



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta National Treasury Management Agency

An Gníomhaireacht um Éilimh ar an Stát
State Claims Agency

SCA's Submissions to the Judicial Planning Working Group 23rd July 2021

The **2021 EU Justice Scoreboard, published on 8 July 2021** (copy attached), presents an annual overview of what it considers are the essential parameters of effective judicial systems, namely, efficiency, quality and independence. The Scoreboard ranks the 27 Member States under various categories. By way of background to the SCA's submission to the Department of Justice, the following data are of note:

- Number of Judges 2012-2019: At approximately 3 per 100,000 inhabitants, Ireland ranks 27/27, having the lowest number of judges (page 66).
- Number of lawyers 2012-2019: At 300 per 100,000, Ireland ranks 8/27 (page 67).
- Number of incoming civil, commercial, administrative and other cases in 2012, 2017-2019: At approximately 4-5 per 100,000 inhabitants, Ireland ranks 21/27 (page 7).
- Number of incoming civil and commercial litigious cases in 2012, 2017-2019: At approximately 4 per 100,000 inhabitants, Ireland ranks 8/27 (page 8).
- Rate of resolving litigious civil and commercial cases in 2012, 2017-2019 (1st instance %): Ireland ranks 25/27, with the last two countries providing no data (page 12).
- Promotion of and incentives for using ADR methods, 2020: Ireland ranks 27/27 (page 25).
- General government total expenditure on law courts in EUR per inhabitant, 2012, 2017-2019: Ireland ranks 3/27 (page 26).
- General government total expenditure on law courts as a percentage of GDP, 2012, 2017-2019: Ireland ranks 25/27 (page 26).
- Procedural rules allowing digital technology in courts in civil/criminal, administrative and criminal cases: Ireland ranks 21/27 (page 72).
- Use of digital technology by courts and prosecution services: Ireland ranks 23/27 (page 33).
- Courts: electronic communication tools: Ireland ranks 22/27 (page 34).
- Digital solutions to initiate and follow proceedings in civil/commercial and administrative cases: Ireland ranks 16/27.

General

The SCA supports the establishment of The Judicial Planning Working Group, whose function will be to *consider the number of and type of judges required to ensure the efficient administration of justice over the next five years*. The Agency supports the appointment of additional judges, with necessary administrative support, in all court jurisdictions.

Digitalisation

Digitalisation of the Courts Service ought to be a priority, as evidenced by the severe adverse impact of the Covid-19 pandemic on the administration of justice. It should be possible to securely file online all proceedings and other documents relevant to the conduct of trials; communicate securely with court personnel, and conduct remote hearings of interlocutory applications and trials, in whole or in part.

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This would obviate the need to file hard copy papers in the relevant court office which is currently required in most courts, even when the hearings are remote. This requirement makes true remote working impossible.

An optimal video-conferencing system is required to enable parties and witnesses to be heard by distance communication technology. This is not currently available.

An electronic case management system would streamline court processes in each court jurisdiction. The current system for listing and/or hearing personal injuries claims is inefficient and can cause prejudice to the parties. A separate list is required for clinical negligence claims in each jurisdiction. In addition, separate lists for the hearing of personal injuries claims in the Circuit and District Courts are required.

The online search facility for incoming proceedings, currently available for High Court cases only, should be extended to the Circuit and District Courts.

Pre-Action Protocol for Clinical Negligence Claims

The Legal Services Regulation Act 2015 provides for the introduction of a pre-action protocol for clinical negligence claims (the PAP). Regulations to give effect to the PAP have yet to be introduced. Based on other common law jurisdictions' experience of using PAPs, it is expected that when fully operational, the PAP will facilitate the early resolution or withdrawal of clinical claims. In cases where proceedings are issued, the application of the PAP will lead to the early identification and narrowing of the issues between the parties. It is expected that liability investigations and some quantum investigations will be completed by the time proceedings are issued. It follows that such clinical claims will be ready for trial at a significantly earlier time than now occurs and that such claims will proceed to trial in greater numbers than currently occurs.

The Agency supports the introduction of a designated panel of judges to hear clinical negligence claims and interlocutory applications. Having cases heard by an expert panel of judges would reduce time spent at trial providing education about medical issues and healthcare processes, thereby shortening the length of trial.

Increased Volume of Personal Injuries Claims in the Circuit and District Courts

As the implementation of the Judicial Guidelines is expected to reduce the level of awards in personal injuries claims, it follows there should be a significant increase in the number of personal injuries actions issued in the Circuit Court and District Courts. Neither court is adequately resourced in this regard. For example motions issued in Dublin Circuit Court are currently obtaining return dates in 11 months' time. This is clear evidence of lack of resources, leading to delay in the determination of cases.

Case management of Personal Injuries Claims

We support the introduction of formal case management for all personal injuries claims and, separately, all clinical negligence claims, in each court jurisdiction. This will result in managed timelines for litigation and the early progression of claims to trial.

Deputy Master Roles

We support the recommendation of the Review of the Administration of Civil Justice that a number of new Deputy Master Roles be created to carry out judicial functions of a limited nature and to case manage litigation.

ENDS.