See the second and third reports of the Working Group on Medical Negligence and Periodic Payments Modules 2 & 3 which Irvine. P chaired in 2012/2013.*

The fact that Personal Injuries Guidelines have been introduced for personal injury actions will undoubtedly mean that the number of claims that will be issued in the High Court in respect of personal injuries will fall in the coming months and years. However, those types of relatively low value routine claims tend to have a high settlement rate so that removing them from the High Court's jurisdiction is unlikely to free up much judicial time or relieve the burden imposed by the more significant claims pursued in the High Court.

Figure 10, which applies equally to case-management in other divisions, shows what effect case-management can have on the timeline of a typical clinical negligence case.

Figure 10 - Effect of case management on clinical negligence case



At an earlier time, it was thought that 2 additional judges would suffice to enable the Personal Injuries Division to operate in a manner which would allow for the abolition of the current lottery system and the timely hearing of all cases in this division. However, in light the influx of clinical negligence cases and the need to tackle the injustice of the current lottery system, a minimum of 3 additional judges are required for this division.

k) Personal Insolvency List

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	**3 Months**	**No data**	**1**	**1**

The work of this list is almost exclusively related to appeals from the Circuit Court in relation to matters under the Personal Insolvency Act 2012. It is important when assessing the needs of this list to recognise that personal insolvency applications decreased significantly in 2020 (down by approximately 52%) due to the impact of Covid-19 on court sittings. Early indications in 2021 place current demand at pre-Covid-19 levels. At the moment, the work of this division is addressed by a single judge one day a week on Mondays. However, where pressure on the list builds up, the judge in charge of this list has also sat from time to time for one or two weeks per term to hear such cases. This has knock-on consequences for the Chancery List to which the judge has been assigned. Furthermore, for the reasons mentioned below, it is likely that within 12 months, the work of this division will need the attention of one full-time judge sitting five days a week.

As of the 1st July, 2021, hearing dates are full to the end of November 2021. Delay in personal insolvency cases can have significant prejudicial effects for creditors in particular. When a debtor initiates the personal insolvency process by having a protective certificate issued in his/her favour, the effect is that creditors cannot proceed against the debtor by way of legal process or execution for a minimum period of 70 days, extendable up to 150 days. It may be that, at the end of that time, having had his/her personal insolvency arrangement (an arrangement proposing to restructure and/or write off debt) rejected by the creditors, the debtor may apply to the Circuit Court to approve the arrangement notwithstanding that rejection. In turn, if he/she loses in that court, the debtor may appeal to the High Court. What is supposed to be a relatively quick process which resolves the debtor's insolvency has by this stage taken perhaps a year or more. A date must then be allocated in the High Court for hearing of the appeal. If the matter is

fought in the High Court, the court will reserve judgment and give judgment as soon as possible. There are cases where two years pass between the issue of the protective certificate and the resolution of the litigation by the High Court, during which creditors are unable to avail of their usual remedies against debtors.

Although the present situation is already unsatisfactory, recent changes in the law will inevitably increase the court's workload, leading to entirely unacceptable further delay. The Personal Insolvency (Amendment) Act 2021 passed earlier this year has removed a significant restriction that previously existed on the ability of a debtor to bring an application to approve a personal insolvency arrangement where such an arrangement was rejected by creditors. It has abolished the requirement to show that a home loan was in default as of January 2015. That requirement meant that no application could be brought in respect of home loans that only suffered a default for the first time in the period which has elapsed since January 2015. That requirement had operated as a major brake on the numbers of applications. The removal of that brake will undoubtedly lead to a large increase in applications to the Circuit Court and, in turn, in appeals to the High Court. This is also likely to be exacerbated by the fact that many borrowers may have fallen into default by loss of income as a consequence of the Covid-19 pandemic.

For the above reasons and to reduce and keep delays at acceptable levels one additional judge is required to stem the workload of this list.

l) Professional List

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None	**Four weeks for approval of sanction, eight-ten weeks for appeals**	**None of significance but this is due to the reduced number of disciplinary**	**1**	**See Wardship Division**

		case due to Covid -19.		

Cases on this list are usually taken by the President of the High Court. Most cases can be heard on a Monday. Where a respondent wishes to contest the imposition of an intended sanction or appeal against a decision of the disciplinary body, a date will be fixed for the hearing of that dispute usually later in the same legal term. If the resources sought for the Wardship list over the next four years were fully met as a result of the recommendations of the Working Group, the President would be in a position to absorb the work attached to this list alongside her wardship commitments without further resources.

m) Wardship Division

Stage 1 delay (Case preparation delay)	Stage 2 delay (Listing delay)	Stage 3 delay (Judgment writing delay)	Current judges	Additional judges
None relevant	No waiting time for ordinary applications. Where the application is opposed, three months	6-8 weeks in complex cases	1 However, for 2 days a week that judge is taken from the Non-Jury/Judicial Review Division	One judge 2 days per week with immediate effect. Commencing June 2022, one additional full time judge and a second judge 3 days a week. Following implementation (over 3 years) of the Decision Making Capacity Act, the president would be capable of dealing with the professional list as well as all wardship matters without any further support.

The court sits five days a week. In order to allow the President fulfil her other roles, a judge from another division currently deals with wardship matters 2 days a week. It is unacceptable to have to "steal" a judge in this way due to the prejudicial effect that this action has on the work of the division from which the second judge is taken. A second judge should be available to carry out this work without recourse to the resources in another division which is already under resourced.

A second full time and a third judge at least 3 days a week will be needed in light of the extraordinary burden which will be placed on the court when the Assisted Decision Making (Capacity) Act 2015 ("the 2015 Act") comes fully into force in June 2022. It will bring about significant changes to the management of affairs of those who lack capacity. Although much of new work in this area will be transferred to the Circuit Court, the High Court will remain under the severest of pressure over the next four years in order to deal with its responsibility for its existing cases.

The files of virtually every person currently in wardship (approximately 2,200) will have to be reviewed by the court so that they can be discharged from wardship within a period of three years commencing June 2022. It is important for the Working Group to realise that the court, in the course of this process, will be making orders which will affect approximately €800 million of funds currently invested on behalf of these wards.

The effect of the 2015 Act will be that an application in relation to each ward will have to come before the court within the statutory three year period. In the course of that application, the court will have to determine whether the ward does or does not lack capacity and if they lack capacity whether they would be capable of making decisions with the assistance of a suitable co-decision-maker. The presiding judge will also have to determine whether there are any outstanding issues which need to be dealt with prior to transfer to the Circuit Court (such as costs, lodgements, existing legal proceedings or other legal issues) so that directions and final orders can be made.
On the assumption that the file of each ward will, for the purposes of the discharge application, have to include an up to date medical assessment as to the ward's capacity, a report on the ward's finances, a report from the ward's committee regarding their welfare and estate, a report from a guardian ad litem voicing the ward's own wishes as to all

matters concerning their future care, it is estimated that each application will probably take 45 minutes if the papers have been read in advance.

It is anticipated that with four hours of pre-reading (say 9am – 1pm), that the court might be in a position to discharge three wards each day between 2pm and 4.15pm. With approximately 30 weeks a year, 450 cases a year could be closed by one judge solely dedicated to the discharge of persons from wardship. A second judge sitting three days a week would be in a position to hear 270 applications a year. The Wardship division so resourced would just barely be in a position to discharge the court's statutory obligations in respect of which there is no discretion or possibility for an extension of time.

Between now and June 2022 the court will continue to receive new applications for wardship and will still be required to review all cases in which there are orders that interfere with the constitutional rights of wards e.g. detention orders, until such time as those wards discharged from the court's jurisdiction. Furthermore, the court will still have to hear all emergency applications in relation to wards who remain under the court's jurisdiction. And, the High Court will continue to have jurisdiction in many sensitive and complex matters concerning wards of court such as applications in connection with the withdrawal of life-sustaining treatment from a person who lacks capacity.

In addition, the court's ongoing jurisdiction in relation to Enduring Powers of Attorney will continue.

Based on the assumption that the President will continue with her obligations to the professional list, deal with all new Wardship matters and all other wardship matters retained under the court's jurisdiction, one additional full time judge for two days a week is required with immediate effect. The court should not have to take a judge from a division which is already overburdened two days each week to deal with the demands of Wardship. From June 2022 a further full time judge and another sitting three days a week will be required for a period of three years to deal with the consequences of the Assisted Decision Making Capacity Act 2015.

General points

a) Caseload not matched by judicial resources

In addition to considering the current shortage of judges on a division by division basis, the picture of that shortage is equally clear when the problem is viewed from a wider perspective. Across the entire court, the ever increasing caseload has not been matched with a corresponding increase in the number of High Court judges. This has caused what can only be described as systemic problems. Due to the sheer number of claims and the lack of judges to deal with them, significant backlogs have developed across almost all divisions causing both hearings and judgments to be delayed.

Because of the build-up of cases, heads of the various divisions are constantly having to 'put out fires', so to speak, and deal with the most urgent applications at the expense of those that may have waited many months for a hearing date. All divisions should have resources sufficient to deal with urgent cases otherwise than by stealing the hearing date assigned to another case which was of immense importance to its own participants. And, lest it might be thought that delays in the High Court may be due to the fact that the court is not using its existing resources in an efficient manner, it is important to note that Ireland ranks lowest in the EU regarding the number of judges per capita. Whilst the argument is often made that this difference can be explained by the fact that Ireland has an adversarial system while most other EU jurisdictions have an inquisitorial system, the difference in the number of judges per capita is so stark that the divergence in the systems could never account for the difference. Cyprus, for example, has a common law adversarial system and has more than four times the number of judges that Ireland has per capita.

Equally, as detailed below, the work of High Court judges has changed substantially over the last 30 years with the result that the overall workload of judges here does bear comparison with that of judges in civil law systems. The increasing use of judicial case management requires greater judicial involvement in cases at early stage. The point has also already been made that the High Court specifically has a significant judgment writing burden which cannot be reduced without jeopardising the integrity of the court's obligations as a court of record and without undermining the proper functioning of the

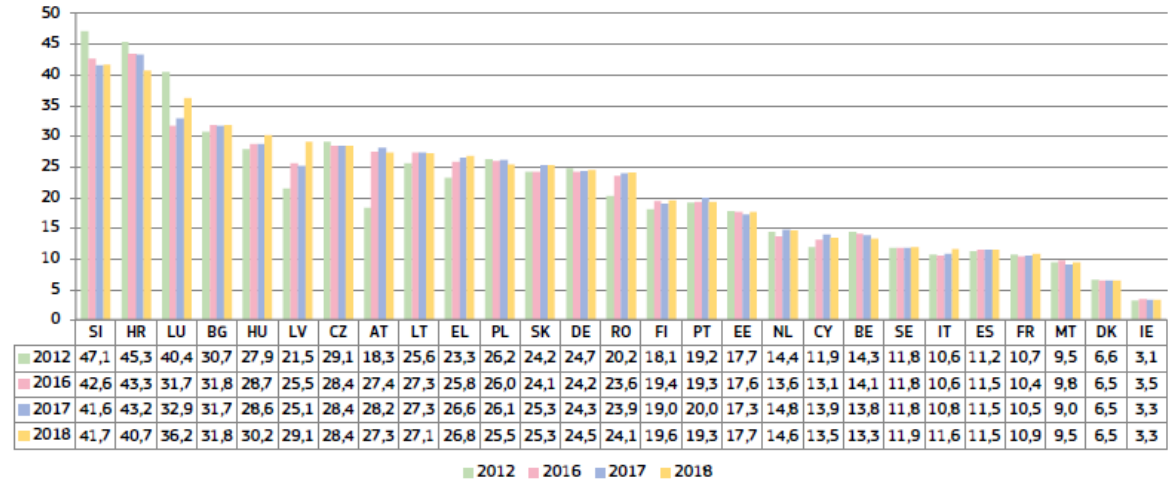
appeals process. As explained above, the appeals process relies on the comprehensive findings of fact in High Court judgments, since the appellate courts do not, save in exceptional circumstances, admit new evidence on an appeal. In addition, appeal courts need to be in a position to understand how the High Court reached its conclusions on the law.

Furthermore, it can be argued with considerable force that the low ratio of judges per capita in Ireland is likely responsible for what is referred to as Ireland's low clearance rate. The clearance rate refers to the ratio between the cases dealt with by the courts when compared to the numbers of incoming cases. In 2018, the European Commission for the Efficiency of Justice ("CEPEJ") carried out a study as to the efficiency of the justice systems of contracting states of the Council of Europe. Regarding first instance civil and commercial cases per 100,000 inhabitants, Ireland had a low clearance rate, having 2,7 incoming cases and only 1,6 resolved cases, resulting in a clearance rate of 59%, described as "very low" by CEPEJ.[130] It was the second lowest of all the jurisdictions considered and the lowest amongst EU member states. A similar picture unfolds in relation to criminal cases where Ireland has 8,5 incoming first instance cases and 6,3 resolved cases per 100,000 inhabitants at first instance, equating to a clearance rate of 74%, the lowest in all jurisdictions surveyed.[131]

Figure 11 - EU Justice Scoreboard 2021 Number of judges per 100,000 inhabitants 2012-2019

[130] European Commission for the Efficiency of Justice, *European Judicial Systems Efficiency and Quality of Justice* (Council of Europe 2018) pp 245-246 available at https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c.
[131] ibid. 306-307.

(source: CEPEJ study)



	SI	HR	LU	BG	HU	LV	CZ	AT	LT	EL	PL	SK	DE	RO	FI	PT	EE	NL	CY	BE	SE	IT	ES	FR	MT	DK	IE
2012	47,1	45,3	40,4	30,7	27,9	21,5	29,1	18,3	25,6	23,3	26,2	24,2	24,7	20,2	18,1	19,2	17,7	14,4	11,9	14,3	11,8	10,6	11,2	10,7	9,5	6,6	3,1
2016	42,6	43,3	31,7	31,8	28,7	25,5	28,4	27,4	27,3	25,8	26,0	24,1	24,2	23,6	19,4	19,3	17,6	13,6	13,1	14,1	11,8	10,6	11,5	10,4	9,8	6,5	3,5
2017	41,6	43,2	32,9	31,7	28,6	25,1	28,4	28,2	27,3	26,6	26,1	25,3	24,3	23,9	19,0	20,0	17,3	14,8	13,9	13,8	11,8	10,8	11,5	10,5	9,0	6,5	3,3
2018	41,7	40,7	36,2	31,8	30,2	29,1	28,4	27,3	27,1	26,8	25,5	25,3	24,5	24,1	19,6	19,3	17,7	14,6	13,5	13,3	11,9	11,6	11,5	10,9	9,5	6,5	3,3

(*) This category consists of judges working full-time, under the CEPEJ methodology. It does not include the Rechtspfleger/court clerks that exist in some Member States. **AT**: Data on administrative justice is introduced in the data since 2016. **EL**: Since 2016, data on number of professional judges includes all the ranks for criminal and political justice as well as administrative judges. **IT**: The regional audit commissions, local tax commissions and military courts are not taken into consideration. Administrative justice has been taken into account since 2018.

This bigger picture analysis underscores the situation earlier discussed in relation to the various divisions and lists of the High Court: the system is severely under-resourced. There simply are insufficient numbers of judges available to tackle the amount of work the court is expected to resolve. Thus, backlogs build, leading to the types of human indignity and suffering described earlier. Apart from the human impact of delay, the point has also been made that these delays very often place Ireland in an untenable position in terms of compliance with its international and European obligations and delay also makes it impossible in certain cases for legislative policies to be realised (for example in asylum cases, strategic infrastructure cases, personal insolvency cases and in commercial cases).

b) Nature of modern High Court litigation

Although the increase in the caseload of the High Court, when considered alongside the extraordinarily small number of judges expected to shoulder that caseload, makes a compelling case for a significant increase in judicial numbers, these factors alone do not give a complete picture of the changed pressure on High Court judges. In particular, it is important to appreciate that the average case dealt with by the court now is far more complex in nature than it would have been even a decade ago.

For far too long there has been a failure to recognise that the High Court is an entirely different entity than it was ten, twenty or thirty years ago. In many ways the High Court is still expected to function as if the bulk of its work comprised either personal injuries actions, most of which could be expected to settle, or relatively short criminal trials, and in both cases relatively few cases required a written judgment. The complexity and range of work which the High Court carries out, as the earlier part of this report has sought to make clear, has increased significantly in recent years. The present review by the Working Group is therefore timely and welcome.

The ever-increasing enactment of new statutes generate large numbers of new legal issues that need to be resolved and clarified by the court. Furthermore, the vast amount of case law now available to the parties to litigation, both domestic and international, and the regular deployment of immensely complex expert evidence, (e.g. such as that which might be introduced in intellectual property disputes or cases involving commercial fraud) and other factors have made litigation much more complicated, labour intensive and time consuming than it was a generation ago.

While the papers for less complex pre-trial applications can often be read quickly so that a judge can work through a number of short applications in a morning, the documentation in relation to longer cases often has to be read over several days or weeks or at weekends. In most divisions, with the exception of the personal injuries' division, the documentation is often voluminous, not infrequently exceeding 5,000 pages or several bankers' boxes of material. And, the pre-reading of papers is essential in shortening hearing times as it dispenses with the necessity for counsel to read out or summarise the paperwork in any great length once the case commences. It also helps the judge to familiarise himself or herself with the main issues and this is vital to ensure that cases will be heard in as short a time as possible.

As to the burden of judgment writing, in cases of reasonable complexity, judges estimate that it takes them significantly longer to write the judgments than it does to hear the cases.

There has on occasion been criticism of the sitting hours of judges, which are routinely from 10.30 to 4.00 each day. Regrettably, such commentators simply have no idea of what writing a judgment entails, leaving aside for a moment all of the other work that has to be carried out by judges during times when they are not sitting hearing cases. Not only are judgments important to the individual parties to litigation, but many are of significant public importance to the lives of the country's citizens. And, it is to be remembered that every complex judgment delivered by the Supreme Court on any matter, Constitutional or otherwise, originated in a judgment delivered by the High Court judge who likely was afforded no non-sitting time to prepare that judgment.

So that the Working Group can understand the judgment writing burden imposed upon judges required to sit to hear complex cases back to back, it has been decided to enclose a link to a standard judgment delivered by a judge in each of the divisions earlier discussed as well as a sample which relate to pre-trial applications, these being the most straightforward types of judgments. We will not inflate the High Court's application for additional resources by providing the link to exceptional judgments such as that in the *Facebook* case earlier mentioned. The reader is urged to consider the judgments referenced to better understand why significant time required to produce such results.

Criminal	
Extradition	https://www.courts.ie/viewer/pdf/3e742be5-209e-4205-9f1b-38e6cc74b6c1/2021_IEHC_555.pdf/pdf#view=fitH
Proceeds of Crime	https://www.courts.ie/viewer/pdf/00f90bbb-47a6-4d95-8ba1-0ca0de041bd1/2021_IEHC_536.pdf/pdf#view=fitH
Civil	
Pre-trial	
Generic pre-trial application	https://www.courts.ie/viewer/pdf/b47ea6d5-ba93-4445-a2bd-275edc4e72e3/2021_IEHC_535.pdf/pdf#view=fitH

Pre-trial Chancery	https://www.courts.ie/viewer/pdf/53478585-1b1f-4646-a9fb-974639f1b1e5/2021_IEHC_540.pdf/pdf#view=fitH
Pre-trial Commercial	https://www.courts.ie/viewer/pdf/aba61680-8f2b-4aff-9037-787f2131da6d/2021_IEHC_473.pdf/pdf#view=fitH
Divisions and lists	
Asylum	https://www.courts.ie/viewer/pdf/4c2e3699-0eb3-4559-92e4-741da6e62794/2021_IEHC_546.pdf/pdf#view=fitH
Chancery	https://www.courts.ie/viewer/pdf/6b9d98e4-10aa-47b3-8120-da293babe6e1/2021_IEHC_488.pdf/pdf#view=fitH
Civil Jury	https://www.courts.ie/viewer/pdf/19c7a917-e498-494d-b3a8-c717c684211d/2021_IEHC_490.pdf/pdf#view=fitH
Commercial	https://www.courts.ie/acc/alfresco/49aca4dc-4dd0-4e81-a8e3-0b2623a7d885/2021_IEHC_412.pdf/pdf#view=fitH
Commercial Planning SID	https://www.courts.ie/viewer/pdf/9d6220ad-70ed-4914-a8bd-0ed45bf06a03/2021_IEHC_509.pdf/pdf#view=fitH
Family Law	https://www.courts.ie/acc/alfresco/412ef367-f66a-4624-81c7-418b7a17baf2/2021_IEHC_378.pdf/pdf#view=fitH
Hague Luxembourg Convention	https://www.courts.ie/viewer/pdf/6c2bfbdb-1dd3-412c-9c9c-693118c01fb8/2021_IEHC_518.pdf/pdf#view=fitH
Non-Jury	https://www.courts.ie/viewer/pdf/a7017b30-3919-4900-9bea-87aadb7548de/2021_IEHC_548.pdf/pdf#view=fitH

Judicial Review	https://www.courts.ie/viewer/pdf/9d7d13aa-9c80-4d78-951a-5538ba628142/2021_IEHC_544.pdf/pdf#view=fitH
Personal Injuries	https://www.courts.ie/viewer/pdf/3e6d8331-fec7-484d-a552-6dc4fb0d3b2e/2021_IEHC_472.pdf/pdf#view=fitH
Wardship	https://www.courts.ie/viewer/pdf/c1823ec3-9321-40d1-a00b-7357c9fa6ce7/2021_IEHC_465.pdf/pdf#view=fitH
Bankruptcy List	https://www.courts.ie/viewer/pdf/cde0deee-010d-410a-8039-16c1ff08bb2a/2021_IEHC_466.pdf/pdf#view=fitH
Professional List	https://www.courts.ie/acc/alfresco/4a0af027-08b6-4b7f-b7c3-77e576c8d890/2020_IEHC_655.pdf/pdf#view=fitH
Costs	https://www.courts.ie/viewer/pdf/a1e4629f-8043-4e07-8b20-4facf9fadb90/2021_IEHC_558.pdf/pdf#view=fitH

The additional resources sought in this report would allow judges in all civil divisions, with the exception of those assigned to personal injuries or civil jury work, to have one full 5-day uninterrupted writing week in the two shorter legal terms and two writing weeks in the longer terms. Alternatively, the additional resources, would allow judges who had completed a complex case one or two non-sitting days immediately after the conclusion of that case within which they might write either a first draft of their judgment or a memo sufficient to avoid the delays that are involved in judgment writing if the facts are allowed go cold for a substantial period before the judge gets the opportunity to consider for the first time how they should decide the case. The opportunity to summarise and capture the most important facts while the evidence is fresh in the mind of the judge is crucial in speeding up delivery of a judgment.

While judges in the Non-Jury/Judicial Review Division are currently scheduled to have a four day writing week every fifth week, in practice these rarely materialise. Regrettably,

when any other division is shorthanded, or an emergency arises, the President will resolve that emergency by assigning a judge who is on a reading week to hear the emergency case.

Hopefully in very early course the High Court will be given the resources that it so badly needs to give Irish citizens access to justice which is both timely and effective.

c) Additional commitments of judges and absences

Aside from their judicial caseload, judges have many other responsibilities. Many are members of committees established by the Courts Service or the Judicial Council. They may be members of rules making committees, sit on examination boards, give public lectures and be involved in other outreach work.

In particular, heads of list and the court's President have considerable administrative burdens to shoulder. By way of example, the President is a member of 16 committees and chairs two of these. In particular, she chairs the investment committee which manages a fund of in excess of €2 billion. Committees bring considerable responsibility and the work is very time consuming.

In addition, whilst the court is meant to have a full complement of 40 judges, the court often loses one or more of its members due to their appointment to other positions or due to illness. In this context it is important to note that the average age of a judge of the High Court is 59. This means that it is always likely that a number of judges are dealing with a serious illness. At the present time, one of the Court's members has been appointed Chairperson of the Siteserv Inquiry and another to the CervicalCheck Tribunal. A third has been appointed Garda Ombudsman. All of these positions are full-time and the appointees are not available to sit as High Court judges (although as previously noted the CervicalCheck Tribunal has not yet commenced substantive hearings). A fourth member of the court has been out ill since the start of January 2021. A fifth ceased work on 23rd June, due to a health issue, and will likely be unavailable until April 2022, or thereabouts. A sixth member of the court has been appointed head of Judicial Studies under the Judicial Council Act and is now only available to the High Court on a part time basis.

Regarding illness, while a long-term absence could, in theory, be accommodated by enlisting a retired judge (if this were made possible by legislation or Constitutional change), short-term illness always presents a problem, particularly in circumstances where the court is chronically under-resourced, as is currently the case. Not infrequently a Monday list or cases scheduled later in the week have to be cancelled due to temporary absences.

The High Court is therefore never at its full complement and, even if it were, judges are not able to devote all of their time to case-related work. A significant amount of their time has to be given over to other activities and responsibilities.

d) Upcoming legal developments

Aside altogether from the other changes to the law addressed previously, full implementation of the Judicial Council Act 2019 will bring with it a significant additional workload for the judges of the High Court. Most important in this context are (1) the disciplinary procedures provided for in Part 5 of the 2019 Act, (2) the Sentencing and Personal Injuries Guidelines and (3) judicial education and training.

Part 5 of the 2019 Act provides for the creation of a Judicial Conduct Committee which will be tasked with investigating complaints made against judges and with resolving those complaints. Complaints will be reviewed for admissibility by the Registrar of the Judicial Council. However, where a complaint has been deemed inadmissible, the complainant is entitled to have the Registrar's decision reviewed by the Complaints Review Committee, which is staffed by judges. Once the relevant provisions in the Act have been commenced, due to pent-up demand, it is expected that the Complaints Review Committee will sit fortnightly for one full day to deal with the review of rejected complaints. This aspect of the complaint's procedure alone will impose a significant additional burden on judicial resources in the High Court.

Once a complaint is deemed admissible, it will be investigated by Panels of Inquiry comprising two judges. It is, as yet, unclear as to the expected volume of work that will need to be carried out by these Panels, but it will undoubtedly add to the burden that

already exists on High Court judges who will have to participate in these Panels. A further role for judges arises from membership of the Judicial Conduct Committee which, upon the conclusion of an investigation, will decide on the sanction, if any, to be imposed. This will involve those on the committee considering submissions from the parties to the complaint. This will be a demand driven resource requirement and will require the attendance of eight judges on each occasion. Therefore, while perhaps only sitting once per month, the impact of removing two High Court judges from the system at any one time to deal with these obligations and without anyone to replace them in court will impact on court lists and the administration of justice.

In addition, the Judicial Council is tasked with reviewing the recently introduced Personal Injury Guidelines and with producing sentencing guidelines. The Personal Injuries Guidelines Committee has completed its initial work, producing the first iteration of the Guidelines. This project took one year to complete and there was an exceptionally heavy burden on the Committee's Chair in leading the team of judges on the Committee and in working with the Council's administrative staff to oversee decisions and progress. The Committee remains obliged to produce a report each year, a task which will place significant demand on High Court members of the committee (estimated 10 hours work) and in the years when the Guidelines are to be reviewed (every 3 years), approximately 20 hours work. While those time periods may seem short if considered in isolation, they respectively represent more than 2 days and 4 days hearing time per judge lost to the court. Their impact is just as great in the context of judgment writing time lost.

The Sentencing Guidelines and Information Committee is carrying an even greater burden than that which was carried by the Personal Injuries Guidelines Committee at the time it prepared its Guidelines. This is a project which will last several years and is of huge national importance. And, it is clear beyond any shadow of a doubt that the members of this committee will not be able to meet their statutory obligations without taking time out of their court schedule. Regrettably, the price for meeting that important obligation will be that the number of judges available to deal with the caseload in their division, will be reduced.

As set out above, the Judicial Studies Committee is comprised of judges and, as one of its priorities, is not only providing judicial education but is training our judiciary to deliver judicial training to colleagues, as is the practice worldwide. Thus, judges must not only be in a position to undertake courses as participants but must be facilitated in delivering small, workshop courses as trainers. If a judge is to be really useful in any jurisdiction, she should have more than one speciality so that she can be deployed in different lists as the need arises. In terms of training, even one day of focused training in courtroom management skills and evidence would be a better induction for new judges and a week in a particular speciality would ensure that all litigants' rights are vindicated in front of an experienced judge. Further, the court management techniques of marshalling lawyers, evidence and witnesses would result in a greater work rate and ensure that, even as our population grows, our litigation becomes more efficient. At present, this kind of training cannot be accommodated due to resource and time limitations. This is a false economy in the medium to long term.

It is hopefully evident from what is stated above that the demands placed upon the judges, beyond the demands of hearing cases and writing judgments, are extensive and time consuming. It is very much hoped that the OECD, as a result of its survey, may be able to provide some harder data as to the time required by High Court judges to meet their extra judicial commitments. Between the large number of cases that they must hear, their pre-reading and judgment writing obligations and their involvement in various committees, the diaries of the judges are overly filled. It should therefore come as no surprise that current working conditions are, for many of the court's judges, such as to place their health and welfare at risk.

Provincial venues

As already stated, the High Court sits at a number of provincial venues to hear Personal Injuries actions, Non-Jury actions and appeals from decisions of the Circuit Court. Two judges will normally sit in a provincial venue for two weeks when they will hear the cases of parties who live in that part of the country. Hearings at provincial venues are immensely important to litigants insofar as they greatly reduce the cost of litigation. The parties, their legal representatives and witnesses are saved the expense and

inconvenience of travelling to Dublin where they might otherwise have to stay for many days until their case was concluded.

While litigants benefit greatly from hearings conducted at provincial venues, it is important to recognise that the consequence of this important aspect of the work of the High Court is that for at least half of the legal year two judges have to be taken from the already overburdened civil divisions to which they are assigned.

Regrettably, backlogs and delays at provincial venues are the order of the day. The following table shows the delay in obtaining a trial date for a personal injuries case when ready for hearing at the following venues.

Venue	**2020**	**2019**
Cork	24 months	17 months
Galway	2 months	2 months
Kilkenny/Waterford	7 months	7 months
Limerick	36 months	25 months
Sligo	12 months	5 months

No up to date figures for 2021 are available but it is understood that the delays remain much the same as they were in 2020. Suffice to state that for litigants to have to wait 12 months, 24 months or 36 months for a hearing date is not in compliance with the court's obligation to provide timely access to justice.

RESOURCES REQUIRED

F. Alternative resources and other measures

The judges of the High Court are aware of the limited resources available to fund the justice system and recognise that there are many meritorious causes for which public funding must be found. As a result, judges were canvassed with a view to identifying whether there are ways in which delays might be remedied and other efficiencies achieved without the need for additional resources. In making its request for additional resources, the court is not asking for more judges simply to prop up a system which is not as efficient or effective as it could be.

For this reason, the judges submitted and discussed a wide variety of measures that will or should be implemented. Crucially, however, many of the improvements proposed, whilst desirable in streamlining the courts' processes or improving the experience of court users, would not reduce the workload of judges or impact in any significant way in speeding up access to justice for litigants. Neither do any of the measures proposed cast in doubt the proposition fundamental to this report, namely, that there are simply far too few judges to determine the numbers of complex cases that can only be determined in the High Court and its Central Criminal Court. That said, there are a number of proposals advanced below which would, if introduced, free up court time and make litigation more effective. However, in many instances, these could not be introduced without additional resources.

Before addressing the alternative proposals, it should be briefly mentioned that the High Court constantly revises its procedures and has already implemented many improvements aimed at combatting or preventing backlogs. Although severely restricted by the public health response due to Covid-19, during the pandemic, the High Court has done everything feasible to keep up the throughput of cases across all divisions both in Dublin and at provincial venues. Many divisions and lists were moved to remote platforms. And, when Covid-19 restrictions ease, a substantial amount of the court's work will remain on remote platforms, thus reducing the number of courtrooms required each day. Because of this, even if additional judges are appointed, it would not be necessary to provide a corresponding number of additional courtrooms.

Equally, the Rules of the Superior Courts have recently been amended so as to improve the throughput of the work in some of the Monday lists. And, over the last 12 months, various High Court practice directions have issued resulting in the introduction of more streamlined procedures in various divisions such as the Commercial Planning/SID and Wardship Divisions.

1. Court-led case management

Currently, it is primarily up to the parties to progress litigation. Aside from the commercial division, and to a limited extent the Non-Jury Judicial Review Division, judges do not get involved with setting the pace and manner in which litigation is conducted. As explained earlier, case management refers to the process whereby the court manages the manner and time within which a case progresses. The judge works with the parties to reduce the issues that need to be determined, sets schedules by which certain actions must be taken, such as the delivery of documents and gives other directions to the parties in relation to the running of the case. For example, the court might actively involve itself in ensuring that parties are limited in the number of expert witnesses they may call (to avoid repetition and time wasting) or may make bespoke time saving rulings particular to the unique facts of the case, its evidence and the parties.

Case management has the significant benefit of identifying and reducing the issues that will need to be tried. It therefore will shorten the hearing, thus reducing significantly the cost of the litigation. Furthermore, once the court has decided precisely which issues need to go to trial, parties are forced to focus on whether they believe they can succeed on those issues and oftentimes will propose that the case be settled, a step that under the current regime is usually only be taken on the day the case is fixed for hearing. And, when cases settle proximate to case management, costs are greatly reduced, and significant court time saved. This process of "crystallising" the issues involves the funnelling down of very broad issues into much more focused issues, which avoids the hearing being overwhelmed with irrelevant submissions, evidence and witnesses. Apart from shortening the time it takes to hear the case, this naturally also impacts the time it takes to write a judgment, since the judge might now be dealing with two days of witness evidence instead of five, may need to read three expert reports instead of six and may need to canvass less legal issues in the judgment as well.

Case management also presents the ideal opportunity to suggest to the parties the possibility of resolving their differences by an alternative dispute resolution process. Additionally, setting a clear schedule of how the case is to progress means that cases are heard swiftly, and the court's diary can be used efficiently. It has previously been observed that when parties are in control of the litigation, delay can be used as a weapon to damage an opponent who needs timely access to justice. When delay is inevitable and can easily be extend by a party who may wish to do, the vindication of rights becomes illusory. Furthermore, when case management is available in a complex case, the judge becomes familiar with the case which may significantly reduce the time ultimately required to hear it.

Nevertheless, it must be emphasised that case management is not a "silver bullet". Case management is best suited to complex cases where multiple issues arise and where narrowing the issues can produce substantial savings in terms of court time. Less complex litigation does not benefit from case management because case management itself generates costs and absorbs judicial time. It can nonetheless be said with relative certainty that all clinical negligence cases would significantly benefit from case management as would all family law cases. The principal objectives would be to narrow the issues, achieve early resolution wherever possible and where that proved impossible, to ensure that the trial would be as effective and cost efficient as possible. In respect of all other classes of claim, it would be for the head of each division to identify those cases in that division that would best benefit from case management.

In order, however, to provide case management, even at the modest level proposed, additional judicial resources would be required. Regrettably, case management takes up significant judicial time. The papers must be read by the judge and a significant period set aside to deal with the case management hearing and at the moment this could only be done at the expense of actions ready for hearing.

If the High Court had the number of judges sought in this report it would be in a position to introduce case management in all of its more complex cases across all divisions as well as in all clinical negligence and family law cases, an approach that would bring significant

rewards to litigants and free up time much needed by the court to meet the heavy demands of its caseload.

On the question of whether an official other than a judge could perform case management, a number of observations are relevant. Case management, although not a task necessarily related to the final outcome of a case, is best performed by a judge if it is to be effective. For example, a complex planning case involving the Aarhus Convention and the Habitat's Directive could not be effectively case managed by anyone other than a judge with specialist planning expertise and experience. To successfully narrow the issues in the complex types of cases where case management is recommended, an intimate knowledge of the law is absolutely essential. An attempt at case management by an official without the necessary knowledge and expertise in the law would undoubtedly be counter-productive. It would inevitably lead to erroneous decisions being made which would in turn require to be appealed to a judge and would thus lead to unnecessary duplication and delay. Furthermore, the benefits that flow from the knowledge gained by the judge in the course of case management would be lost if another official were to perform it. In addition, where the judge who is ultimately going to hear the case has identified the relevant issues that require determination, the parties may well consider that it is time to see if the dispute can be resolved. It is therefore strongly emphasised that case management of complex High Court cases must be performed by judges.

E-filing, remote hearings and electronic delivery of judgments

Many judges have indicated great enthusiasm for moving to soft copy documentation wherever possible. However, even though further moves in that direction may make paper management of the cases more streamlined and possibly improve working practices for judges, court staff and court users, it is unlikely to free up judicial time. The filing and management of hard copy documents for court cases is done mostly by court offices, registrars or judicial assistants and, although it may be a nuisance, it ordinarily does not take up any amount of judicial time.

More masters

A significant amount of the work done in the Monday motion lists could undoubtedly be done by Masters rather than judges and this would free up some judicial time. Certainly,

a good percentage of the work in the Common Law Lists could be done by Masters. However, it is important to remember that if this work is to be shifted to Masters, the parties would have a right of appeal to a High Court judge against the Master's decision, a factor relevant both to delay and costs.

If consideration is given to the appointment of an additional Master or Masters, to ensure an efficient running of the Master's business, the President of the High Court should have oversight over any Masters so appointed so that their work can be managed in the same way that the President has control over the work of all High Court judges. Currently, there is only one Master in the High Court, and he is a civil servant who does not come within the managerial purview of the President of the High Court. As the business of the Master is closely connected with the judicial business of the High Court, this should be changed. In the proposed consolidated Courts Act published by the Law Reform Commission in 2010 one of the proposed provision reads as follows: "The Master of the High Court shall, in respect of the discharge generally of his or her functions and exercise generally of his or her powers of a judicial nature be subject to the general direction of the President of the High Court."[132] Enactment of this provision or a like provision is recommended to improve efficiency.

Extending sitting hours

As discussed previously, full cases are normally heard between 11am and 4pm with most judges sitting at 10.30am to deal either with the call-overs of a list or to deal with other minor matters in relation to cases under their control. And, judges regularly sit beyond 4pm to complete the evidence of a witness or to avoid a case running into an extra day. Although the possibility of lengthening the court day is often proposed as a means of enabling the courts to get through a greater amount of cases, it is very unlikely that such an approach would have the desired objective. First, judges need to have time to read papers and write judgments. Already, the time allocated either side of court sittings is already grossly insufficient for judges to meet their judgment pre reading and judgment writing obligations much of which are done in the early morning, late in the evening, at weekends and in vacation time. Extending court hours would have no effect on the

[132] Law Reform Commission, *Consolidation and Reform of the Courts Acts (LRC97-2010) available at* https://www.lawreform.ie/_fileupload/reports/r97courts.pdf

throughput of cases. It would merely reduce the time judges have for pre reading and writing judgments and their other judicial responsibilities with the result that judgments would become more delayed than ever before.

Important also is the fact that most contested cases require intense concentration by the judge, the parties and their legal representatives. Having regard to the complexity of the issues under consideration in the course of any trial, it can safely be said that concentration wanes as the day progresses. Few people leave a courtroom refreshed and it is not an understatement to say that most, even experienced practitioners and judges, feel exhausted come 4pm. There is simply a limit to the amount of truly productive work that can be done in a courtroom in any given day.

Furthermore, if the court was to sit for longer hours, this would mean judges would have to take on fewer cases as they already do not have enough time for pre-reading, judgment writing and non-sitting obligations, let alone judicial education and training, which is currently taking place after court hours.

Writing time

Other jurisdictions provide writing time immediately after the conclusion of a case. The Supreme Court of Victoria (the equivalent to the Irish High Court) schedules one judgment writing day for each day of the hearing so that after a four day case the judge will not sit for another four days in order that they can write the judgment.

In South Australia, the court also endeavours to provide judges with judgment writing time immediately after a trial concludes, particularly in complex civil cases and long criminal trials. Apparently, this is not always achievable with the result that if a judge develops a significant backlog of judgments, they will be taken out of list for a few months to write those judgments before they resume sitting again. In Ireland judges are expected to catch up with their judgments during vacation time, and they do.

In New Zealand, the general approach when scheduling civil work is to allow 50% judgment writing time to sitting time, ideally immediately after the hearing. For example, for a two-week case, 5 days of judgment writing time would be scheduled afterwards. One

additional judgment writing week is also allocated to judges in each quarter of the judicial roster as a general catch-up.

While spreading the court's caseload across a longer legal year in which judges would be given more time off to write their judgments might look attractive on paper, it is doubtful if it would increase the number of cases that would be determined by the court in any given year. And, importantly, such a system would make it much more difficult for the High Court to schedule its work. As matters stand, everyone involved in litigation can arrange their holidays during the window of the court vacation without a risk that this will clash with the date fixed for hearing and might have to be cancelled. Thus, the High Court is able to schedule work to accord with its diary rather than having to work around the multiple diaries of those involved in pending cases. However, absent the window presented by the long vacation, the court would have to bend to the diaries of those who without that window could not reasonably be expected to take their holidays to align with the court's diary.

Vacations

As already stated, there are four vacation periods throughout the year; Christmas, Easter, Whit and what is commonly known as the long vacation. It should be noted, however, that work continues during these vacations. Court sittings for urgent matters take place as a matter of course each day other than public holidays and weekends (although there is also always a judge rostered for duty on those days for matters which are exceptionally urgent).

The shorter vacations are absolutely essential, not only to the health and welfare of members of the court, but for the uninterrupted time they provide to judges to write judgments relatively proximate to cases they heard the previous term and to undertake judicial studies. Anecdotally, most judges, except for those who are assigned to the Central Criminal Court spend approximately half of these short vacations catching up with judgments allied to which they are rostered for vacation duty and to update themselves on recent legal developments.

The long vacation is equally important as it is time without which the judges of the High Court simply could not keep abreast of their judgment writing obligations, particularly in their more complex cases where they may need to find several uninterrupted weeks to catch up. Without the long vacation judges would have to hear substantially fewer cases than they currently do so that they could write more of their judgments during term time. This would have the effect of further lengthening the already unacceptable delays experienced by litigants who so badly need access to justice. The long vacation is the time when many judges write judgments that cannot be written at any other time of year because of their heavy caseload and/or the complexity of the judgment itself. In the case of the latter, such a judgment frequently requires hours of uninterrupted concentration which is simply unavailable at any other time of the year. The judgecraft courses which have recently begun had to be scheduled for weeks during the long vacation as there was no other time when judges could attend in sufficient numbers to make the courses effective.

Furthermore, it should be borne in mind that, even if the long vacation was shortened, the summer months would still likely result in a lower throughput of cases during this time as lawyers and their clients are likely to resist being forced on for trial during the period currently assigned to the long vacation as it is the time when many of them choose to take their holidays. Indeed, when the head of the Personal Injuries Division of the High Court in and about 2010, the current President of the High Court tried to utilise the long vacation to decrease the backlog that pertained in the division at the time, it was impossible to fill the diary and a significant number of the cases which were assigned dates against the will of the parties ultimately had to be adjourned due to the unavailability of expert witnesses who, because of their own personal or professional circumstances were unavailable at that time.

Pre action protocols and new streamlined rules for clinical negligence actions

As discussed above, the court favours the introduction of pre-action protocols, case management and streamlined new procedures for clinical negligence actions. The judiciary has been pressing for these since 2013, as is stated earlier in the report. Pre-action protocols have enjoyed great success in other jurisdictions as has case management. Case management in the scheme proposed will be very heavy on judicial

time but will undoubtedly shorten cases in the long run, probably result in earlier settlements and a significant reduction in legal costs. And, it is important to emphasise that in seeking a minimum of 3 extra judges for the Personal Injuries division account has been taken of the savings in court time that will result from the introduction of pre action protocols and new rules in clinical negligence cases given that the court is confident that these will be introduced in relatively early course.

Retired judges, deputy judges and retirement of judges

Due to the fact that the court is virtually never running at its full complement, and that there are often unexpected shortages, e.g. through an illness of some significance, it would be desirable to able to bring back retired judges to fill a temporary gap in the court's number. This would have the advantage that the vacancy could be filled quickly apart from the fact that such an approach would be quite economic.

Regarding deputy judges, it is unlikely that these could be introduced without constitutional amendment having regard to the fact that Article 35.3 prohibits judges from holding a position of "emolument". Furthermore, in a small jurisdiction such as Ireland the introduction of deputy judges who would be part-time practitioners would potentially give rise to concerns about conflicts of interest.

Although not a very significant issue, some further efficiency could be achieved if judges who retire were permitted to hand down judgment in the 3 months following their retirement. Currently, in the lead-up to a judges' retirement they cannot work at full capacity lest they could be assigned a case in which they might not be able to deliver judgment by their retirement date.

Additional Judges in the Circuit Court

The High Court is aware of the additional judicial resources sought by the Circuit Court in order to meet its Constitutional and ECHR obligations. Insofar as almost all decisions made by the Circuit Court, other than those made by the Circuit Criminal Court, may be appealed to the High Court, the workload of the High Court will automatically increase as a result of any additional throughput of work in the court below. However, whilst this increase in itself is expected to be modest, currently there are very significant delays in

having Circuit Appeals heard at a number of provincial venues with the delay in Limerick being the worst. The number of appeals awaiting a hearing date is such that parties to an appeal will be routinely delayed by at least 12 months, a delay likely to be very prejudicial to the party that will succeed on the appeal.

12. Legislation governing the appointment of judges

It is regrettable that the number of High Court Judges is fixed by statute. Ideally, the legislation governing the appointment of judges would provide that the Government would be entitled to decide the number of judges required by any given court to administration justice in a fair and timely manner at any given time. The Government would then have the flexibility to respond to any crisis as might arise and need immediate attention. It might appoint a number of additional judges to respond, for example, to a tranche of litigation such as that which is expected to arrive in the High Court as a result of the State's CervicalCheck programme. Then, as those cases were dealt with, the number of judges in the High Court could be reduced by a decision being made not to fill vacancies created by other judges on their retirement. And, with a significant number of judges in the High Court, those vacancies arise on a regular basis.

Summary of additional resources required over current numbers i.e. pre Civil Law (Miscellaneous Provisions Act) 2021

Division/List	**Number of additional judges required 2021**	**Number of additional judges required 2022**	**Number of additional judges required 2023**	**Number of additional judges required 2024**
Criminal business				
Central Criminal Court	4	4	4	4
Special Criminal Court	0	0	0	0
Extradition List	1	1	2	2
Bail List	0	0	0	0
Civil business				
Asylum Division	2	2	2	1
Chancery Division	2	2	2	2
Civil Jury	2	2	2	1
Commercial Division	2	2	2	2
Commercial Planning and SID Division	2	2	2	2
Family Law Division	1	1	1	1
Hague Luxembourg Convention Division	1	1	1	1
Non-Jury/Judicial Review Division	3	3	3	3
Personal Injuries Division	3	3	3	3
Personal Insolvency List	0	1	1	1
Wardship Division	1	2	2	2
All other lists	0	0	0	0
Total	24	26	27	25

The economic cost of additional judges

One final, but perhaps an important point, is that although additional judges require public expenditure, they also generate income for the state. It is estimated that an average case in the Commercial Division generates between €450,000-€550,000 in legal fees (inclusive of VAT). This means that the VAT paid to the State per case is in the region of €84,000 to €103,000. In addition, the State benefits from the fee for entry into the Commercial Division (€5,000) and any Stamp Duty on court pleadings. Thus, the Commercial Division, in fact generates income for the State rather than creates costs. Appointment of additional judges would increase fee generation as the throughput of cases in the court would increase. Also, close to half of all judicial salaries revert to the State in any event by reason of the payment of income tax.

Importantly, it must also be noted that the expenditure in relation to judicial salaries is low when compared to other expenditure (see Figure 12 below). Whilst it is acknowledged that any state expenditure, however small, is significant, it must be understood fully that this small a sum is spent on the entire judiciary who deal with every single piece of litigation, all minor criminal offences, all tax disputes, all immigration challenges, all rape case, all murder cases, all intellectual property claims, all appeals from the various state bodies and all contract and tort claims just to name a few as well as all non-contentious matters that come before the court.

Figure 12 - Justice sector gross expenditure

	2020 Forecast Outturn Gross Expenditure	**2021 Revised Estimate Gross Expenditure**
Total Exchequer Expenditure Budget[133]	€87.3 billion	€82.4 billion
Total Justice Sector Budget (Courts Service, Irish Prisons Service, An Garda Síochána, Data	€2.95 billion	€3.0 billion

[133] Irish Government, *2021 Revised Estimates for Public Services* (Government Publications 2021) p 7 available at https://assets.gov.ie/109157/98bf8dc3-ee67-4d4f-af0d-dbaf01513587.pdf

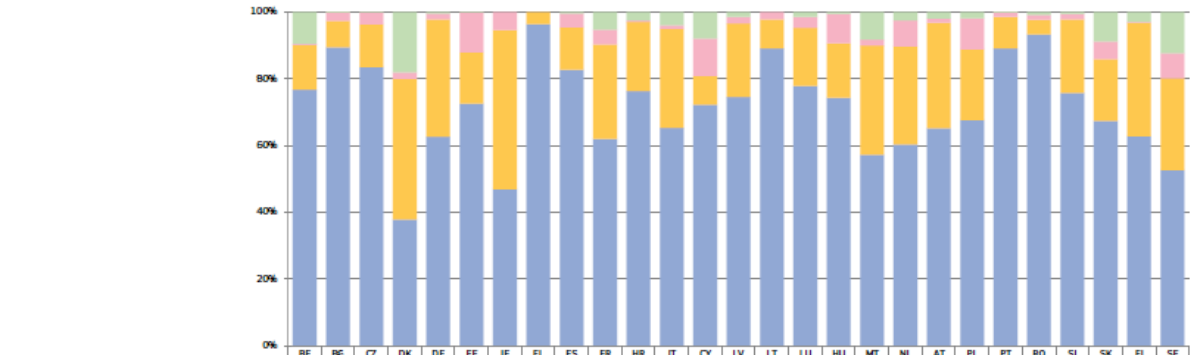
Protection Commission, Policing Authority and the Dept. of Justice) [134]		
Courts Service[135]	€0.161 billion	€0.159 billion
Judicial Pay[136]	€0.030 billion	Not available
Judicial Pay as a % of Justice Budget	1%	Not available [137]

Relevant also is the fact that spending on judges in Ireland is comparatively low when compared to other countries. In the 2018 CEPEJ Study mentioned above, it was found that Ireland spent only 9.7% of its budget for the justice system as a whole on the judicial system, the second lowest of all Council of Europe states, only Ukraine being lower and only a miniscule part of that budget is spent on judges' salaries. This finding is also underscored by the 2021 EU Justice Scoreboard which details that Ireland spends only 48% of its courts budget on the salaries of both judges and court staff, only Denmark being lower.

[134] Irish Government, *2021 Revised Estimates for Public Services* (Government Publications 2021) p 15 available at https://assets.gov.ie/109157/98bf8dc3-ee67-4d4f-af0d-dbaf01513587.pdf .
[135] ibid. p 85.
[136] Exchequer, *Audited Financial Accounts of the Exchequer* (Government Publications 2021) p 17 available at https://assets.gov.ie/179628/fa9dcb20-8e6e-42e7-b185-ba9bf09efbcf.pdf.
[137] The Judicial pay estimate is not available for 2021, however, assuming judicial pay for 2021 remains largely consistent with 2020, the judicial pay as a percentage of gross expenditure in 2021 will remain at 1%.

Figure 13 - General government total expenditure on law courts by category (in 2019, as a percentage of expenditure)

(source: Eurostat)



	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE
Other	110,2	0,5	20,0	674,0	50,0	0,1	0,0	0,0	13,0	292,0	41,1	226,0	2,4	1,7	0,0	1,8	1070,0	3,2	53,0	21,5	200,9	0,3	35,2	1,1	27,2	18,0	1629,0
Fixed assets (e.g. court buildings and software)	3,7	20,7	634,0	72,0	232,0	10,3	37,1	0,0	177,0	254,0	7,2	71,0	3,4	2,7	2,6	5,0	17224	0,7	176,0	12,3	1106,1	8,4	64,2	3,7	16,3	1,0	1020,0
Operating costs (e.g. building rentals, legal aid, energy)	156,2	67,4	2271,0	1576,0	4741,0	13,3	336,3	24,0	534,0	1609,0	351,8	1768,0	2,6	28,4	11,0	25,4	32105	12,6	647,0	341,8	2509,0	67,2	192,3	48,6	57,8	210,0	3678,0
Wages and salaries of judges and court staff	898,3	753,8	14572	1423,0	8442,0	63,1	331,0	645,0	3503,0	3519,0	1287,4	3916,0	22,0	96,5	112,5	113,7	46288	22,2	1341,0	706,4	7972,9	624,9	4098,2	167,9	210,2	388,0	7055,0

(*) The following data are provisional: **ES** (2019), FR (2018, 2019), **PT** (2019) and **SK** (all years). Data extracted 08 April 2021.

In light of the currently limited expenditure on judges as well as the fact that judges generate income for the State, the attitude towards expending state funds on judges should be fundamentally rethought. Important in this regard is to appreciate that such expenditure is necessary to give the citizens of Ireland and Irish businesses meaningful access to justice.

V. CONCLUSION

It is sincerely hoped that the above has provided the Working Group with an insight into the workings of the High Court, the difficulties it faces in light of the lack of resources and given the group useful material for its consideration.

Because the judges of the High Court fully acknowledge that funds are limited, this report has attempted to give rigorous and detailed reasons to justify the appointment of each and every additional judge. As detailed above, in order for the High Court to administer justice in a fair and timely manner, 24 additional judges are needed with immediate effect. By the middle of 2022 the court will need 26 additional judges to accommodate the expected increase in its workload. It is important to stress that these are the minimum numbers required (i) to provide litigants with timely access to justice and (ii) to effect any real changes in the manner in which litigation is managed.

Whilst the number of judges sought might at first glance seem large, two observations are critical in this context. First, when spread across the full breadth of the work undertaken by the court, each division and/or list only receives about 1.5 judges each on average. Second, and more importantly, such increase in judicial numbers is to be expected in circumstances where the workload of the court has outstripped – for many years – the number of judges which has only ever been incrementally adjusted. The recommendation of appointing an additional 24 judges with immediate effect is the result of a failure to align judicial numbers with the increased workload over an extended period of time. Those 24 judges are those that should have been appointed over the past 20 years. This has not happened. The work of High Court judges has become exceedingly time-consuming and complex, as is illustrated above. It is simply not possible anymore to dispose of the court's caseload with a small team of judges. Not acknowledging this for many years has precipitated the present crisis and lead to the recommendation now made.

It is, therefore, no overstatement to say that the appointment of additional judges in the numbers mentioned would have a transformative effect upon the speed with which litigation and decision making could progress across all divisions. The citizens of Ireland

and Irish businesses would be properly served in that they would have access to justice of a type expected in a modern democratic society and the State would find itself compliant with its international, European and domestic obligations.

Mary Irvine
President of the High Court
31st August, 2021

Appendix Four: Submission of the President of the Court of Appeal

1. The Court of Appeal is a relatively new entrant to the Irish legal system, having been created by statute in 2014 following a referendum to approve its establishment (held in October 2013).

2. The Court of Appeal has both a civil and criminal jurisdiction. On the civil side, the Court hears appeals, subject to very limited statutory exceptions, from all decisions of the High Court. On the criminal side, it hears appeals relating to indictable offences from the Circuit Court, the Central Criminal Court and the Special Criminal Court. It should be noted that unlike some other appellate courts, the Court of Appeal has no capacity to influence either the number of appeals coming to it or the nature of those appeals.

3. When the Court of Appeal was first established on 28th October 2014, it comprised a President and nine ordinary judges. It very quickly became apparent that this was inadequate to a significant extent as the Court was simply incapable of coping with the volume of incoming work.

4. The number of ordinary judges of the Court of Appeal was then, by statute, increased from nine to 15 and appointments were made in October 2019 to bring the Court up to its full complement. At present, one judge sits as Chairman of the Cervical Check Tribunal, one judge sits as a Law Reform Commissioner and there is one judge who is not sitting due to illness. There is provision, pursuant to s. 14 of the Law Reform Commission Act 1975 (as amended by the Court of Appeal Act 2014) for the appointment of an additional judge when a judge of the Court is serving as a Law Reform Commissioner and this provision saw the recent appointment of Mr. Justice David Barniville, previously the head of the Commercial Court in the High Court, who made his declaration as a judge of the Court of Appeal in September 2021.

Reserved Judgments Outstanding

5. As of end June 2021 there were 495 Civil Appeals and 370 Criminal Appeals live and on hand. The average waiting time for an appeal to get a hearing date is currently 20 weeks in a Criminal Appeal and 22 weeks in a Civil Appeal. This figure is an average and does not reflect the reality of where a matter is urgent and an early date required, then this time is considerably shortened. While the situation in relation to waiting times is satisfactory, the situation in relation to the number of reserved judgments is much less so. As of the end of July 2021, there were 121 reserved judgments outstanding on the civil side, of which 28 date from 2020, and there were 34 reserved judgments outstanding on the criminal side, of which four date from 2020. It is not satisfactory that there should be so many reserved judgments outstanding, and that judgments can be outstanding for such significant periods of time. It does not reflect any unwillingness to work on the part of judges; it is simply a reflection of the number of cases in which judgments are reserved. It should also be observed that unlike other jurisdictions, a large proportion of the work involved in a Court of Appeal hearing is in the preparation of the hearing and the reading of voluminous books of appeal in advance of the actual hearing of the appeal. This is time that is not available to the judges to draft judgments.

6. The contrast between time required hearing appeals as between time required for hearing appeal in Court room and what is required for reading papers in advance and then for writing reserved judgments afterwards is particularly stark. Most appeals in Court of Appeal are dealt with within a day and many in less time. It is not unusual to list multiple appeals to be dealt with on same day before same Court. However a case a case that is only allocated an hour of Court time may require boxes of documentation to be read in advance and will require the preparation of a detailed analytical reserved judgment afterwards. It must be stressed it is only possible to deal with appeals in Court so quickly because of extent of preparation that has taken place. Court sitting are tip of iceberg

7. The difficulties in relation to reserved judgments were compounded by decisions taken by me as President during the pandemic. The Court moved very quickly to conducting remote hearings. We were conscious that the nature of a Court of Appeal hearing – involving the exchange of written submissions and then oral submissions – leant itself to remote hearings in a way that witness actions in some of the other courts did not. We felt a particular responsibility to make this work. As a result, the judges of the Court of Appeal sat during what would usually have been the Easter and Whit vacations, and during the month of September in 2020. These are times when, normally, judges would have been working on reserved judgments, but instead, by sitting on appeals, they were adding to their lists. The number of reserved judgments outstanding has seen stress levels rise among members of the Court and there are real health and safety issues in this regard. There is a lesson to be learned here about the dangers of tampering with the blocks of time when sittings have traditionally not been scheduled – Christmas, Easter, Whit and summer.

Resources

1. Each judge of the Court of Appeal is assigned a Judicial Assistant where they do not have an Usher/Crier. There are two judges who do not have a Judicial Assistant assigned directly to them. There is a pool of four unassigned Judicial Assistants to assist with legal research and provide additional support where the workload demands. The President is assigned an Executive Legal Officer.

Courts Service Staff in the Office of the Registrar of the Court of Appeal

2. The Office of the Registrar of the Court of Appeal is split across two locations. There is a civil office located in Áras Uí Dhálaigh in the Four Courts complex, which has the following staff:
    - Two court-going Registrars (Assistant Principal Officers) and one vacancy to be filled shortly
    - One Office Manager (Higher Executive Officer)
    - Three Executive Officers

- One Clerical Officer

3. The criminal office, located in the Criminal Courts of Justice, has the following staff:
    - One Court-going Registrar (Assistant Principal Officer)
    - One Office Manager (Higher Executive Officer)
    - Three Executive Officers

Lay Litigants

4. An issue that also merits mention by virtue of the impact it has on the workload of the Court and of individual judges is the fact that a high proportion of our appeals involve lay litigants. On the civil side, this consistently runs at about one-third of cases. While there are some exceptions, in general, judges cannot expect assistance by way of focused written or oral submissions from lay litigants.

The Future

5. The workload of the Court of Appeal is entirely dependent on the volume of appeals that are generated in the courts from which appeals are heard. If there is an increase in the number of judges in the High Court and the Circuit Court, then more cases will be dealt with in those courts, and inevitably, there will be more appeals. If the Court of Appeal is to cope with an expanded workload, offering reasonably early hearing dates and then delivering judgments of a high quality within a reasonable time, then it must follow that extra resources will be required. The extent of the resources required will obviously depend on the extent to which numbers rise in the High Court and Circuit Court, but on a tentative basis, it seems realistic to think in terms of a need for an extra six judges. One consideration that merits mention in this context is that a greater pool of judges facilitates assembling a panel of judges with an appropriate expertise and background for the hearing of a particular appeal. The Court of Appeal hears appeals from all of the divisions of the High Court – some have a greater tendency than others to generate appeals – but appropriate specialisation is required to deal with these very diverse areas. In general, when assigning a panel, one seeks to assign at least two judges with background, expertise and experience relevant to the area of law involved in the appeal. I say two judges because experience has shown that there

can be advantages to having one generalist sitting with two specialists, in that the generalist may bring a different perspective to bear.

Mr. Justice George Birmingham
President of the Court of Appeal

20th September 2021

Appendix Five: Submission of the Chief Justice and designate Chief Justice in relation to the Supreme Court

1. The Supreme Court welcomes the opportunity to make a submission to the JPWG. While it has been made clear that the Court does not consider that an increase in judicial numbers at Supreme Court level is necessary at this time, and accordingly the Court is not part of the review exercise being conducted in conjunction with the OECD, the Court considers that it may be helpful to set out some matters in relation to its work which may be of assistance to the JPWG in its task.

2. First, since the JPWG is reviewing the work demands present and future on the Court system and, since that system is an integrated whole, it is desirable to understand the operation and functioning of the Court. Second, it is necessary to explain, by reference to the Court's workload and current practices, why additional numbers are not required at present at this level of the court system. Third , the Court would wish to offer its views on issues of possible reform that have been raised or which might usefully be considered as part of the JPWG's work.

3. The Supreme Court has been reorganised very significantly since the passage of the 33rd amendment of the Constitution in 2013. A new Court of Appeal was established in 2014, which succeeded to the jurisdiction of the old Supreme Court, and a new jurisdiction for the Supreme Court was created by the provisions of Article 34.5.3° and 34.5.4° permitting appeals from the Court of Appeal and the High Court respectively, but only in cases involving matters of general public importance, or where the interests of justice made an appeal necessary. The Court had briefly a complement of 10 members between July 2014 and June 2015 but since that date the membership of the Court has fluctuated between 8 and 9.

4. As things stand, and with current work patterns, it is not envisaged that it will be necessary to appoint a tenth member to the Court on a permanent basis (although in the interests of efficiency the existing capacity could be used to increase the number temporarily, shortly before the retirement of a judge - this is discussed below). Furthermore, since the Court has the smallest complement of judges in the court system, and now a more predictable work flow, it is easier to identify the

points at which it is necessary to either increase or reduce the complement of members. The number of judges on the Court at any given time which is sufficient depends on a number of factors such as the volume of cases at the time, the nature of those cases, and the demands on the time of members and, at times, questions of health. It is clear, however, from a comparison of the Court with comparator common law courts of final appeal with similar caseloads, that the complement of judges is broadly similar to, and certainly not in excess of, international comparators, and is within a reasonable range, having regard to the work load of the Court as a matter of history, and as may be envisaged in the future. Even if there is a significant expansion in judicial numbers in the High Court and Court of Appeal, it is not envisaged that there would necessarily be a *pro rata* increase in applications involving matters of law of general public importance. The demand for judges in the Court is something capable of being addressed in the first place within the current statutory limit, or by incremental adjustment of that limit on a phased basis and does not require radical reassessment at this time, although it is possible that some reassessment will be necessary in the light of any changes to work flow as a result of the implementation of any changes as a result of the Working Group's work For that reason, it has been made clear from the outset that the Supreme Court is not inviting the Working Group to recommend any additional numbers at this stage, or the alteration of the statutory limit.

5. It is however important that, since the Working Group is considering judicial planning for the future, the Group would have an understanding of the demands on the Court and its work patterns, and the Court's views on other reforms which do not involve additional judicial numbers but which may be desirable and beneficial. In addition to providing an account of the Supreme Court's own position, such an understanding may also be relevant to a broader understanding of the entire judicial system, since the pressures upon the Court are matters that are not unique to the Supreme Court.

6. Most of the Supreme Court's caseload originates in the High Court or the criminal trial courts. Those courts may be required to hear extensive evidence and legal argument, but the hearings in this court will be confined to legal submissions only

on a (generally) more restricted range of issues. Nevertheless, the issues arising for determination in any Supreme Court appeal must by definition have arisen in the trial court and, where relevant, the appellate court and those courts face the same challenges as the Supreme Court in dealing with those issues efficiently and effectively. To the extent that the reforms introduced after 2014 have been successful in both the Supreme Court and the Court of Appeal, not least in matching the judicial numbers to work load, and permitting active case management, they are a useful guide to reforms that may be implemented in other divisions of the court system.

Reform of the Supreme Court

7. The Supreme Court was established by section 5 of the Courts of Justice Act 1924. There was a full right of appeal from the High Court and a member of the Supreme Court was required to preside in the newly established Court of Criminal Appeal. There were only three members of the Supreme Court initially (and four members of the High Court including the judicial commissioner of the Land Commission). The Court's complement was increased to five in 1936 and remained static until 1995 when it increased to eight, at which time there were 20 High Court judges, excluding the President of that Court**.** This remained the position until 2013 when, as a temporary measure in advance of the amendment to the Constitution and reconstitution of the Court, the maximum numbers for the Supreme Court was increased to ten which has remained the case, although since 2015 the number on the Court has fluctuated between eight and nine.

8. The increase between 1995 and 2013 reflected a continuous increase in the volume, length and complexity of litigation in Ireland, which inevitably led to a sustained increase in appeals to the Supreme Court. There was a similar expansion in appeals to the Court of Criminal Appeal. The pattern of increasing numbers of judges in the High Court and Circuit Court in response to growing delays at each court level meant that the court system was always playing catch-up, and a general pattern of delay in increasing the number of judges and the small increase in numbers led to a pattern of increasing backlogs and delays. Delays in the court system are particularly pernicious as a matter of principle because

parties are entitled to have a hearing with reasonable expedition, but also because they become self-perpetuating. Not all parties wish to have the expeditious court process that is their right. Some litigants obtain a benefit from delay either because of the pressure brought to bear on the other side to settle the claim, or because they hope that a trial at a later date will be more beneficial because of an absence of witnesses or damage to memory or the happenstance which can often derail an action or appeal which is waiting too long for a hearing. There are others who simply wish to put off the evil day. Thus, a significant delay in getting a hearing or an appeal can provide a perverse incentive to parties to bring claims or lodge appeals when they might not otherwise do so.

9. The situation around and immediately after the millennium was increasingly impossible. The volume of cases coming from the High Court and, where relevant, the Circuit Court, vastly outstripped the capacity of the Court to hear and determine the cases with the result that delays grew year on year despite the efforts of the Court to deal with them. The increase in the number of High Court judges, and judges of the Circuit Court, to deal with the ever increasing volume of litigation and its complexity, meant that many more appeals were lodged each year than a single court could deal with.

10. This was recognised and was the subject of a working group chaired by Ms. Justice Denham which was established in 2006 and reported in May 2009. The Working Group on a Court of Appeal reported that there was a significant and marked increase in the waiting time for appeals to the Supreme Court which had grown from **ten months** in 2004 to **30 months** in 2008.[138] The Supreme Court was disposing of approximately 230 appeals when comparator courts, in where there was an intermediate court of appeal, were dealing with much less.[139] The relevant figures contained in the reports were Canada 58, New Zealand 27, UK 82, Australia 66 and USA 74.[140] The Working Group predicted that if a similar system was

[138] Report of the Working Group on a Court of Appeal (May 2009), available at https://www.courts.ie/acc/alfresco/32627080-c831-4fbb-aeb6-297f703fd631/Report%20of%20the%20Working%20Group%20on%20a%20Court%20of%20Appeal.pdf/pdf#view=fitH, at p. 45.
[139] Ibid. at p. 39.
[140] Ibid.

established workload of the Supreme Court would be in the region of 80 cases of public importance (a prediction which proved accurate until a slight downturn due to COVID-19).[141] The Working Group concluded:-

> "*[P]ut simply there are too many appeals raising too many complex issues to be dealt with by the Supreme Court alone. It is the opinion of the Working Group that urgent reform of the system is necessary*".[142]

11. Unfortunately, the fact that the Court of Appeal was not established until more than five years later in October 2014 meant that the situation had, predictably, deteriorated even further. By that time the *average* waiting time in the Supreme Court for an appeal certified ready for hearing was **54 months.**[143] The requirement to give priority to urgent and important cases meant that progress in routine appeals was slowing further. There was a backlog of cases awaiting hearing totalling in excess of 2,150 pending appeals. This backlog was allocated between the Supreme Court and the Court of Appeal. There was, in addition, a cohort of uncertified cases, being cases in which a notice of appeal had been lodged, but the parties had not prepared for hearing.

12. It was, however, unsurprising that if the Supreme Court which, by mid-2014 comprised ten members, was not in a position to reduce the backlog, or indeed process appeals faster than appeals were being lodged, a Court of Appeal with only ten judges (and with the additional requirement to fully staff the criminal division of the court) would not be able to do so. It was only when the Court of Appeal numbers were expanded to the present number of 17 judges in October 2019 that that court was in a position to dispose of more appeals than were being lodged and it is now steadily reducing its backlog. For the first time in decades therefore waiting times for appeals from the High Court in civil matters and trial courts in criminal matters are dropping, and the cases of general public importance are being dealt with speedily in a court of final appeal. The experience of the

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[141] Ibid. at p. 116.
[142] Executive Summary of the Working Group on a Court of Appeal, at p. 12.
[143] Court Service Annual Report 2014, available at https://www.courts.ie/acc/alfresco/a4d65572-956f-4a95-9ec9-922cd5643220/Courts%20Service%20Annual%20Report%202014.pdf/pdf#view=fitH at p. 61.

establishment of the new jurisdiction of the Supreme Court and the creation of the Court of Appeal and the provision of resources to it in the shape of additional numbers, shows that the problem of backlog and delays can be addressed effectively and that matching the number of judges to the workload is a first and essential step to any approach seeking to ensure that the administration of justice in Ireland is performed in the best way possible. It also shows that delays in addressing the problem significantly increases the problem and that piecemeal measures will not suffice.

13. However the effective administration of justice is not limited to dealing with case loads and establishing the numbers processed. It involves dealing with litigation and litigants in a way that delivers justice with the maximum understanding and sensitivity as well as efficiency. That involves a consideration not just of how many judges are needed to process the case load of a court, but also how those judges can be best equipped to carry out their function in the best way possible. This requires a consideration of techniques to improve the processing of cases in an efficient way, and accommodating the demands of ongoing training of judges to assist them in understanding and dealing with the range of challenges they face.

Case management

14. *Orange v The Director of Telecommunications Regulation* [144] was a case of undoubted significance and complexity, and a case which would almost certainly be heard by the Supreme Court under its new jurisdiction. However, it took 51 days in the High Court and 16 days in the Supreme Court in the year 2000. Chief Justice Keane described the case as having occupied a "*wholly inordinate degree of court time*" due in part to the absence of adequate case management. Since then, considerable steps have been taken to engage in active court case management by the Court, a process that was significantly accelerated with the establishment of the new jurisdiction of the Supreme Court in 2014.

[144] [2000] IESC 22, [2000] 4 IR 159.

15. Detailed new rules were drafted and adopted.[145] A new practice direction[146] was adopted pursuant to powers conferred in the 2014 Act. Both the Rules and Practice Direction have been amended, updated and developed in the light of experience.[147] Cases now rarely take more than one day of oral argument. It is only the most complex and important cases which take more than two days, and this is rare. Case management by a judge includes a requirement for detailed written submissions (with a word limit) to be delivered in advance, agreement on core books of authorities and trial materials and relevant documentation and transcripts. The Court presents and delivers to the parties a summary of the facts, issues and arguments in the case, sometimes with a request for clarification of their position on a particular point.. Time-limits for oral argument are fixed. This process of judicial engagement in advance of a substantive hearing can assist in limiting and focussing the issues, and in any event increases the Court's appreciation of the central issues in dispute. There is a preliminary meeting of the panel assigned to hear the case, normally on the day of the hearing but sometimes in advance of that, and a conference (which is a meeting of the judicial panel assigned to hear the case) immediately after the case for preliminary consideration. There may then be a number of subsequent conferences depending on the complexity of the case and the division of views in the Court. One or more judgments is then prepared, discussed, revised and issued.

16. This significant compression of hearing time is achieved by the requirement of detailed pre-reading of material by the Court. The most difficult feature of the case from a judge's point of view is securing sufficient time for judgment writing after the case has been heard, and before it is necessary to turn to the pre-reading for the next case due to be heard. Inevitably judgment writing is completed later and often at weekends and other days when the Court is not sitting. In contrast to the position as a matter of history, when many decisions in routine appeals were given

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[145] Rules of the Superior Courts (Court of Appeal Act 2014 SI 485/2014)
(These Rules substituted new rules for O. 58 of the Rules of the Superior Courts. See pp. 6-36 of the Rules).
[146] Practice Direction SC 16 Conduct of Proceedings in the Supreme Court, available at https://www.courts.ie/content/conduct-proceedings-supreme-court.
[147] All of the practice directions relating to the Supreme Court can be found at https://www.courts.ie/supreme-court-practice-directions.

orally on the day of the hearing, the important nature of almost all cases heard in the Supreme Court now require at least one detailed written judgment.

17. It is an unavoidable consequence of deciding cases of general public importance that the resulting judgments are often long and complex. It is a fundamental obligation of the Court to engage with the arguments made and to give careful reasons for its decision. A decision is not merely a determination of the merits of a particular case, which for the parties involved may be of immense importance, but also by definition involves determining the law more generally, and so giving binding guidance to other courts that will have to apply the principles set out in the judgment in a range of cases which may raise similar or related issues. What is decided therefore is often of great importance and consequence for the State and for institutions and individuals who may seek to organise their affairs without having recourse to litigation and who seek advice from their lawyers. As the judgments of the Court are a vital part of the work it is essential that they be as good, in every respect, as possible. The process of decision making and judgment writing necessarily requires consideration, refinement, sometimes further discussion, and sometimes disagreement and the preparation of dissenting or concurring judgments.

18. All of this is unavoidably time consuming. While some cases can be dealt with reasonably speedily shortly after argument, others require further thought, time and space. Given the demands for pre reading in advance and judgment writing afterwards the visible part of the work of a Supreme Court judge, the public hearing and the delivery of a judgment is only a fraction of the time engaged in disposing of any particular case. Organisation of Court time and business and assessment of court numbers must take account of this model. Increasingly at least part of the work in other courts is subject to the same demands. The challenge posed of dealing with such cases can be very considerable since the issues and evidence may be much more far ranging, and the requirement for case management at least as pressing in the initial stages of a case as on final appeal. The experience of the Supreme Court suggests that this requires more judicial resources, but produces greater focus and efficiency.

Other Obligations

19. In addition to the demands of hearing and deciding cases, there are a large number of matters with which judges must discharge outside of court. Among these is handling Applications for Leave to appeal to the Court of which there are approximately 240 in a normal year, and which are dealt with by three person panels of the Court each Friday during term time and also in vacations. Although the processing of Applications for Leave has become more efficient as the legal profession and the members of the Court have become habituated to them, they still require a significant amount of time. Because of the importance for the parties in knowing whether there will be an appeal or not, these applications are usually dealt with within a few weeks of the completed papers coming before the panel. The procedure may also involve consideration of applications for stays or the grant continuation or discharge of injunctions, often as a matter of urgency. Subsequently there may be applications for costs and occasionally applications to review the decision of the Panel. The Court (unlike the courts of final appeal in some jurisdictions) gives reasons for its decision on each application and this requires, particularly in the case of a refusal of leave to an applicant who is not legally represented, a level of detailed reasoning. The Court deals with approximately 240 such applications in a normal year although this can fluctuate considerably.

20. In addition to this there are a large number of official bodies and boards drawing in judges from each jurisdiction. Because the Supreme Court is the smallest jurisdiction in numbers, this means that all its members are engaged in a number of different functions. An illustrative but not exhaustive list of such engagements is:

i. Judicial Council (Chief Justice and two other members of the Court currently);
ii. Committees of the Judicial Council (personal injuries guidelines, judicial conduct, sentencing guidelines, education and wellbeing, Supreme Court Judicial Support Committee);
iii. The Courts Service Board (Chief Justice and one other judge of the Court);

iv. Committees of the Courts Service Board (Finance, Building, Modernisation);
v. Council of State and Presidential Commission (Chief Justice);
vi. The Judicial Appointments Advisory Board (Chief Justice);
vii. Chief Justice's Working Group on Access to Justice (Chief Justice and one other judge);
viii. The Rules of the Superior Courts Committee (Chief Justice and one other judge);
ix. Land Values Reference Committee;
x. Irish Legal Terms Advisory Committee;
xi. The Legal Research and Library Services Committee (one judge);
xii. The Incorporated Council for Law Reporting (one judge).
xiii. King's Inns Disciplinary Committee, Education Committee, Education Appeals Board and Judicial Benchers Panel of the Council (the Chief Justice and three judges at present);
xiv. Advisory Committee on the grant of Patents of Precedence (Chief Justice).

21. The Court also has a number of international engagements with a network of other courts principally within the European Union and the Council of Europe. Following from the sharp distinction in civil law systems between private law and public law, most civil law jurisdictions have more than one Supreme Court or equivalent dealing with different areas of law, and some have three. Each of these court types has a network body with which the Irish Court must engage. This is particularly important post-Brexit, as Ireland may be facing the risk of becoming isolated as a common law rather than civil law jurisdiction. Those on which the Court is most active are: the Network of the Presidents of the Supreme Judicial Courts of the European Union (of which the Chief Justice is a board member); ACA-Europe, a European association composed of the Court of Justice of the European Union and the Councils of State or the Supreme administrative jurisdictions of each of the members of the European Union (in which the Chief Justice and one other judge of the Supreme Court are involved); Conference of European Constitutional Courts (one to two members); Superior Courts Network of

European Court of Human Rights (Chief Justice and one judge), the Colloque Franco-Britannique Irlande (one judge). There are a number of other bodies which require representation from the Court.[148]

22. The Court has also established an outreach programme. When the Court sits outside Dublin each year it engages with universities if possible, local communities, the legal profession and schools. Members of the Court have engagement with Law Schools around the country as adjunct professors, chair conferences, deliver papers and publish articles in journals. Members of the Court also adjudicate mooting or mock trial competitions and debates. The Court also has a formal Comhrá Programme in which students in participating second level schools can meet remotely with members of the Court and learn about the work of the Courts.

23. Finally, the judicial training function has been improved and expanded since the establishment of the Judicial Council and requires attendance at seminars and working groups sometimes over a number of days. All of these activities involving committees and meetings must be scheduled at times outside the court sitting day to ensure that judges from all jurisdictions can attend and longer and more detailed engagements will involve removing a judge from the panel available to hear cases. All of these activities are in different ways important to the discharge of the Court's function.

Efficiencies

24. The organisation of the work of the courts is an aspect of the administration of justice and therefore a matter for the judiciary rather than for any other body or branch of the State, and all changes and adjustments in working practices have hitherto been matters introduced by the judiciary. There is no doubt that despite significant advances made, the system is capable of improvement and being made more efficient, effective and user friendly for individuals and businesses as well as

[148] For example, the Judicial Network of the European Union, which is comprised of the Supreme Courts in the European Union and is operated by the Court of Justice of the European Union, the World Conference on Constitutional Justice, the Venice Commission's Joint Council on Constitutional Justice and the International Association of Supreme Administrative Jurisdictions.

the legal profession and the Court is happy to consider any suggestions for changes and innovations that might be suggested. Some issues that might be usefully addressed are considered below.

Technology

25. The technology available within the court system in Ireland suffered significantly through a decade of underinvestment during and after the financial crisis. An improvement in IT systems available to the Court would likely improve efficiency. The Court was able to react to the COVID-19 pandemic by moving hearings online and using electronic delivery of documentation. This also allowed the court and its staff and users to evaluate the capacity of the Court to use such technology on a more permanent basis. It is the Court's experience that these tools have not resulted in greater general efficiency. Instead they have in general permitted work to be disposed of which would otherwise not have been capable of being dealt with at all , but that in general online hearings were more difficult, less satisfactory and more time consuming than in person hearings. It is clear however that there are some areas where the technology developed can be usefully and immediately incorporated such as remote hearings for case management hearings and electronic delivery of documentation and authorities, but it is also clear that the platforms and software require further refinement and development if they are to reach the point of improving the capacity of the court to perform its function, rather than serve as a limited and imperfect substitute for the traditional system. A more general problem affecting the court system is that it is very difficult to capture data as to the makeup of cases and their progress through the court system in order to be able to analyse the sources of cases coming to the Court, and the factors which influence this. It is also difficult to generate accurate data to measure the Court's own throughput and identify pinch points. It is essential therefore that the technology available to the Courts System be radically restricted and improved.

26. This is related to judicial numbers in another way. The Courts Service now has a Strategy and Reform Directorate which leads a Modernisation Programme intended to be delivered over the next ten years, and which involves very

substantial budgetary expenditure. Much of the reform is in the field of technology. It is really essential that there is ongoing and detailed judicial involvement in that process if it is to result in the most effective improvement of the delivery of the administration of justice in Ireland. In other jurisdictions where similar projects have been undertaken, a judge has been asked to become the principal representative of the judiciary in the process, and to be allowed to devote half of his or her working time to the project, to ensure cooperation with the service, and communication with his or her colleagues. This is not feasible in Ireland at the moment given the limited judicial numbers.

Judicial Assistants

27. Legally trained judicial assistants can be of considerable assistance to judges. Such assistance, and indeed any research assistance is a very recent development in the Irish court system. However, a popular image of judicial assistants carrying out the bulk of the judgment writing task under the general direction of a judge is very wide of the mark. The requirement for judicial independence carries with it the obligation for a judge to make up their own mind, come to their own conclusion and write their own judgment. In any event, research assistants are normally recent graduates and the assistance they give to a judge of the Supreme Court may involve carrying out focussed research tasks, proof reading judgments, and carrying out a number of tasks which would otherwise be time consuming for the judge and is undoubtedly helpful, but the judge remains responsible for the hearing of appeals and his or her judgment, and therefore bears the burden of the work necessary to do so. In addition, since the Judicial Assistants also perform the role previously performed by Ushers and Criers, the time available to undertake judicial research, draft legal memos and proof-read judgments is limited.

28. Although the Courts Service has very recently begun to expand the Legal Research and Library Service for judges, the Judicial Assistant programme does not provide the optimum service which a research programme is capable of doing. There are two obvious constraints. First, judicial assistants are poorly paid, both in comparison to many of the grades in the public sector generally, and in particular

to their contemporaries being offered traineeships in substantial solicitors' firms. While judicial assistant roles offer recent law graduates a unique experience in working with a judge and gaining an insight into work in the courts, there is a limit to which the uniqueness of the role can be expected to make up for the significant salary gap compared to roles on offer in the current jobs market. Second, the contract is inflexible and normally requires a three year commitment while at the same time being non-renewable. These two constraints mean that although the job can attract and has attracted some high achieving recent law graduates it is less attractive than it should be to candidates who might otherwise be well suited to the role such as candidates with additional relevant academic or professional qualifications and/or relevant post qualification experience.

The Retirement Cliff

29. Currently a judge who retires must have completed all judicial tasks on or before the last day of service. This includes not only producing all judgments which they are themselves writing, but also the delivery of all judgments of a court in which they were on the panel hearing the case. This means not only that the period approaching retirement can be extremely gruelling for the retiring judge, but also has the effect of removing them from the possibility of being rostered to hear cases where there is any risk that the decision will not be finalised and judgment(s) delivered before the retirement date. On the other hand, delay in appointment of a judge at any level in the system, and particularly to an appellate court, significantly impairs the capacity of a court to function smoothly. In a collegiate court that can have a disproportionate impact. In the case of the Supreme Court at the moment, a judge has retired in April but is only being replaced in October. The current Chief Justice in turn, is due to retire in October, and accordingly has not been available for new cases in the summer term. The overall result is that the complement of judges available to hear cases is significantly reduced. It would be beneficial if there was provision that a judge could have a limited period after the date of retirement from sitting duties, to complete judgments. On the other hand, since the date of retirement (and the requirement for replacement) is normally known well in advance, prior nomination could allow a smoother

transfer to the Court. Indeed, the fact that there is capacity to appoint one further member of the Supreme Court could usefully be used simply to deal with the overlap period, so that a new member could be appointed before the person he or she is due to replace retires. These features are particularly important in a collegiate court with relatively small numbers.

Reconsideration of Statutory Jurisdiction

30. The Supreme Court hears leapfrog appeals from the High Court in cases which are of general public importance and there are exceptional reasons to hear a direct appeal. This applies particularly in the fields of European Arrest Warrants, immigration and asylum, and planning, where in the period toward the end of the 20th century and the beginning of the 21st century, legislation sought to deal with the problems of delays in the appellate structure, by excluding the possibility of appeal from the High Court to the then Supreme Court (and now Court of Appeal) unless the trial judge certified that the case involved a point of law of exceptional public importance. Since the advent of the new jurisdiction created in 2014, this has the effect, that it is likely that if such a certificate is granted that there will be an appeal to the Court of Appeal, and the Supreme Court. This runs counter to the underlying policy of the legislation and the promotion of efficiency in litigation. Consideration could be given to a statutory amendment either removing the possibility of such an appeal to the Court of Appeal entirely or providing that if a certificate of leave to appeal is granted to the Court of Appeal is granted, application may be made by the respondent or any other party to the Supreme Court to take up the appeal. The current system cannot be justified on the grounds that it is either logical or efficient and it risks creating the very thing that the statutory changes sought to avoid -significant delays in important cases created by the appellate process.

Part-time Judges/Extension of Retirement Age

31. There has been some discussion of the extension of the retirement age for judges in line with the increase in the retirement ages both in the public sector and the economy more generally. The general improvement in health and life expectancy means that judges who are required to retire at age 70 are a valuable and

experienced resource who are nevertheless lost to the legal system when they could still provide considerable assistance, at relatively lower cost, within the system. While there are broader issues to be considered there is a strong case for an increase in the general retirement age. Recently the mandatory retirement age has been increased in the UK.

32. It is suggested also that the possibility of part-time judges is one worthy of investigation, and raises less issues than might arise from a general increase in the retirement age. This would allow for deployment of resources in a focussed and limited way in response to temporary changes in demand, or events such as illness, or the need to have a judge assigned to deal with a single case due to last weeks or perhaps months, without the necessity for a permanent increase in judicial numbers. There may however be a difficulty in appointing members of the legal professions on a part-time basis not least because the Constitution requires that a judge shall not have any other position of emolument. There are also considerations of practicality which make it difficult to adopt this procedure in a relatively small jurisdiction. However, the use of retired judges in a part time capacity involves less cost to the State and more importantly less risk since much more is known of the skills expertise , disposition and habits of a judge who has completed years of service and is due to retire. The capacity of the person to properly discharge the role could possibly be assessed by the newly created Judicial Appointments Commission to ensure the decision is independent of Government and Court Presidents. Any recruitment could be for a limited periods during the year which could be more attractive to retired judges and lessen the overall work demand upon them. This could be a useful reform whether in conjunction with an extension of the retirement age or independently of it. This is something which has been utilised in other common law jurisdictions. Other options that might usefully be considered are the possibility of offering reduction in the working year for judges approaching retirement in return for reductions in pay and pension job sharing arrangements which can extend the useful working life of judges. The current system which requires a judge to work at full capacity, and more, up to the day of retirement age and immediately cease all judicial activity thereafter is wasteful, inefficient and unduly inflexible.

Mediation /Alternative Dispute Resolution

33. Mediation and other forms of a dispute resolution processes are useful and are encouraged at every level of the court system. They have limited impact however in Supreme Court appeals under the new constitutional arrangements. Very few, if any, appeals are resolved by settlement. By the stage of an appeal to the Court the parties are heavily committed to their positions. It is often the case that the issue has systemic importance for some or all of them, especially given that the State (in one manifestation or another) is involved in roughly half the appeals. Furthermore once it has been determined that the issue is one of general importance it is necessary to resolve it: otherwise uncertainty is created that will generate further litigation and inevitable appeals.

Specialist Judges

34. It is very doubtful that there is useful role for further specialist judges in the court system. Having judges who can only deal with one type of case creates additional difficulties of matching judges to workloads, and increasing the risk of insufficient numbers and accordingly delays, or too many judges for the available work and corresponding inefficiencies. It is preferable to have judges who can then specialise in an area, but who can be deployed elsewhere in the system if necessary. At appellate level a court benefits from the degree of expertise that familiarity with an area entails but also the fresh perspective that judges with more general experience may bring to the analysis.

Delegation of Case Management tasks to Court Officers

35. There is probably only limited scope for further delegation of case management tasks to non-judicial court officers and limited gains that might be achieved by any changes. Since the 2014 reforms there are almost no repetitive routine applications in the Supreme Court. The Supreme Court Office manages the processing of applications for leave and the appeal itself and seeks to ensure compliance with the Practice Directions. The judicial assistant to the case

management judge is involved in reviewing the books of appeal lodged. However the main benefit of judicial case management is the early involvement of a judge in ensuring engagement of the parties, the progress of the case and, where possible, the refinement of issues. A direction given by a member of the Court tends to be followed more closely than the views of the administrative staff, and it would likely lead to a reduction in efficiency, if anything , if that involvement was removed.

Conclusion

36. For almost 100 years judicial numbers have been addressed on an ad hoc and nearly always belated fashion, in which judicial numbers have nearly lagged behind the demands of litigation and court users. Since comparisons have been made Ireland has had the lowest ratio of judges to population in the EU while experiencing considerable and sometimes complex litigation. For much of its recent life this mismatch was experienced acutely in the Supreme Court. The Supreme Court recognises therefore the importance of the work of the Working Group and value of comprehensive analysis of the demand for properly resourced judges at the moment and which is likely to be experienced in the foreseeable future, and welcomes the opportunity of continued productive engagement with the Working Group. The experience of the Supreme Court leading up to the Constitutional amendment in 2014 and thereafter, illustrates both the significant benefits to be gained from comprehensive and well thought out reforms in adjusting judicial numbers to workload and the significant cost involved in failure or delay in addressing such issues. For the reasons set out the Supreme Court does not seek any present change to its numbers or any adjustment of the statutory limit and supports the submissions made for increases in judicial numbers in other jurisdictions.