

To whom it may concern,

I am grateful for this opportunity to make a submission. I note that the Working Group (WG) is interested in the following:

- The number and type of judges required in Ireland in the next five years, and longer term to ensure the efficient administration of justice.
- The impact of the Covid-19 pandemic, demographic changes, and implications of Brexit in regard to court caseloads and the subsequent resource requirements.
- The development of judicial skills.
- The extent to which efficiencies in case management and working practices, as well as enhanced digital technology, could help in meeting additional service demands, improving services, and access to justice.

I will focus only on my areas of expertise here in relation to the efficient administration of justice (touching on bullet points 1 and 4) and judicial skills (bullet point 3). In so doing, I will speak about the importance of restorative justice and diversion (in relation to efficiency), and the need for judicial training/skills to incorporate restorative practices, therapeutic jurisprudence and procedural fairness (in relation to skills). I will focus on the criminal courts, unless stated.

Firstly, in relation to the efficient administration of justice, it is essential that more people are fully informed and supported to engage in alternative dispute resolution. This will aid in the efficient administration of justice because many more cases and offences can be resolved outside of court. In the criminal courts, this involves restorative justice. As the WG will know, there is ongoing work to develop the use of restorative justice, through which victims and offenders may engage with each other, with the support of a trained facilitator, to determine how to respond in a given case. In the meantime, restorative justice is available via the probation service (or, potentially, a local NGO, in parts of the country), in between conviction and sentencing, or following sentencing. The Gardaí can also use restorative justice with youth cautions, but there is currently no scope for prosecutors, prosecuting gardaí or the judiciary to refer cases to restorative justice as a diversion from conviction, as exists in many countries. The greater use of diversion – restorative justice being only one service to which a case can be diverted – is central to the efficient administration of justice, including the resolution of the backlog emerging from COVID-19. Many countries (including, Canada, where I have colleagues who work in justice administration in collaboration with the courts) are exploring restorative justice and diversion as a way to reduce these backlogs. It would also be great if judges could refer cases back to gardaí for adult cautions, or if gardaí were encouraged to use adult cautions in a range of low level cases which currently end up being heard at court. Outside the criminal courts, the corresponding process is mediation – there should be much greater resources put into using and encouraging mediation, so that courts are reserved only for those cases that cannot be resolved outside of courts.

Secondly, judges and courts will work most effectively if they can encourage people to comply voluntarily with their decisions, while also being satisfied with the court process. As such, I would recommend that judicial training incorporate restorative practices, therapeutic jurisprudence and procedural fairness. I am happy to discuss further if full explanations are sought/needed in relation to these concepts and how they can improve the mix of judicial skills, but I will summarise by saying: research shows that compliance and outcome quality are linked so closely to how people are treated and feel treated. If judges can be trained in these concepts, they will be very well suited to be strategic and intentional in how they engage with people.

Thanks so much!

Kind regards

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