

## **Submission by Forensic Science Ireland to Judicial Planning Working Group**

Forensic Science Ireland (FSI) supports the appointment of additional judges, particularly on the criminal side, to ensure the administration of justice, and to address backlogs arising from the Covid-19 pandemic and from population growth. However, it must be recognised that speeding up criminal trials through appointment of additional judges will increase pressures on other sectors of the criminal justice system.

### **Staffing/Resources**

Forensic analysis of evidential items is an essential step in the investigative process for most major criminal prosecutions. The increased power of DNA analysis, combined with the increasing number of hits from the National DNA Database as it grows in size, ensures that DNA evidence is required for trials to proceed in most cases of murder, sexual assault, assault, armed robberies, aggravated burglary, and in many burglaries. Where DNA evidence is not available, it is likely that fingerprint evidence will be requested. For prosecutions to proceed under the Misuse of Drugs Acts, a Certificate of Analysis from FSI is required in all contested cases.

In 2020, FSI received 29,000 cases but only had capacity to process 22,000 cases. The integration of the Fingerprints and Documents & Handwriting services from the Garda Technical Bureau into FSI at the end of 2019 together with the growth in demand for Drugs and DNA investigations led to a 74% increase in case submissions in 2020 when compared with 2018. For 2020 alone, drugs and toxicology submissions increased by 26% and more specifically, complex submissions (related to possession with intent to supply, or cultivation) increased by 34%. FSI currently has a backlog of 6,000 drugs cases awaiting analysis. This approximates to a delay of 9 months on average in the analysis of drugs cases.

As of July 2021, FSI has a staff of 198 FTE. We have agreed a Workforce Plan with the Department of Justice for 236 staff by 2023. We have made a submission to the Department for funding for the full complement of 236 staff in 2022, to coincide with our move to a new purpose built laboratory in Backweston, Co. Kildare. We would welcome the support of the Working Group for this request. The move to a purpose built facility together with an

appropriate level of staffing will allow us to improve and extend the service we currently offer to the criminal justice system.

### Efficiencies/Judicial Skills

FSI supports the recommendations regarding efficiencies in case management and practices and for developing judicial skills. We have a number of suggestions in this regard;

1. Presumptive Drug Testing: Presumptive testing of controlled drugs is widely used in the UK and other countries. It is a system whereby a trained police officer carries out a simple chemical test, using a commercially available test kit, to confirm that a suspect material is a specific controlled drug. (England and Wales do not require presumptive tests for cannabis but allow experienced law enforcement personnel to give evidence that a material is cannabis based on its “physical appearance, texture and smell”.) Presumptive testing was introduced in Ireland in limited circumstances on an administrative basis by Garda Circular 23/11 in 2011. It is limited to Cannabis/Cannabis Resin or Cocaine cases where the suspect admits to the detecting member that they believe the substance is one of those drugs, that it is for their immediate personal use, and the quantity of drugs seized must be consistent with this. The tests used are ones which have been validated by Forensic Science Ireland, and the members carrying out the tests have been trained by Forensic Science Ireland. It is our understanding that the overwhelming majority of prosecutions under Section 3 of the Misuse of Drugs Act 1977 end in a guilty plea. Hence, full operation of the presumptive drug testing scheme should result in a substantial reduction in the number of personal possession cases being submitted to FSI for analysis. Yet, in 2020 of 12850 drugs cases submitted to FSI, 5770 were personal possession cases. This number has increased steadily in each year since 2016. It appears that, in a number of District Courts around the country, presumptive drug testing results from trained Gardai are not accepted by the Courts and that Certificates of Analysis from FSI are sought instead. The principal reason for this appears to be the lack of a statutory basis for presumptive drug testing by members of An Garda Síochána. To rectify this situation, we have proposed to the Department of Justice that a provision be included in the forthcoming Criminal Justice (Miscellaneous Provisions) Bill to place

the presumptive drug testing scheme on a statutory basis. This would create a statutory basis for a Garda to give evidence regarding the results of a test where the test is one which has been certified as suitable by FSI and the Garda has been deemed trained in the test by FSI.

2. Adult Caution Scheme: The Criminal Justice Strategic Committee of the Department of Justice recommended that the Adult Caution Scheme be extended to personal possession of drugs cases for first offences. The Garda Circular issued in December 2020 applies only to Cannabis/Cannabis Resin. On the basis of submissions to FSI, we estimate that approximately 32% of Section 3 cases are cannabis/cannabis resin and the remaining 68% are non-cannabis drugs. Extension of the Adult Caution Scheme to all personal possession cases has the potential to significantly reduce pressure on FSI and on the Courts system.
3. Continuity: Section 170 of the Criminal Justice (Forensic Evidence and DNA Database) Act substituted a new Section 10 into the Misuse of Drugs Act 1984. This allows evidence to be given by certificate regarding the “receipt, handling, transmission and storage” of items within FSI i.e. the chain of custody. Such certificates are now being issued and accepted in the Courts. However, this provision applies only to prosecutions under the Misuse of Drugs Acts. We have requested that this be extended to all criminal prosecutions and have been informed that such a provision will be included in the forthcoming Criminal Justice (Miscellaneous Provisions) Act. Even in relatively simple cases, there may be a dozen staff within FSI involved in the chain of custody. Having all of these staff preparing individual continuity statements and being on standby for Court depletes the staff resources available to FSI.
4. Video Evidence: Greater use of video links to allow FSI staff to give evidence, particularly to courts outside Dublin, would allow more efficient use of FSI resources and avoid situations where FSI staff sometimes have to wait in Court a number of days to be heard, or travel long distances to courts to be told when they arrive that their evidence is not required. FSI has the facilities in place to allow evidence to be given by video link and has done so successfully on a number of occasions.

5. Criminal Justice Operational Hub: FSI is participating with other criminal justice agencies, including the Courts Service, in the development of the Criminal Justice Operational Hub (CJOH). Full rollout of this project has the potential to provide better use of resources and improved service levels across the sector. We anticipate that the ability to draw down real time information on the status of cases and scheduled court dates will enable us to prioritise cases more effectively. Similarly, the ability for FSI to upload Statements of Evidence and Certificates of Analysis on to the Hub for immediate drawdown by relevant parties would bypass blockages and delays in the current system.
6. Pre-trial Hearings: Best use of the resources of FSI and of the criminal justice system generally would be obtained from a system which encouraged the determination at an early stage of what issues are in dispute and what are not. This would mean that scientific examinations and evidence could be directed towards resolving the issues which are in dispute. The preliminary trial hearings provided for in the Criminal Procedure Bill 2021 are a move in this direction and it is to be hoped that the Courts will make full use of them.
7. Judicial Skills: FSI would be happy to assist in the development of judicial skills in areas such as the scientific basis for presumptive drug testing, statistical evaluation of scientific evidence, and any other area where it is felt that we can be of assistance.