



An Roinn Dlí agus Cirt  
Department of Justice

# REPORT OF THE JUDICIAL PLANNING WORKING GROUP

December 2022





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# Foreword

Our core task as a Judicial Planning Working Group was to consider the number and type of judges required to ensure the efficient administration of justice over the next five years in the first instance, but also with a view to the longer term. This was the first time a systematic assessment of this nature was undertaken and a major OECD study was commissioned as a key input to our work.

The Group is recommending to the Minister for Justice a substantial increase in judicial numbers over the coming years starting in early 2023.

- ▶ Judges are key persons at the heart of the Courts system.
- ▶ An effective Courts system that provides timely access to justice is of central importance to society and the economy, given the Courts' role in the prosecution of crime, in helping families and individuals resolve their disputes, in the resolution of business and property problems and in protection of the vulnerable.
- ▶ A stable well-functioning Courts system that can give decisions within a reliable timeframe is an important part of Ireland's attractiveness to foreign business and feeds directly in to Ireland's prosperity.

Current judicial numbers cannot meet these objectives fully given population growth, new and growing areas of law and the increasing complexity of issues raised before the Courts. Our Group was very conscious of the current unsatisfactory position in the Courts with delays and backlogs, exacerbated by the Covid pandemic, having an adverse impact on individuals and on society more generally. We recognise the need for a sizable increase in judge numbers and sustained investment, alongside other measures, to improve this.

Our work was undertaken in the context of important developments, underway and planned, to improve the administration of justice. This report and the OECD study, as well as reflecting these developments, make additional recommendations for system improvements and greater efficiencies in how the Courts and judiciary work. Together these represent a demanding multiannual change programme for the judiciary and the Courts Service, requiring strong collaborative leadership. Sustaining this focus while continuing to deliver current operations, already under pressure, will need to be a high priority for all involved.

A significant challenge for our work and that of the OECD team was the limited systems in the judicial/Courts process for the collection and use of data. Developing better information systems is an essential element in facilitating the judiciary itself, with the support of the Courts Service, to manage and deploy its resources effectively, to identify where services can be improved for court users and to support public confidence in the effective use of resources, as well as underpinning the business case for additional judicial resources.

Courts do not operate in isolation. An effective justice system involves more than the judiciary and the Courts Service. Our report acknowledges the work in place to progress improvements through a coordinated approach across the Justice sector and the importance of this joined-up approach in delivering large-scale change. It was clear from our work that one of the contributing factors to an increased need for judicial resources is the impact on the Courts of a multiplicity of new public policy decisions and actions. Maximising the effective use of scarce judicial time needs to be a core consideration in public policymaking affecting the Courts and in assessing implementation approaches.

The Group is recommending the desirability in the medium-term of a more structured system for assessing judicial resource requirements based on comprehensive data and a whole-of-system perspective. This would allow for a more planned approach with regular review rather than a system of individual requests or a major review such as this one at intervals.

Our work as a Group was not straightforward given the complex interlinked factors to be considered and the data limitations encountered. My thanks to all the members of our Group and the judicial observers, who participated fully in the Group's work, for the time, commitment and expertise they gave to our work.

The OECD study was a key input to our work. I want to express my appreciation to the OECD team for their report and for the valuable perspective they provided in our meetings with them. This project required major engagement by the judiciary and the Courts Service with our Group and with the OECD. I want to thank the Chief Justice and his predecessor, the Court Presidents and other members of the judiciary for their comprehensive submission and their engagement over the period of our work on different issues as they

arose. My thanks also to the CEO of the Courts Service and her team for their contribution. I also want to acknowledge the many submissions from other groups that informed our work.

Last, but certainly not least, I want to express my thanks and appreciation to the Secretariat who supported our work.

In submitting the Working Group's report to the Minister for Justice I hope the report and its recommendations will help inform the Minister's and Government's consideration of the important matters covered.

**Brigid McManus**  
**Chair of the Working Group**  
**December 2022**



# Executive Summary

**Chapter 1** is an introduction outlining details about the Judicial Planning Working Group and its work.

**Chapter 2 (The Judiciary and the Courts System)** outlines the key features and organisation of the judicial process and courts system and provides some key data on, judicial and staff numbers, budgets and caseloads including waiting times for hearings. These indicate significant waiting times and backlogs.

**Chapter 3** (Judicial Resources) considers the issue of judicial numbers including judicial resource planning and management.

*Judicial numbers and international comparators:* The total number of ordinary judges increased in the last decade by 21%, nearly double the rate of population increase of 12%, and in line with the increase in public sector numbers of 24%. This increase was all in the Superior Courts where numbers increased by 76% and there was no increase in District and Circuit Court judge numbers in the last decade. In its evaluation of European judicial systems published in October 2022, the European Commission for the Efficiency of Justice (CEPEJ) indicated that Ireland has 3.3 professional judges per 100,000 inhabitants. Most of the 46 Council of Europe Member States have between 10 and 30 professional judges per 100,000 inhabitants while the European average is 17.6.

*OECD Report:* A study was commissioned by the Department of Justice from the OECD specifically to inform the Working Group's work. The study is published by the OECD in parallel with this Report. Overall, the OECD study found that the Irish judicial system has a shortfall of judges along with limited efficiency of Court operations and case management capacity. The OECD identified a range of possible additional numbers of judges per court jurisdiction and these are set out in Table 3B in *Chapter 3*. It suggested the likely number needed was between certain points in that range: in terms of total numbers between 36<sup>1</sup> and 108 extra judges. The weighted workload methodology used by OECD relies on data to ascertain judicial workload needs and the OECD has highlighted some significant caveats arising from major data limitations. It also states that introducing procedural,

operational and organisational improvements, adjustments to support staff and registrar resources, and investments to modernise case management systems and IT infrastructure may enhance efficiency and hence possibly reduce the number of judicial positions required.

*Submission from Court Presidents:* The Chief Justice and Court Presidents made a comprehensive submission to the Working Group, which provided considerable detail on the operation, workload and challenges facing the Courts and substantiating the case for additional judicial resources. An overview of the submission from the Court Presidents is contained in *Chapter 3.5*.

The total put forward by the Court Presidents would indicate a requirement for more than 60 additional judges in the short term - an increase of more than a third on the total complement at present.

Many of the other submissions received as part of the Group's consultation process, highlight the need for additional judges to keep pace with the increase in the judicial caseload and the backlog of cases on hands (see *Chapter 3.6*).

*Factors affecting judicial workload:* Different factors affecting the need for judicial resources were considered including increased volume and complexity of judicial caseloads and the impact of new work. Examples of new work include the commencement of the Assisted Decision-Making (Capacity) Acts 2015-2022, the establishment of an Environment and Planning Court and the Family Court Bill, which aims to reform the family justice system. There is also a significant backlog in criminal cases, which has been exacerbated by the impact of the Covid pandemic. Delays in this area have a major impact on an individual's rights, as well as impacts on victims and all involved.

*Capacity Constraints in Courts Service and wider Justice System:* An increase in the number of judges, particularly if the increase is of significant scale, gives rise to major requirements in terms of The Courts Service staff and infrastructure. There are constraints in the pace at which judicial numbers can be brought into the system and supported to work effectively. The Courts Service also notes that there are ongoing

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<sup>1</sup> The OECD figure does not represent the minimum number of judges necessary to deal with a Court's workload but is a calculation based on the number of judges that would be necessary if all cases before that Court were of a low level of complexity.

capacity issues in County Dublin for courtrooms and ancillary facilities, although greater capacity can be found in areas outside of Dublin. Phased recruitment of new judges will therefore be essential to ensure that any new judges appointed are properly supported in their roles by the Courts Service from the start, if judicial resources are to be used efficiently.

Constraints in the wider justice system, in particular in relation to criminal justice, were highlighted to the Group and also indicate the need for phased judge recruitment.

*Potential Efficiencies:* Work already underway on implementation of the Report of the Review of the Administration of Civil Justice (October 2020) and the Courts Service Modernisation Programme may assist the efficient use of judicial resources and reduce demands but these will take time to deliver.

This Report has other recommendations that should support a more effective deployment of judicial resources and use of Court infrastructure. These include a five day working week as standard across all jurisdictions, greater powers and supports for Court Presidents in managing judicial resources, better data to support resource allocation decisions, potential reorganisation of district and circuit Court areas, and piloting different approaches to vacation periods.

*Potential Scale of Required Judicial Resource, and Recommended Approach to Increasing Judge Numbers:*

The Working Group considers that there is strong evidence from the material available to it that a significant number of additional judges will be needed over the next five years if access to justice is to be provided in a timely manner and existing backlogs and excessive waiting times addressed. The likely need will be in the range 60 - 108 as set out in more detail in [Chapter 3.14](#). A phased approach should be taken to addressing judicial resourcing. It recommends that 44 additional judges be appointed between now and end 2024 in two phases, Phase 1 as soon as practicable and Phase 2, subject to satisfactory review, before the end of 2024. Additional numbers in further phases should be determined by a review in 2025 of judicial needs up to 2028. The Working Group recognises that while Phase 1 represents a significant increase in judicial numbers, this will mainly be required to address urgent backlogs and new work.

The Working Group is also of the view that before additional judges in Phase 2 are appointed there should be an assessment of the impact of the extra judges appointed in Phase 1 and progress against key milestones in the Change Programme. Appropriate targets/metrics in these areas should be agreed in advance between the judiciary, the Courts Service and the Department of Justice in tandem with the arrangements being put in place for the appointment of the judges. An indicative list of indicators to be used to measure the impact of the additional judicial resources is in [Chapter 3.14](#).

*Court Staff:* The Courts Service is currently resourced to provide support services to 174 judges. The Working Group accepts that additional resources will be required by the Courts Service to support the increased number of judges recommended in this Report and the enhanced roles required to be carried by the Courts Service, to support the judiciary. It is recommended that the Department of Justice seek to ensure, through the annual estimates process, that adequate resources are provided to the Courts Service to support the additional judges and to implement the recommendations in this Report.

*A more planned approach to calculating judicial numbers:*

The Group considered the more structured approaches used in other countries to plan judicial numbers. The Group recommends that in the context of the establishment of a formal judicial resource-planning model, a structured system for assessing judicial resource requirements and related support resources in Ireland should be put in place jointly by the Courts Service and the Department of Justice through a planned approach based on comprehensive data and a whole of system approach. Building on the OECD workload study, a set of data and metrics should be developed that allows judicial workload to be assessed through weighted caseload data and that takes account of caseload trends across different types of business, the effective deployment of judicial resources across existing work, population trends, the impact of new legislation, judicial training and other non-Court judicial work. As the full rollout of this will be dependent on a 10-year project to develop a digital case management system across all Courts business, it is recommended that in the shorter term a set of available data should be identified as part of the proposed assessment in 2025 that could be used while the full system is being

developed. Changes in demographic trends in the State and their impact on Court caseloads also need to be considered.

*Assessment of policy and legislative proposals impacting on the Courts:* The Working Group also believes that Government Departments developing legislative or other proposals, which impact on Court operations, should engage at the earliest opportunity with the Department of Justice in respect of their potential impact on the Courts. The Department of the Taoiseach, in its role as Government Secretariat, should ensure that existing requirements for a regulatory impact and full costs assessment of legislative and policy proposals being submitted to the Government, and which impact on Court operations, are implemented.

**Chapter 4 (Effective Use and Management of Judicial Resources),** looks at the effective use and management of judicial resources including the organisation and management of the Courts at district and circuit levels and the development of a modern judicial human resource management framework. It considers issues such as diversity in judicial appointments, the use of judges on a temporary fee-paid basis, retaining judges for a period after retirement for judgment writing and the judicial retirement age.

*Human Resource Management:* Judges are unsupported by any structured human resource management framework and do not have any clear terms and conditions of service to which they can refer. This is also the position for certain officers carrying out quasi-judicial functions - High Court Master(s) and County Registrars. A strategic and comprehensive approach to the development of the judicial human resources function should encompass the full range of human resource management and support functions as well as a strategic multi-annual approach to judicial human resource planning. Human resource management should include establishing clearly defined terms and conditions in line with public sector norms, the development of a full suite of human resource supports including welfare supports and the collection and management of relevant HRM data (sick leave, holiday/vacation days, retirement schedules, diversity characteristics) in a standardised manner across all courts to support decision-making and planning.

The issue of judicial performance management is also important to consider having regard to the independence of the judicial function and the focus should be on matching judge's skills to the right positions, understanding the requirements of a particular type of job and the person assigned to it and creating the conditions that allow an individual to undertake their work functions to the best of their ability. Appropriate human resource management arrangements and training should be put in place for officers carrying out quasi-judicial functions (High Court Master(s) and County Registrars) with any underpinning legislative provision required.

*Review of Support Staff Roles in the Courts Service:* A strong factor in the effective use of judicial resources is support from Courts Service staff. Their roles in the Courts Service should be reviewed to take into account emerging judicial needs and the requirements of the Courts Service Modernisation Programme and other developments including the recommendations of the OECD study and this Working Group.

*A Diverse Judiciary:* From a rule of law perspective, a judiciary should be representative of the diverse nature of society. The focus of this section is primarily gender diversity given the lack of data collected on diversity in the Irish judiciary. The Working Group recognises the steps being taken by Government to address this issue through the Judicial Appointments Commission Bill.

*Specialist Judges/Expertise:* The Working Group is of the view that persons being appointed to judicial office, should generally be appointed initially as ordinary judges but have the opportunity to deal with various areas of litigation during their careers. This approach will continue to be important to maximise judicial expertise. However, experience shows that persons appointed as judges are required, on the direction of the relevant Court President, to specialise as judges in a particular area of law for a specific period.

*Increasing the flexibility of judicial resources: Retirement age, Flexible/ Part-time working, use of temporary/ fee-paid judges, period post retirement for case completion, cover for long-term absences:*

*Retirement Age:* The retirement age of 70 for the Irish judiciary is in line with the position elsewhere in the Irish public service and reflects Government policy. The

Group is not making a recommendation to change the policy in this area.

*Flexible/Part-time work options within Judiciary:*

Currently all judges are appointed on a full-time basis. Options for part-time and flexible working available widely in the Irish public sector are not available currently to the judiciary. The Group recommends in principle the adoption of flexible work arrangement options for the Judiciary together with any necessary legislative underpinning. The detailed arrangements for implementation should be developed by the Department of Justice in consultation with the Chief Justice and Court Presidents and in agreement with the Department of Public Expenditure and Reform.

*Use of judges on a temporary fee-paid basis:* The Working Group considered the possibility of using retired judges or other legal professionals on a temporary basis to deal with temporary demands such as backlogs. A significant constraint in the Irish context is the requirement in Article 35.3 of the Constitution that “No judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument”. The Department of Public Expenditure and Reform has indicated that proposals to employ retired judges as temporary judges would not be consistent with Government pay and pension policy. Issues in relation to potential conflict of interest were also considered. The Group considers that while there is potential for arrangements for temporary part-time judges to deal with temporary or particular needs, considerable constraints arise from Constitutional provisions, public pay and pension policy and potential conflict of interest and it is not making any recommendation to introduce such arrangements currently.

*Period after Retirement for Judgment-Writing:* When a judge is approaching his or her retirement age, the President of a collegiate 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. The Group considered options to address this issue including international practice. The difficulty from a public sector pay and pensions policy perspective, outlined earlier in this section, in relation to raising the pension age or the employment of judges after retirement, would apply in this case also and no recommendation is made by the Group in this area.

*Flexibility in judge numbers to cover long-term absences:*

*legislative change:* Given the pressures on judicial capacity, a reduction in such capacity for any significant period of time can impact on court operations. Such gaps can arise for a variety of reasons such as longer-term absences due to long-term sick leave or other reasons, the time between a retirement and a replacement judge being appointed or the appointment of a judge to another body. The Group considers this problem could be improved by amending the relevant legislation to enable additional flexibilities to be built into the process.

*Court sitting days and responsibility for courtroom scheduling:*

It is important that the best use be made of judicial time and the physical infrastructure, including technology to support remote Courts. This is even more critical in the context of a significant increase in judicial numbers. The current position in relation to Court sitting times is mixed. The Working Group considers it important that the Court sitting days should be standardised at 5 days per week in all jurisdictions. There will be circumstances and business needs when this approach may need to be varied and the President of the relevant jurisdiction should have the discretion to vary this in such exceptional circumstances. All options for maximising the effective use of judicial resources in courtrooms should be explored. To maximise the use of courtrooms, the Courts Service, as part of its statutory role, should have responsibility for the scheduling of all courtrooms in the State supported by the necessary IT solutions.

*Court vacations/Judgment writing:* There would be potential for a better utilisation of Court infrastructure and other resources if there could be a spread of utilisation across the year including current vacation periods. The Working Group believes that consideration should be given to staggering Court vacation periods across different Courts by trialling a different vacation period on a pilot basis. Over time, as sufficient additional judges are appointed, all courts should move to scheduling trials over a longer working year. The early delivery of judgments is important for the administration of justice and adequate time should be provided to judges for this purpose.

Possible reconfiguration of Court Districts: A reconfiguration of District Court districts to meet present day needs of Court users would enable

the more effective allocation and use of resources and better service delivery. The Working Group recommends that the operations of the District Court should be restructured into a smaller number of larger districts (and aligned as required with Circuits) with a view to the more effective and efficient use of resources, and achieving better service delivery to Court users. In addition, the Working Group recommends that the Circuit Court geographical areas should be reviewed in parallel with any review of District Court areas to ensure that the allocation, management and processing of caseloads on hands is maximised.

*Powers of the Court Presidents:* It is important that Court Presidents have the necessary powers to effectively and efficiently assign, re-assign and manage the business of their Courts and they should be given additional powers, as required for this purpose. These powers could include, for example, the issue of practice directions for the benefit of judges, officers carrying out quasi-judicial functions and Court users generally. The Working Group is of the view that Court Presidents should also be empowered, as required, to assign work to judges in their jurisdictions so that there is an equitable allocation of work between, for example, urban and rural locations.

*Long-term Strategy for each court jurisdiction:* The Working Group supports the OECD recommendation that there should be a long-term strategy developed for each Court jurisdiction.

**Chapter 5 (Data Collection and Management)**, discusses the challenges posed in the judicial process and Courts system by data collection, management and dissemination and highlights the systems improvements needed in these areas.

*Data collection, planning and resource management:* The availability of quality data supports the effective management and future planning for the judicial process and the Courts system. It is also essential for evidence-based policy making in this area. This is why a data strategy is a key part of the 10 year Courts Service Modernisation Programme. Better data will also support the monitoring of Court activity such as the tracking of caseloads on hands, managing backlogs and monitoring timelines for the processing

of cases. Finally, good data also supports a quality strategic planning process including for effective resource and workforce planning. There is currently a lack of comprehensive key management data of the sort mentioned previously to support the judiciary/ Courts Service in effectively allocating and managing judicial and other resources so as to underpin a robust system of identifying additional judicial and associated requirements in a structured way. Current software in Courts Service offices cannot support a modern data collection and management strategy and this deficit needs to be addressed as part of a data enhancement strategy. Accordingly, IT systems, supported by consistent and transparent data and case definitions, should also be developed on a joined up basis, as part of an overall IT development process for the Courts, to support the enhancement of a modern data management strategy. The development of better IT systems will also enable the priority enhancement of data collection and the presentation of performance metrics by the Courts Service utilising a properly resourced data analytics team.

*Work ongoing at present in the Courts on data and case management:* The Courts Service Data Strategy 2021 - 2024, outlines a series of initiatives aimed at enhancing the Courts Service's capacity to manage and appropriately use data generated from its activities. This Strategy includes actions in relation to, for example, the collection, management, processing, use and quality of data as well as data governance. There are in excess of 120 case management systems currently in use in the Courts, which do not meet the requirements of a modernising Courts Service and system. The Courts Service aims to meet its future needs by developing a single case management system and the objective is to develop the elements of the new facilities in modules although there are significant challenges in the specification of new case management systems for Courts.

*Data Management Structures and Responsibilities:* New structures should be put in place in both the Department of Justice and the Courts Service for monitoring existing judicial resources and addressing the need for additional resources. These should involve the Courts Service having primary responsibility for the collection of operational data in the context of general resource planning, allocation and management including judicial resource management. The

Department of Justice, as part of its governance function, should be responsible for the strategic assessment and determination of judicial resources including numbers, and managing the proposed judicial resource-planning model. This work should be based on close collaboration with the Courts Service and other relevant public bodies. In the context of managing judicial resource planning, the Department should take a whole of system, inter-agency approach to this process to respond to developments in the overall criminal and civil justice systems. Any request for additional judicial resources would be considered in the context of this process.

## Chapter 6 (Improving Services to Court Users),

examines matters associated with the improvement of services to Court users. In particular, the issues of efficiencies in case management (including the role of judicial and non-judicial office holders), working practices and procedures are addressed as well as some other reform initiatives aimed at enhanced efficiency of service delivery compatible with the fair administration of justice. In its Report, the OECD calls for greater investment in the structural modernisation of case, Court and data management practices together with the upgrading of information technology to support the necessary changes. In the OECD's view, this investment will lead to efficiency gains that have the potential to reduce the number of additional staff needed.

*Case management functions, case management teams and judicial office holders:* The Working Group supports the greater use of other quasi-judicial officers such as High Court Masters and County Registrars to support more effective case management overseen by the President and the judiciary of the relevant Court jurisdiction. In this regard, it is important that there is clarity in relation to the type of work, which should be undertaken by a judge and the functions of officers carrying out quasi-judicial functions. The use of officers carrying out quasi-judicial functions should be integrated into the administration of a Court and be subject to the directions of the Court President in relation to the practice and procedures to be adopted and the allocation of work and sitting times.

*Enhancing the Digitalisation Process and Information Technology solutions to support case management:* The use of information technology to underpin case

management reforms is seen as vital and should cover a broad range of areas. Building on the Courts Service Modernisation Programme, the development of modern and integrated IT solutions should remain a priority for the Courts Service. This should include an automated Case and Court Management Information System which should be developed on a joined up basis, as part of an overall IT development process for the Courts, to support the enhancement of a modern data management strategy. This issue is now being addressed comprehensively by the Courts Service, within the context of that Service's ICT Strategy 2021 - 2024. Digital reforms should, for example, also support the greater use of e-forms, e-documents and the streamlining of requirements and standards for full e-filing. The development of digital supports for remote and hybrid hearings should also continue building on the work already done by the Courts Service including in the context of Covid-19.

*Alternative Dispute Resolution Mechanisms:* The Group recognises that various alternative options for the resolution of inter-party disputes currently exist which if utilised more comprehensively and on a voluntary basis, would reduce the burden on judicial time and take pressure off the Courts system. These include mediation, arbitration and conciliation.

*Lay Litigants/Litigants in Person:* The Working Group notes the recommendations in the Report of the Review of the Administration of Civil Justice (October 2020) on the provision of support, including, the simplification of procedures, for the assistance of lay litigants and suggests that these should be fully implemented as soon as possible. The Working Group notes that the Minister for Justice announced a review of the Civil Legal Aid Scheme in June 2022. The Working Group suggests that this review would provide an opportunity in its analysis and recommendations, to consider the impact on judicial time and resources of unrepresented litigants.

*Backlog Management:* Ensuring that a caseload is managed strategically so that backlogs can be planned for, and well managed, should be another critical objective in any adequately resourced Courts planning and management process. In order to provide a framework for the management of backlogs, the Courts Service should develop a backlog management and reduction strategy involving the judiciary and/or

consider the creation of backlog teams, including legal and Courts Service staff, as resources permit.

*Case Management and Court Performance:* establishment of a specialised Group: As recommended also by the OECD, the Working Group suggests that consideration be given to the establishment of a specialised committee or group within the Courts Service's internal structure, or on the Courts Service Board, to develop overall policies and drive changes in this area.

### **Chapter 7 (Judicial Skills and Training),**

considers the issues of judicial skills and training, particularly in the context of those areas which will be required to support the recommendations in this Report. The importance of resourcing continued professional development and training, as well as knowledge management, for the judiciary and Court support staff is recognised given the increasing complexity and specialisation in all areas of law, which judges, in particular, have to deal with including the growing influence of EU law in Ireland. This challenge is particularly important in areas with a large caseload and where case management could greatly support efficiencies. Judicial training should include both initial training on appointment but also ongoing training during a judicial career.

As part of the annual judicial planning process, judges should be provided with adequate time during the working year to attend training and skills development programmes. The Working Group recognises that a structured approach to ensuring judges' training needs do not constantly compete with Court sittings can best be addressed by jurisdictions being better resourced. The Working Group highlights that providing case management training for judges, officers carrying out quasi-judicial functions such as County Registrars and support staff is one of the key elements of training identified in order to underpin the implementation of its case management recommendations.

**Chapter 8** outlines the costs involved in implementing the recommendations of the Working Group including in relation to additional judge numbers (such as salaries, allowances, judicial support staff and chambers). The cost of Phase 1 additional judges is estimated at €18 million per year and Phase 2 at an extra €15.3 million per year. Additional costs will

arise in the implementation of the full range of other recommendations.

**Chapter 9** contains concluding comments. The Working Group recognises that the Irish court system is underdeveloped relative to other countries. It acknowledges the initiatives underway and underlines the importance of progressing steadily on these. It emphasises the importance of addressing the lack of key management and operational data to support the effective management of resources alongside IT/digitalisation development, better case management and stronger human resource management. Additional judicial resources are needed but unless all of the interlinked structural issues are addressed, adding more judicial resources to an overburdened system will not provide an effective and efficient court system.

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame																														
<b>Chapter 3 Judicial Resources</b>																																		
<b>1</b>	Judicial Resources	<p>A significant number of additional judges will be needed over the next five years if access to justice is to be provided in a timely manner and existing backlogs and excessive waiting times addressed. The Working Group recommends that a phased approach be taken to addressing judicial resourcing. It recommends that 44 additional judges be appointed between now and end-2024 in two phases, Phase 1 as soon as practicable and Phase 2, subject to satisfactory review, before the end of 2024. Additional numbers in further phases should be determined by a review in 2025 of judicial needs up to 2028.</p> <p>Phases 1 and 2 are broken down as follows:</p> <table border="1"> <thead> <tr> <th></th> <th>Current Numbers</th> <th>Phase 1</th> <th>Phase 2</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td><b>District Court</b></td> <td>64</td> <td>8</td> <td>6</td> <td>14</td> </tr> <tr> <td><b>Circuit Court</b></td> <td>38</td> <td>8</td> <td>6</td> <td>14</td> </tr> <tr> <td><b>High Court</b></td> <td>44</td> <td>6 (+14%)</td> <td>6 (+14%)</td> <td>12 (+27%)</td> </tr> <tr> <td><b>Court of Appeal</b></td> <td>16</td> <td>2 (+12%)</td> <td>2 (+12%)</td> <td>4 (+25%)</td> </tr> <tr> <td><b>Total Number of Judges</b></td> <td>162</td> <td>24 (+15%)</td> <td>20 (+12%)</td> <td>44 (+27%)</td> </tr> </tbody> </table> <p>The Working Group recommends that before additional judges in Phase 2 are appointed, there should be an assessment of the impact of the extra judges appointed in Phase 1 and also of progress against key milestones in the Change Programme. Appropriate metrics in these areas should be agreed in advance between the Judiciary and Courts Service and the Department of Justice in tandem with the arrangements being put in place for the appointment of the judges. Implementation of Phase 2 will be subject to the review and satisfactory progress against these metrics. There should be a review early in 2025 of the balance of judicial resource requirements for the period up to 2028. This review should consider factors such as (i) the impact of additional judges appointed to date (ii) actual trends in new business before the Courts, (iii) the capacity of the Courts Service and courts infrastructure to support additional judges, (iv) the potential impacts at that point on the wider Justice system, and (v) progress in the programme of modernisation and change.</p>		Current Numbers	Phase 1	Phase 2	Total	<b>District Court</b>	64	8	6	14	<b>Circuit Court</b>	38	8	6	14	<b>High Court</b>	44	6 (+14%)	6 (+14%)	12 (+27%)	<b>Court of Appeal</b>	16	2 (+12%)	2 (+12%)	4 (+25%)	<b>Total Number of Judges</b>	162	24 (+15%)	20 (+12%)	44 (+27%)	Department of Justice in lead with Judiciary and Courts Service supporting re: milestones.	Short-Medium
	Current Numbers	Phase 1	Phase 2	Total																														
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<b>Total Number of Judges</b>	162	24 (+15%)	20 (+12%)	44 (+27%)																														

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
2	Courts Service Resources	The Working Group accepts that additional resources will be required by the Courts Service to support the increased number of judges recommended in this Report and the enhanced roles required to be carried out by the Courts Service, to support the judiciary. It is recommended that the Department of Justice seek to ensure, through the annual estimates process, that adequate resources are provided to the Courts Service to support additional judges and to implement the recommendations in this Report.	Department of Justice	Short-Medium
3	Establishment of a formal judicial resource-planning model	A structured system for assessing judicial resource requirements and related support resources should be put in place jointly by the Courts Service and the Department of Justice through a planned approach based on comprehensive data and a whole of system approach. Building on the OECD workload study a set of data and metrics should be developed that allows judicial workload to be assessed through weighted caseload data and that takes account of caseload trends across different types of business, the effective deployment of judicial resources across existing work, population trends, the impact of new legislation, judicial training and other non-court judicial work. As the full rollout of this will be dependent on a 10-year project to develop a digital case management system across all Courts business it is recommended that in the shorter term a set of available data should be identified as part of the proposed assessment in 2025 that could be used while the full system is being developed.	Court Presidents and Courts Service supported by Department of Justice in relation to legislation.	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
4	Regulatory Impact Assessment of proposals impacting on court operations	Government Departments developing legislative or other proposals which impact on court operations, should engage at the earliest opportunity with the Department of Justice in respect of potential impacts on the courts. In the case of proposals with such potential, the Department of Justice should ensure when developing its own proposals or when engaging with other Departments making proposals that an assessment is provided by the Courts Service of the impact on court operations. This assessment should identify additional resource implications and the impact on the courts' users and business if no additional resources are available. The Department of the Taoiseach, in its role as Government Secretariat, should ensure the implementation of the existing requirements for a regulatory impact and full cost assessment as part of any such legislative or other proposals being submitted to the Government.	Department of Justice, Government Departments, Courts Service and Department of the Taoiseach	Short
5	Consideration of alternative enforcement mechanisms as part of new policy proposals	The design of any proposal for policy change which requires the initial enforcement by the Courts should first require consideration, from the perspective of both cost and effectiveness, of whether an alternative enforcement mechanism is available (such as determination by a body carrying out quasi-judicial functions or an administrative sanction) which does not involve the use of Court/ judicial time.	All relevant Government Departments	Short
6	Review of Legislation: alternative means of compliance	A process should be commenced, led by the Department of Justice, to critically analyse existing legislation which involves enforcement by Courts to establish if other administrative means could be employed to encourage compliance.	Department of Justice	Short-Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
<b>Chapter 4 Effective Use and Management of Judicial Resources</b>				
1	Comprehensive and strategic approach to human resource management for the judiciary	<p>An evidence-based, comprehensive and strategic approach to human resource management for the judiciary should be developed and the necessary resources and supports provided to the Court Presidents, the Judicial Council and the Judicial Appointments Commission, when applicable, to undertake these in consultation with the Courts Service and the Department of Justice, as appropriate. Issues to be addressed include the following:</p> <ul style="list-style-type: none"> <li><b>i.</b> Noting the lack of explicit terms and conditions applying to judges, appropriate terms and conditions should be developed in line with public service norms including those applying to sick leave and other forms of leave.</li> <li><b>ii.</b> A full suite of human resource supports including welfare supports should be developed.</li> <li><b>iii.</b> Workforce planning should strategically reflect future, as well as current, needs including enhancing diversity and positioning the Courts to support the needs of those wishing to conduct their business in the Irish language.</li> <li><b>iv.</b> Judicial needs and application trends for judicial positions should be assessed.</li> <li><b>v.</b> Relevant HRM data (sick leave, vacation days, retirement schedules, diversity characteristics) should be collected in a standardised manner across all Courts to support decision-making and planning.</li> <li><b>vi.</b> Appropriate structures for managing judicial human resource matters should be considered including the interface between the role of the Court Presidents and the Judicial Council.</li> </ul>	<p>Department of Justice with the input of the Department of Public Expenditure and Reform and the Judiciary</p> <p>Courts Service &amp; Judicial Council</p> <p>Courts Service</p> <p>Courts Service and Judicial Appointment Commission</p> <p>Courts Service</p> <p>Courts Service; Judicial Council, Courts Presidents.</p>	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
2	Officers carrying out quasi-judicial functions: Human Resource arrangements	Appropriate human resource management arrangements and training should be put in place for officers carrying out quasi-judicial functions (High Court Master(s) and County Registrars) with any underpinning legislative provision required.	Courts Service with the input of the Court Presidents and the Judiciary and Department of Justice re: legislation	Short-Medium
3	Review of the roles of support staff in the Courts Service	Support staff roles in the Courts Service should be reviewed to take into account emerging judicial needs and the requirements of the Courts Service arising from the modernisation programme and other developments including the recommendations of the OECD study and the work of this Working Group.	Courts Service	Short-Medium
4	Appointment and specialisation of judges	It is recommended that in order to gain a broad range of experience during their judicial careers, persons obtaining judicial office, should, as a general rule, be appointed as ordinary judges of a court jurisdiction. However, such persons may be required, on the direction of the relevant Court President, to specialise as judges in a particular area of law for a specific period of years.	Judicial Appointments Commission, Court Presidents	Short
5	Flexible work arrangements	Options for flexible working arrangements in line with the approach in the public service generally and as applies to judges in other jurisdictions internationally should be developed and implemented underpinned by the required legislative amendments to the operation of the statutory ceiling on judge numbers.	Department of Justice in consultation with Department of Public Expenditure and Reform	Short-Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
6	Legislative change to provide flexibility to cover absences	<p>The actual number of judges is set by legislation. It is recommended that additional flexibilities be built into this process subject to appropriate safeguards:</p> <ul style="list-style-type: none"> <li data-bbox="592 577 1142 882">i. Legislative provisions should allow for a small number of additional judges in excess of the limit in each category to be appointed to cover long-term absences and to appoint a judge in advance of a planned retirement to ensure a smooth transition with no time gaps including judgment writing time before departure and the potential for early on-boarding and induction.</li> <li data-bbox="592 898 1142 1097">ii. Legislation requiring a judge to sit full-time on another body for long duration should ensure that there is provision for an increase in the number of judges to replace the seconded judge who is no longer able to actively hear cases.</li> </ul>	Department of Justice	Short
7	Proactive allocation, deployment and management of resources	Judicial and other Courts resources should be proactively allocated, deployed and managed to maximise effectiveness and the necessary legislative and other supports should be provided to enable this.	Courts Service supported by the Department of Justice in relation to legislation	Short

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
8	Management and Restructuring of Districts of the District Court	<p>It is recommended that:</p> <ul style="list-style-type: none"> <li data-bbox="584 477 1133 678">i. The operations of the District Court should be restructured into a smaller number of larger districts (and aligned as required with Circuits) with a view to the more effective and efficient use of resources, and achieving better service delivery to court users.</li> <li data-bbox="584 734 1133 1077">ii. The President of the District Court should be assigned sufficient powers and to ensure the optimum deployment and use of resources in the larger districts with a view to enhancing the provision of more effective and efficient services to Court users. This would facilitate greater flexibility of judicial assignments allowing the President to react quickly to any upswing or decrease in business in a given area.</li> <li data-bbox="584 1120 1133 1249">iii. There should be greater use of specialisation, for example, in family and childcare law, which should be possible in a smaller number of districts.</li> </ul>	<p>Department of Justice, Courts Service with the input of the Chief Justice and District Court President</p> <p>Courts Service with the input of the Chief Justice and District Court President. Department of Justice regarding Legislation</p> <p>District Court President</p>	Medium
9	Circuit Court: Review of geographical areas	The Circuit Court geographical areas should be reviewed in parallel with the District Court areas.	Department of Justice, Courts Service with the input of the Chief Justice and Circuit Court President	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
10	Power of Court Presidents	<p>It is recommended that:</p> <ul style="list-style-type: none"> <li data-bbox="592 477 1141 712">i. The President of each Court jurisdiction should be provided with any additional powers needed to ensure the maximum and efficient use of judicial resources within that jurisdiction including the power to redistribute work to judges in those jurisdictions, according to needs.</li> <li data-bbox="592 725 1141 925">ii. The President of the District Court should be enabled to issue practice directions with applicability across every district of the District Court. This would allow consistency across all judicial districts and facilitate coordination and coherence.</li> <li data-bbox="592 938 1141 1106">iii. As recommended in the Report of the Review of the Administration of Civil Justice (the Kelly Report), the powers of the Presidents of the first instance jurisdictions to issue practice directions should be codified in statute.</li> <li data-bbox="592 1120 1141 1355">iv. Existing legislative provisions, including practice directions, should be used, as required, to ensure that there is consistency of approach in relation to the arrangement of business of the Circuit and District Courts across all of the Circuits and Districts, respectively.</li> <li data-bbox="592 1368 1141 1570">v. The President of each Court should be given the power to issue practice directions to officers carrying out quasi-judicial functions who function within their jurisdiction, such as the Master in the High Court or County Registrars in the Circuit Court.</li> </ul>	<p>Department of Justice</p> <p>Department of Justice</p> <p>Department of Justice</p> <p>Court Presidents</p> <p>Department of Justice</p>	Short

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
11 (i)	Courts organisation and sitting times	<p>Changes to the organisation of Courts and in Court sitting times should be made where they would facilitate a better deployment and use of judicial resources to respond to particular needs. In particular,</p> <p><b>i.</b> District Court and Circuit Court sittings, should, where possible be scheduled over 5 days (Monday to Friday), subject to the direction of the relevant Court Presidents. Court Presidents should also have discretion to make allowance, as appropriate, for exigencies such as the factoring in of vacation sittings, out of hours sittings (including at weekends), maintaining a roster of on call judges, judicial training requirements and travel time.</p>	Court Presidents	Short
11 (ii)	Maximisation of courtroom use etc.	<p><b>ii.</b> Sitting arrangements for the courts should be streamlined and courtroom use should be maximised. Subject to adequate resources being available, a number of hearings should be scheduled over longer hearing days through, for example, allocated time slots.</p>	Courts Service	Medium
12	Court vacations: pilot project	<p>Consideration should be given to staggering Court vacation periods across different Courts with an initial pilot. In doing so, consideration should be given to the different requirements in relation to holiday sittings, judgment preparation, judgment-writing and vacation periods across different court jurisdictions.</p>	Judiciary	Medium
13	Court vacations: time periods	<p>Over time, as sufficient additional judges are appointed to enable this to happen, all Courts should move to scheduling trials over a longer working year, with any period of court closure limited to some days in December and a short period in summer.</p>	Judiciary	Long
14	Judgment writing	<p>Judgment writing should be made more efficient including enabling judges to set aside sufficient time for the production of written and oral judgments soon after a case has been heard. In particular, consideration should be given to developing sound judgment writing schedules for different case types, including timelines, and to review options for staff and IT support for judgement drafting.</p>	<p>Court Presidents and Chief Justice</p> <p>Courts Service</p>	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
15	Responsibility for the scheduling of courtrooms	To ensure the most efficient use of judicial and Court resources, the Courts Service, as part of its statutory role, should have clear responsibility for the scheduling of all courtrooms.	Courts Service Department of Justice in relation to legislation.	Short
16	Data collection on court activity	There should be regular and permissible data collection on issues affecting court activity such as the average hearing time, or the number of hearings that require one or more full days recognising that the development of a fully comprehensive data set requires the implementation of new systems over the medium to long-term.	Courts Service	Short-Medium  Short-Medium
17	Adoption of court system performance measurements	In due course, consideration could be given to encouraging broader Court system performance measures including metrics, benefiting from experiences in other countries.	Courts Service with the input of the Judiciary	Medium-Long
18	Develop a Courts research strategy	Develop a courts research strategy overseen by a joint research group including the judiciary and other key stakeholders in court management.	Courts Service	Medium
19	Develop long-term strategy for each Court jurisdiction	A long-term strategy should be developed for each Court jurisdiction that aligns with the Courts Service Modernisation Programme and Courts Service's strategic development generally in order to transform the Courts into a more modern institution. This should articulate a broader strategic outlook and framework for the full justice process, including the criminal justice system.	Chief Justice and Courts Presidents with input from Department of Justice	Short

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
<b>Chapter 5 Data Collection and Management</b>				
<b>1</b>	Data management: Structures and responsibilities	<p>The development of a comprehensive data collection and data analytics system must be a key priority for the Courts Service in collaboration with the judiciary. In this regard, it is recommended that:</p> <ul style="list-style-type: none"> <li><b>i.</b> Responsibility for the collection and presentation of operational data should rest with the Courts Service in the context of general resource planning, allocation and management including judicial resource management.</li> <li><b>ii.</b> The Courts Service should establish a new unit to provide relevant data to support the Courts Presidents in the optimal allocation and management of their judicial resources. This unit would also supply information to the Department of Justice for the purpose of judicial resourcing considerations.</li> <li><b>iii.</b> Responsibility for the strategic assessment and determination of judicial resources including numbers, and managing the proposed judicial resource planning model, should be a governance function of the Department of Justice based on close collaboration with the Courts Service and other relevant public bodies.</li> <li><b>iv.</b> The necessary professional expertise and training should be available to Court Presidents and to the relevant staff in both the Courts Service and the Department of Justice. Recruitment of specialist staff in the Courts Service to support data analysis should be considered.</li> </ul>	<p>Courts Service</p> <p>Courts Service</p> <p>Department of Justice</p> <p>Courts Service, Judicial Council and Department of Justice</p>	<p>Short</p> <p>Short-Medium</p> <p>Medium-Long</p> <p>Short-Medium</p>
<b>2</b>	Data training	Members of the judiciary, their support staff and other Courts Service staff should receive appropriate training relevant to their role in the collection, recording and management of data as required. This should include training in the analysis of data and the development and understanding of management reporting in order to track current work processes to see where challenges occur.	Judicial Council and Courts Service	Short-Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
3	Data management: Development of IT Systems	IT systems, supported by consistent and transparent data case definitions, should be developed on a joined up basis, as part of an overall IT development process for the Courts, to support the enhancement of a modern data management strategy. This will involve a process to agree the metrics by which activity in Courts are to be measured and understood by all stakeholders. Data reports and processes should be developed that assist in identifying delays early and allow Court Presidents to adjust the allocation of resources accordingly. Consideration should also be given to developing an IT dashboard that enables judges of the Superior Courts to track the pending inventory of their cases waiting written judgments.	Courts Service	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
<b>Chapter 6 Improving Services to Court Users</b>				
<b>1</b>	Procedural simplifications	Work should continue in the Courts to simplify and streamline procedures with a view to reducing the administrative burdens on Court users. Options for streamlining and the automation of case processes should be identified, including e-forms, requirements and standards for full e-filing, as well as more detailed data tracking of case processes and timelines. Consideration should also be given to the development of early Court rule changes and directions in advance of legislative changes resulting from the report of the Review of the Administration of Civil justice as well as standardising operations by the County Registrar and Courts Service staff across different locations.	Courts Service with input from Department of Justice	Medium  Short-Medium
<b>2</b>	Review of roles of Officers carrying out quasi-judicial functions	The role of the High Court Master and County Registrars should be reviewed in order to assess how they could support more effective case management and other procedures under the direction of the Court Presidents. In the shorter run, the relationships between the Courts and Court officers carrying out quasi-judicial functions should be reviewed including governance and arrangements on issues such as role, performance and supervision.	Courts Service and Department of Justice	Short
<b>3</b>	Review of pre-hearing process	Review and consider ways to streamline pre-hearing processes with a view to rebalancing tasks between judges and non-judicial officers. (e.g., to consider where, when and if a judge needs to be involved and what tasks could be administered by a registrar or someone with a similar function) at all Court levels.	Judiciary and Courts Service	Short

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
4	Development of comprehensive information technology systems	Building on the Courts Service Modernisation Programme, the development of modern and integrated IT solutions should remain a priority for the Courts Service. This should include an automated Case and Court Management Information System supported by consistent and transparent data case definitions, which should be developed on a joined up basis, as part of an overall IT development process for the Courts, to support, inter alia, the enhancement of a modern data management strategy. The development of this Information System should be undertaken on the basis of a people-centred approach to ensure a user-friendly design, and integrated across Court levels and alternative dispute resolution methods.	Courts Service	Medium-Long
5	Investment in Court and case management techniques	<p>There should be enhanced investment in modernising Court and case management techniques and tools to drive efficiency including:</p> <ul style="list-style-type: none"> <li><b>a)</b> The provision of an effective case management system to replace the current manual processes particularly in the area of case scheduling as well as more detailed data tracking of case processes and timelines, in collaboration with the Courts Service.</li> <li><b>b)</b> Putting a user-friendly system in place to allow for the electronic uploading of books of leadings, documents and authorities for the purposes both of interlocutory applications and substantive hearings. Such a system should in time minimise the need for extensive hard copy papers.</li> <li><b>c)</b> Supporting more effective case management through legislative amendments and streamlining procedures.</li> <li><b>d)</b> Leveraging the opportunities for transformation prompted by the Covid-19 pandemic such as the use of remote Court technology for dealing with routine applications.</li> <li><b>e)</b> Strengthening the use of IT tools generally to enhance efficiency, including testing document and content management software, as well as artificial intelligence tools to facilitate documentary search and analysis.</li> </ul>	Courts Service	Medium-Long

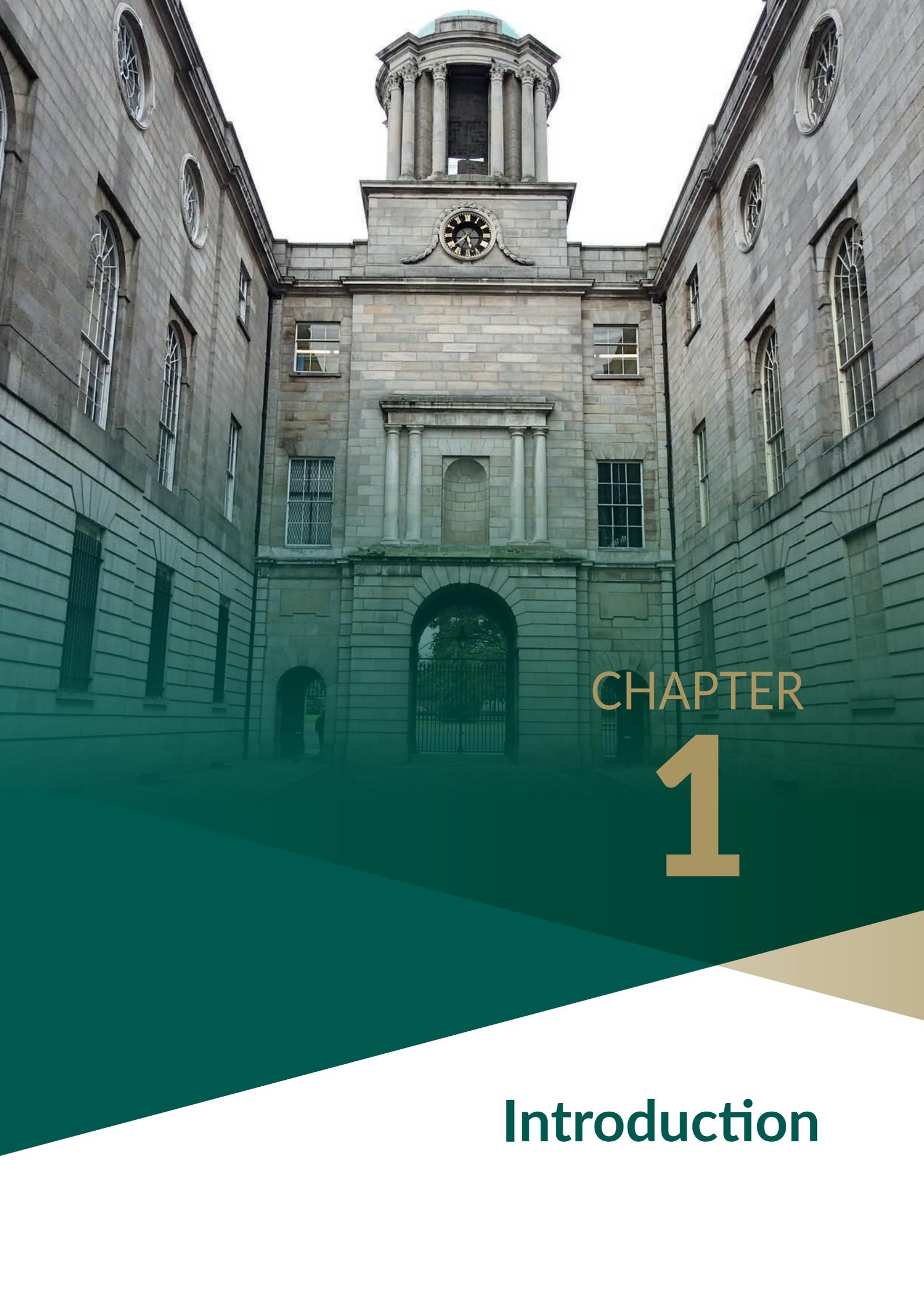
Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
6	Enhanced use of digitalisation in Courts including e documents	There is a need to enhance the use of digital measures in all Courts, such as for e-forms, as part of a wider policy to promote electronic case management including continuing efforts to develop and standardise the current guidelines for e-document submissions.	Courts Service	Medium
7	Automation of work processes: involvement of stakeholders	Arrangements should be made to ensure the sustained involvement of relevant stakeholders, including the judiciary, to provide guidance for the planned phased automation of work processes so as to secure a system that facilitates the tracking of individual cases effectively, and supports regular data-driven processes, staffing and user needs assessments in the long run.	Courts Service	Medium-Long
8	Remote and hybrid hearing	Continue to build on the options for remote and hybrid hearings. The impact of virtual hearings on judicial workloads should be monitored.	Courts Service	Short-Medium
9	Case management: Establishment of a Data Working Group	A Data Working Group, comprising members of the judiciary and Courts Service staff, should be established to identify the key data points to assess the state of Court lists and to feed into metrics on case management - with the ultimate aim of supporting judicial assignment decisions as well as providing up to date information on the status of court lists and public data on the operation of the courts. These metrics and data points will inform the prescription of the new case management system being developed by the Courts Service. To develop policy and to drive change in this area, consideration could also be given to reporting into the Courts Service Board.	Courts Service with the input of the Judiciary	Short-Medium
10	Review and development of case management techniques including pilots	Efforts should continue to review and develop case management solutions for different case types, ensuring that judges have access to relevant and timely information by case-type. Consider in each Court, the development of differentiated case management pilots, possibly starting with personal injury cases. Consider the creation of a lead-case management judge position to focus on court performance.	Courts Service, Judiciary	Short-Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
11	Setting of goals for court and case management	Goals for overall court and case management should be set at each Court level, as well as developing advanced case management options in collaboration relevant stakeholders. In collaboration with the Director of Judicial Studies, ensure advanced case management training for judges and any case management teams is provided.	Court Presidents with the support of the Judicial Council	Medium-Long
12	Pilot testing of case management techniques	Consider pilot testing specific case management techniques led by case management teams - possibly judge led following a review of priority areas and implementation requirements, including adjustments to staffing and training. Disseminate best international case management resources to Court staff, having regard to the Courts Service Modernisation Programme.	Courts Service	Short
13	Creation of judge-led case management teams	To support the growing focus on data-driven and more differentiated case processing (for simple and more complex cases), consider the creation of <ul style="list-style-type: none"> <li><b>(a)</b> case management teams, supported by a dedicated case management judge or senior legal staff, and</li> <li><b>(b)</b> an initial case management team possibly led by a dedicated judge, to ensure proper judicial guidance, especially as case management advances.</li> </ul>	Courts Service	Medium
14	Enhanced utilisation of ADR mechanisms	Recognising the right of persons to have recourse to the Courts, it is recommended that every opportunity be taken to utilise ADR mechanisms such as mediation, arbitration and conciliation in appropriate circumstances and on a voluntary basis, to resolve disputes in areas in which they are under-utilised which should alleviate the burden on judicial time.	Judiciary	Medium
15	Utilisation of non-litigation routes: support and training	To ensure that litigants are offered early opportunities to choose a non-litigation route, consideration should be given to putting in place the necessary support (e.g., training, time and standing to be accepted by both parties) for those responsible for facilitating this decision (e.g., County Registrars, Court registrars and judges)	Courts Service, Courts Officers and Judiciary.	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
16	Further supporting lay litigants: enhanced information availability	Continue to increase the availability and accessibility of information for lay litigants and the public generally across all Court jurisdictions, especially regarding assistance in deciding to seek an appeal. Building on existing structures and by engaging through the Service Access to Justice Civil Reform User Group, consideration should be given to providing more effective support for lay litigants.	Courts Service	Medium
17	Further supporting lay litigants: enhanced information availability	As part of its modernisation programme, and building on the recommendations of the Kelly Review Group on the administration of Civil Justice, the Courts Service should continue to provide more and better information and support for unrepresented litigants across all court jurisdictions and case types.	Courts Service	Medium
18	Adjournments and data tracking	Improved data tracking processes should be put in place to monitor adjournments with a view to informing case management decisions.	Courts Service	Medium
19	Backlog Management Strategy	The Courts Service should develop a backlog management and reduction strategy involving back-up judges and/or consider the creation of backlog teams, including legal and Courts Service staff, as resources permit. This would involve, for example, (i) compiling backlog cases, (ii) developing solid case management plans with the parties to resolve these cases, (iii) reviewing the operations of the High Court in provincial locations in order to identify enhancements in case scheduling, notifications and other issues, and (iv) exploring opportunities for the increased use of written procedures and online tools to process interlocutory events and more options for virtual hearings as resources permit.	Courts Service	Long
20	Backlog definition	A definition of backlog for each case type and Court level should be developed by the Courts Service, with the collaboration and input of the judiciary. This definition should enable the Courts Service to measure and report on backlogs.	Courts Service with the input of the Judiciary	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
<b>Chapter 7 Judicial Skills and Training</b>				
<b>1</b>	Expansion of professional development/ training for judges and resource planning	Training for judges should be expanded and, where possible, undertaken without impacting on Court sitting time. Training should be factored into judicial resourcing decisions. The Working Group recommends that in developing a model for assessing judicial resource needs adequate allowance should be included to facilitate judicial training needs.	Judicial Council	Medium
<b>2</b>	Time for attendance at training programmes	The importance of judges being given adequate time to attend training courses including, where necessary, during term time is highlighted. In this regard, the requirements in relation to judicial training should form part of the annual judicial planning process - and should be scheduled for individual judges for the year ahead where possible.	Court Presidents	Long
<b>3</b>	Comprehensive approach to training and Training Need Analysis	Building on current efforts consideration should be given as to how best to develop a systematic and comprehensive approach to training and development for judges. A full Training Needs Analysis should be undertaken by the Judicial Council to support planning for judicial training in to the future. This could, inter alia, define priority-training needs, reflect on the needed skills and competencies for judges and how training can become a lever for increased efficiency and effectiveness of the judicial system as a whole.	Judicial Council	Medium

Chapter and Recommendation number	Title	Detail	Body responsible	Time Frame
4	Scope of judicial training programmes in context of Report's other recommendations	<p>Recognising the overall responsibility of the Judicial Council for the provision of training to the judiciary, judicial training and skills development should be comprehensive and comprise both legal and non-legal aspects. In particular, judicial training should be provided in those areas which support the Working Group's recommendations including having a module on business efficiency. Training in the following areas, to support the recommendations in this Report, is particularly important:</p> <ul style="list-style-type: none"> <li><b>i.</b> The use of information and digital technology.</li> <li><b>ii.</b> Advanced case management techniques including in the area of case progression. This training should also be provided for any case management teams.</li> <li><b>iii.</b> Management including people management skills.</li> <li><b>iv.</b> Judicial leadership training: both to Court Presidents and across all Court levels - to support all judges in enhancing their roles as leaders and, in particular, those who may be aiming for higher positions on the bench and involved in case management functions such as list management, judicial trainers and those serving on various committees under the Judicial Council Act 2019.</li> <li><b>v.</b> Dealing with lay litigants.</li> <li><b>vi.</b> Specialism in areas such as family law, childcare and complex litigation for example white-collar crime and environmental law.</li> <li><b>vii.</b> Training provided to judges to enable deep engagement with the Courts Service Modernisation Programme.</li> </ul>	Judicial Council	Short-medium
5	Other training	<p>Relevant training should also be provided for officers carrying out quasi-judicial functions, judicial support staff and Courts staff. Consideration should be given to whether certain elements of training in some areas, particularly those linked to case management, might usefully be undertaken in conjunction with judge training in these elements.</p>	Courts Service	Short



CHAPTER  
**1**

**Introduction**

## 1.1 Introduction

This Judicial Planning Working Group<sup>2</sup> was established by the Minister for Justice in April 2021, in the context of a Programme for Government commitment “to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years”. The Working Group had an independent chair, Ms Brigid Mc Manus, former Secretary General of the Department of Education and comprised representatives from the Departments of Justice; Public Expenditure and Reform; An Taoiseach; the Courts Service; and Office of the Attorney General. Two members of the judiciary sat as judicial observers on the Working Group from October 2021. The Terms of Reference of the Working Group and details of its membership (including Judicial Observers) and the Secretariat are at **Annexes 1** and **2** respectively.

The Working Group was requested to report to the Minister within 12 months of its establishment. This deadline was extended with the agreement of the Minister for Justice pending receipt of the final Report of the Organisation for Economic Cooperation and Development (OECD) titled “*Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*”. The OECD was commissioned by the Department of Justice to, inter alia, provide evidence-based research to inform the work of the Working Group.

In this Report, the Working Group specifically looks at, and makes recommendations in respect of, the Court of Appeal, the High Court, the Circuit Court and the District Court. No detailed analysis of the Supreme Court is included in the Report. The Supreme Court had indicated that, unlike the other Courts, it was not inviting the Working Group to recommend additional numbers of judges at this stage.

It should be noted that Working Group members, in making recommendations in this Report, recognise that the resource recommendations are in the first instance an assessment for the Minister for Justice of the resources needed if backlogs are to be addressed and services improved which must then be raised with the Minister for Public Expenditure and Reform in the

context of the annual estimates discussions. Members of the Working Group are not committing their Minister or Department to providing particular resources, recognising that resource allocation decisions must be taken by Ministers and the Government annually and multi-annually, in the context of many competing public service objectives and requirements.

## 1.2 Work approach and matters taken into account by the Working Group

The Working Group met on 27 occasions in plenary session since its establishment. 10 of these meetings were in person. 17 meetings of the Working Group were held virtually primarily due to Covid restrictions but also on other occasions to facilitate attendance.

The work of the Working Group included a formal consultation process and a series of meetings with various persons/bodies including representatives of the Judiciary, the Courts Service and the OECD. A full list of written submissions received is at **Annex 3**. Details of organisations who met with the Working Group (or Group representatives) are at **Annex 4**.

All written submissions are published separately in parallel with the Report of the Working Group at <http://www.gov.ie/justice/>

## 1.3 The OECD Report

The OECD was commissioned by the Department of Justice, alongside the establishment of the Working Group, to undertake independent research with the aim of providing an evidence base to inform the work of the Working Group. The OECD Report titled “*Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*”, is based on a weighted workload model and its methodology is described in the Foreword and in Chapter 2.6 and Annex A of the OECD Report.

The OECD Report is aimed at, inter alia, ensuring that the structure of Ireland’s judiciary is appropriate in terms of its size and composition so that access to justice is provided in a timely manner and its administration is organised in a way that optimises its

<sup>2</sup> In this Report, “the Judicial Planning Working Group” is generally referred to as the “Working Group”.

efficiency and effectiveness having due regard to the requirements of the fair administration of justice.

The OECD's analysis also integrates examples of international good practice from a number of common and civil law jurisdictions. The judicial workload study it conducted in Ireland and its methodology, followed approaches used in other countries for determining judicial numbers and was adapted to the current situation of the Irish judicial process and Courts system.

The OECD experienced significant challenges arising from the limited availability of certain national Courts data when conducting its research. This restricted their methodological approach and ability to make findings in some areas. The OECD highlights the fact that Courts related data is not currently collected for the purpose of case and Court management, which *"limits the capacity of the Department of Justice and the judiciary to access the data needed to manage resource allocation effectively and assess case trends and their impact on judicial operations"*. The Working Group also faced data availability challenges in compiling its Report. Both the OECD Report and this Report, highlight options to scale up the collection and management of data to support management decisions.

The OECD is publishing its Report in parallel with the Report of the Judicial Planning Working Group. The OECD Report made a key contribution to the work of the Working Group including in assessing the challenges being faced by both the judiciary and the Courts Service at the present time in supporting the administration of justice in a fair, effective and efficient manner. Its work in highlighting international best practice was also of particular assistance to the Working Group in allowing us to take on board approaches to key issues in other countries whose systems are facing similar challenges at this time.

The key analysis, findings and recommendations of the OECD cover a wide range of areas including the Report's chapters on (i) Calculating judicial needs; (ii) Modernising Irish Courts: key opportunities and challenges; (iii) Judicial governance and modern human resource management for judges and the courts and (iv) Towards more effective court, case

and data management. It should be noted that while the Working Group refers to some specific parts of the OECD Report in this Report, it is the view of the Working Group that the totality of the OECD Report provides a useful framework for consideration in relation to the reform of the judicial process and the Courts system.

## **1.4 Submission from the Chief Justice and the Presidents of the other Courts**

In addition to the work commissioned by the Department of Justice from the OECD, in its deliberations and in framing its recommendations, the Working Group has taken account of a comprehensive submission received from the Chief Justice and the Presidents of the Court of Appeal, High Court, Circuit Court and the District Court in September 2021 as well as other submissions received as detailed at **Annex 3**. The submission from the Court Presidents highlights, inter alia, the many key challenges facing the judicial process and the Courts system due to the shortage of judges in each jurisdiction. This submission also sets out the number of additional judges, which in the view of the Court Presidents, are needed to perform the functions of the Courts in an efficient, effective and timely manner. The Court Presidents submissions are considered in more detail in [Chapter 3.5](#).

The Working Group has also considered a wide variety of other material including the requirements of relevant legislation such as the Judicial Appointments Commission Bill 2022, the Courts Service Modernisation Programme, the Report of the Review of the Administration of Civil Justice (the Kelly Report - October 2020) and its suggestions for justice efficiencies and reform measures. This is in addition to factors, such as projected increases in population in the State from the *Central Statistics Office (CSO)*, the increase in caseload complexity, the extent of current backlogs in all Court jurisdictions and the need for corresponding Courts Service expansion.

## **1.5 Challenges in the judicial and Courts processes and some implications for the Working Group's work**

The Working Group was established during a period

of ongoing and significant challenge for the judicial process and the Courts system as a whole particularly in the context of the Covid-19 pandemic.

Substantial challenges facing the judicial process and the Courts system at the present time, and which provide the context for the Working Group's work, are highlighted throughout this Report. Challenges include a growing backlog of cases giving rise to substantial delays in processing cases with very negative impacts on those affected. There is a requirement under both domestic and international law for legal proceedings to be conducted in a reasonable timescale. Domestic and EU legislative change are among the factors driving new case types before the Courts and greater complexity of caseloads. At a time of population increase, while there has been a significant increase in the number of judges in the superior Courts, there has been no increase in judge numbers in the Circuit and District Courts since 2007 and 2008 respectively. The number of judges per capita in Ireland is low by international standards.

At the same time, there is a significant underdevelopment in information technology, in the use of case management techniques and tools, and in modern data collection and management systems, all of which would contribute to a more effective system for Court users. While much of this is being addressed in the current Courts Service Modernisation Programme, this will take time to deliver. In the short-term, there is a lack of data and agreed performance indicators to assess the deployment and use of judicial resources and to provide as evidence to assess the case for additional resources.

The ongoing reform initiatives in relation to the administration of justice being overseen by both the Department of Justice and the Courts Service at the present time, with input as appropriate by the judiciary, are acknowledged. These include the implementation of the Report of the Review of the Administration of Civil Justice "the Kelly Report" (October 2020), Family Justice Reforms and the Courts Service Modernisation Programme (2020-2030). There are also ongoing reforms in the criminal justice area. The Courts Service Modernisation Programme, which is considered

further in Chapter 2.5, aims, inter alia, to bring new digital technology and modern ways of working to the administration of justice, making access to justice easier and quicker to navigate and better able to respond to the needs of Court users. Managing and integrating the significant and necessary modernisation and change programmes collaboratively across the Courts Service and the judiciary, while continuing to deliver operationally, will add to the challenges outlined above.

It is also recognised that many of the challenges identified in this Report are not unique to the Irish judicial and Courts system. Similar challenges are being faced by judicial and Courts processes in other common and civil law jurisdictions. With the support of the analysis undertaken by the OECD, international best practice, particularly in other common law jurisdictions, is drawn upon to support our analysis and recommendations.

## 1.6 Structure of Report

The Report of the Working Group is structured as follows:

- ▶ *Chapter 1* contains an introduction to the Report.
- ▶ *Chapter 2* provides some key data on, inter alia, judicial and staff numbers, caseloads including waiting times for hearings and budgets.
- ▶ *Chapter 3* considers the issue of judicial numbers including judicial resource planning and management to ensure the fair and efficient administration of justice.
- ▶ *Chapter 4* looks at the effective use and management of judicial resources including the organisation and management of the Courts and the development of a modern judicial human resource management framework.
- ▶ *Chapter 5* discusses the challenges posed in the judicial process and Courts system by data collection, management and dissemination and highlights the systems improvements needed in these areas.
- ▶ *Chapter 6* examines matters associated with the improvement of services to Court users. In particular, the issues of efficiencies in case management (including the role of judicial and

non-judicial office holders), working practices and procedures are addressed as well as some other reform initiatives aimed at enhanced efficiency of service delivery compatible with the fair administration of justice.

- ▶ *Chapter 7* considers the issues of judicial skills and training particularly in the context of those areas which will be required to support the recommendations in this Report.
- ▶ *Chapter 8* outlines the costs involved in implementing the recommendations of the Working Group.
- ▶ *Chapter 9* contains concluding comments.

## **1.7 Acknowledgements**

The Working Group would like to thank all those who met with and/or made submissions or other inputs to the Group, which greatly assisted its work. The Working Group appreciated the opportunity to meet with members of the OECD research team led by Dr. Tatyana Teplova and for the insights which they provided on their work.

The Group acknowledges that information provision for the OECD research and analysis, and for this Report, involved very considerable work and effort by individual members of the judiciary and Courts Service staff particularly given the lack of the kind of key management and other data needed for this work. The Working Group greatly appreciates the work undertaken to support both the OECD's work and the work of this Group.

The Working Group thanks the Secretariat for its contribution to the work of the Group - Dr. David Costello who supported the preparation of the Report, Ms. Roisin Friel, Ms. Nicola Kelly, and Mr. James Boyle who acted as Secretary to the Group over the period of our work, and Mr. Gerry McDonagh, Ms. Orla Mullen and Mr. Colm Mahady of the Civil Justice Governance team in the Department of Justice who assisted us.



CHAPTER

2

Cóirteanna Breithiúnais Coiriúla  
The Criminal Courts of Justice

# The Judiciary and the Courts System

## 2.1 Introduction

This chapter outlines the key features and organisation of the judicial process and courts system and sets out some data in relation to Court operations.

## 2.2 The Courts System and the Judiciary

The origins of the Irish courts can be traced back to pre-independence and British legislation. With the foundation of the Irish State in 1922 and the coming into force of the Constitution of the Irish Free State on 6 December 1922 (the Constitution of the Irish Free State (Saorstát Éireann) Act, 1922), the legislature passed the Courts of Justice Act, 1924. Since independence, Ireland has remained a common law jurisdiction, which respects the rule of law with the presumption of innocence, right to liberty and a fair trial guaranteed by its Constitution (1922 and 1937).

The 1937 Constitution, *Bunreacht na hÉireann* which celebrates its eighty-fifth anniversary in 2022, provides for the separation of powers and the importance of the Courts' supervisory role in the preservation of citizen's personal rights. The jurisdictional arrangements established by the 1924 Act were substantially replicated on the reconstituting of the Courts by the Courts (Establishment and Constitution) Act 1961.

### Supports for the administration of justice

The management and administration of the Courts in Ireland remained essentially unchanged from the Courts of Justice Act of 1924, until the establishment of the Courts Service under the Courts Service Act, 1998, pursuant to recommendations of the Working Group on a Courts Commission, chaired by the Hon. Ms. Justice Denham, then a judge of the Supreme Court.<sup>3</sup> Section 5 of the 1998 Act prescribes the functions of the Courts Service to be as follows:

- (a) manage the courts,
- (b) provide support services for the judiciary,
- (c) provide information on the courts system to the public,
- (d) provide, manage and maintain Court buildings, and

- (e) provide facilities for users of the Courts.

The Judicial Council was established on 17 December 2019, pursuant to the Judicial Council Act 2019. Section 7 of that Act provides that the functions of the Council are to promote and maintain:

- (a) excellence in the exercise by judges of their judicial functions,
- (b) high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the Courts,
- (c) the effective and efficient use of resources made available to judges for the purposes of the exercise of their functions,
- (d) continuing education of judges,
- (e) respect for the independence of the judiciary, and public confidence in the judiciary and the administration of justice.

### Framework of current Irish Courts System

There are five distinct Court jurisdictions in the State. An overview of the Courts in Ireland is presented in **Figure 1A**. The High Court, Court of Appeal and Supreme Courts are collectively known as the Superior Courts.

In summary, the *Court of Appeal* deals with appeals from the High Court in civil cases and criminal appeals from the Circuit Court, Central Criminal Court and the Special Criminal Court.

The *High Court* can determine all matters and questions, whether of law or fact, civil or criminal. The Court can also deal with actions from all parts of the country and there is no general limit or restriction on how much money the Court may award in compensation or damages. The *Central Criminal Court* is the criminal division of the High Court. The *Special Criminal Court* deals with the trial of offences where it

<sup>3</sup> See Fitzpatrick, P.J., 2008. "Management of the Courts: The Irish Experience". - *IJCA* (Vol. 1: 56).

Figure 1A



is determined that the ordinary courts are inadequate to secure the effective administration of justice. This includes organised crime and terrorist offences. The *Circuit and District Courts* have limited civil jurisdiction based on statute. In family law cases, the Circuit Court has concurrent jurisdiction with the High Court.

### The Role of judges

The role of judges<sup>4</sup> has been described as

- (i) trying those accused of breaking the law (criminal law),
- (ii) resolving disputes between individuals and institutions including companies (private and family law), and
- (iii) ensuring that the state and all public bodies act lawfully and protecting citizens from the misuse of power (public law).

The late Mr. Justice Thomas Finlay, former Chief Justice, described “*three basic and fundamental functions of a judge*” as follows:

1. To do justice between the parties in deciding the issues brought before the court, be they civil or criminal.
2. To try and ensure that not only is justice done between the parties, but that also to reasonable and unbiased observers appears to be done.
3. In deciding what is the just order to be made, to have regard to both the immediate and long-term consequences of it on the parties. In the context of criminal cases, I include as a party the public.”<sup>5</sup>

The areas of law, in respect of (i) to (iii) above, have grown substantially in complexity in recent years. This is referred to in the submission to the Working Group in September 2021 from the Chief Justice and Court Presidents.

### Appointment of additional judges

As will be discussed further in *Chapter 3.17*, the Working Group noted that the process by which additional judges are agreed for the Courts is in need of overhaul. In addition, there is a general lack of data, which could provide the basis for the introduction of a more scientific modelling framework, to determine if there is an appropriate number of judges appointed to facilitate access to justice, in a prompt fashion. The present process is that the Presidents of the relevant Courts write to the Minister for Justice and/or the Attorney General seeking additional judicial resources to be assigned to their jurisdictions. This process (until the analysis and recommendation on the relevant request by the Department of Justice is included) does not normally include any information on the related public service staff or other costs involved.

## 2.3 The Courts: Some Key Statistics

By way of background, the following tables provide some key judicial/Court statistics and will be drawn upon, as required, to support the analysis in this Report. As pointed out in Chapter 1.3, the Working Group faced a particular challenge in sourcing key business data for the Courts and judiciary to assist in drafting this Report. The data available differs across the different Court jurisdictions, and the definitions used for civil and criminal business purposes, also differ.

### 2.3.1 Number of judges

**Table 2A** provides details on the number of judges serving in the State by Court jurisdiction and their evolution for the years 2012 to 2021.

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<sup>4</sup> See *The Power of Judges*; David Neuberger (President of the Supreme Court of the United Kingdom from 2012 to 2017) Editor: Claire Foster-Gilbert, 2019 by Haus Publishing pages 8-9.

<sup>5</sup> “Viewpoint: The Role of the Judge”, Tom Finlay, *Judicial Studies Institute Journal* (2005) <https://www.ijjs.ie/assets/uploads/documents/pdfs/2005-Edition-01/viewpoint/the-role-of-the-judge.pdf>

**Table 2A:** Number of ordinary judges 2012 - 2021

Year/ Court	District Court	Circuit Court	High Court	Court of Appeal	Supreme Court	Ordinary Judges Total	Court Presidents
2012	63	37	31	-	7	138	4
2013	63	37	31	-	9	140	4
2014	63	37	31	9	9	149	5
2015	63	37	37	9	9	155	5
2016	63	37	37	9	9	155	5
2017	63	37	37	9	9	155	5
2018	63	37	37	9	9	155	5
2019	63	37	37	15	9	161	5
2020	63	37	37	15	9	161	5
2021	63	37	42	15	9	166	5

Numbers above do not include additional judges made available under other legislation, where a serving Superior Court judge is assigned to work at external agencies such as GSOC or LRC. Numbers do not include specialist judges of the Circuit Court.

### 2.3.2 Number of Courts Service staff

**Table 2B** provides statistics on the number of Courts Service staff and their evolution for the years 2015 to 2021.

**Table 2B** Number of Courts Service Staff (2015 to 2021)

Year	Total number
2015	943
2016	976
2017	1,072
2018	1,097
2019	1,121
2020	1,142
2021	1,144

### 2.3.3 Courts Service budget/expenditure (including for the judicial process)

**Table 2C** outlines the evolution of the total annual pay, non-pay and capital budgets for the Courts Service and related expenditure for the years 2012 to 2021.

**Table 2C** Courts Service Budget/Expenditure (2012 to 2021)

Year	Budget €	Expenditure €
2012	€108m	€108m
2013	€105m	€105m
2014	€107m	€105m
2015	€108m	€107m
2016	€113m	€112m
2017	€140m	€133m
2018	€138m	€135m
2019	€141m	€139m
2020	€161m	€155m
2021	€159m	€154m

**Table 2D** outlines the evolution of the annual Central Fund Allocation in respect of the judiciary for the years 2012 to 2021.

**Table 2D** Central Fund Allocation in respect of the judiciary (2012 to 2021)

Year	Allocation
2012	€23.7m
2013	€23.3m
2014	€23.5m
2015	€24.8m
2016	€24.6m
2017	€26.0m
2018	€26.8m
2019	€28.0m
2020	€29.9m
2021	€30.8m

### 2.3.4 Increasing Court caseloads: some general comments

The Annual Reports of the Courts Service have tracked the amount of incoming business to all court offices for both civil cases and criminal offences across Court levels, (see **Tables 2E and 2F** below).

The purpose of **Table 2E** is to demonstrate the total amount of business coming into court offices that transact civil work, which includes not only matters where cases were commenced but also in the case of the High Court, other types of business such as applications for deed poll, for wardship as well as for judgement to be marked in the office. There was a trend of increasing civil business prior to the Covid-19 pandemic, but since then, civil business has declined. The reasons for this trend have yet to be determined but significant factors include the overall economic situation, impact of Covid-19 restrictions and the personal injury guidelines published by the Judicial Council. In contrast, the demands on the Criminal Courts have shown an increase as criminal business continued to trend upwards in most Courts (**Table 2F**).

The number of cases before the Criminal Courts are generally a function of what is happening in wider society as well as activity by An Garda Síochána. The Covid-19 pandemic during 2020 and 2021 exacerbated waiting times in the Criminal Courts, especially those Courts where jury trials were necessary. While these lists have been prioritised since the pandemic restrictions were lifted, there are significant delays in listing matters for trial, which is in turn reducing the numbers of early guilty pleas before those Courts.

**Table 2E:** Incoming Court Civil business trends 2016 - 2021

Civil Business Overview (number of cases)						
		District Court	Circuit Court	High Court	Court of Appeal	Supreme Court
2016	Incoming	133,724	53,287	43,132	594	212
	Resolved	105,177	37,723	35,964	591	368
2017	Incoming	133,823	53,795	39,659	611	234
	Resolved	121,075	36,612	27,398	470	275
2018	Incoming	137,493	49,253	39,219	499	308
	Resolved	106,698	39,606	30,982	475	285
2019	Incoming	144,485	50,723	36,701	539	364
	Resolved	111,158	35,590	28,117	491	392
2020	Incoming	93,719	38,535	29,811	277	182
	Resolved	67,784	17,121	12,784	476	223
2021	Incoming	91,577	30,938	17,121	317	195
	Resolved	69,193	24,125	12,401	431	222

**Table 2F:** Incoming Court Criminal business trends 2016 - 2021

Criminal Business Overview (number of offences)							
		District Court	Circuit Court	Special Criminal Court	Central Criminal Court (High Court)	Court of Appeal	Supreme Court
2016	Incoming	382,325	28,387	60	1,946	1,099	-
	Resolved	284,678	25,344	67	734	1,109	-
2017	Incoming	391,207	32,787	54	1,761	1,281	-
	Resolved	290,567	47,716	50	2,098	1,078	-
2018	Incoming	391,296	33,096	51	1,202	1,266	8
	Resolved	296,971	60,556	74	1,941	1,472	17
2019	Incoming	406,480	34,616	70	1,982	1,440	10
	Resolved	301,506	68,069	90	1,125	1,003	12
2020	Incoming	382,455	29,074	136	2,911	1,405	11
	Resolved	194,796	27,788	31	1,433	1,719	9
2021	Incoming	353,495	32,565	145	3,602	1,391	35
	Resolved	264,481	31,674	177	1,317	1,222	46

### 2.3.5 The Supreme Court

#### Supreme Court: Incoming Business Trends

The data in **Table 2G** gives an overview of the work done in the Supreme Court.

**Table 2G:** Incoming Supreme Court Business Trends 2016 - 2021

Incoming Supreme Court Business		
Year	Civil Business (Cases)	Criminal Business (Offences)
2016	212	-
2017	234	-
2018	308	8
2019	364	10
2020	182	11
2021	195	35

The number of new appeals lodged in the Supreme Court have continued in Q3 2022 to be consistent with 2020 and 2021. Despite the return to normal sittings in both the Court of Appeal and the High Court, the number of new appeals lodged by the end of Q3 2022 in the Supreme Court was 108, 72% and 76% of the figures for 2021 and 2020 respectively but only 48% of the 180 lodged in the Court in 2019. Average waiting times for leave to appeal being determined are at 5 weeks at the end of Q3, the same as at the end of the previous quarter. Furthermore, the time from leave to appeal being granted to being listed for hearing has been maintained at 15 weeks, down from 21 weeks at the end of 2020.

### 2.3.6 The Court of Appeal

#### Court of Appeal: Incoming Business Trends

The Court of Appeal caseload trends for the years between 2016 to 2021 are shown in **Table 2H**.

**Table 2H – Incoming Court of Appeal Business Trends 2016 to 2021**

Incoming Supreme Court Business		
Year	Civil Business	Criminal Business
2016	594	333
2017	611	282
2018	499	323
2019	539	282
2020	277	260
2021	317	248

There are a high number of cases pending in the Court of Appeal. This is influenced by the impact on hearings at the height of the Covid-19 pandemic even allowing for the substantial work undertaken at that time by the Court, with the support of the Courts Service, to progress cases on the basis of remote hearings. Although the Court of Appeal was able to reduce the number of pending cases, as well as processing times in 2020, cases pending remained high compared to incoming cases. At the end of September 2022, there were 408 civil appeals and 371 criminal appeals on hand in the Court of Appeal.

**Waiting Times in the Court of Appeal**

The average waiting time for a hearing of an appeal from its appearance in a list to fix dates at the end of September 2022 is currently 24 weeks in a criminal appeal and 25 weeks in a civil appeal.

**2.3.7 The High Court**

**High Court: Incoming Business Trends**

The complexity and range of work that the High Court carries out, has increased significantly in recent years. The enactment of new statutes can generate substantial amounts of new business as well as new legal issues that need to be clarified or resolved by way of determination of the Court. Furthermore, the significant increase in the case law now available to the parties to litigation, from both domestic and international sources including arising from the State’s membership of the European Union, has made litigation much more complicated, labour intensive and time consuming. Added to this are such matters as the regular deployment of complex expert evidence, such

as might be introduced in intellectual property disputes or cases involving commercial fraud. All of this work gives rise to an evolving caseload and has increased pressure on the High Court.

High Court business proceedings which were commenced during the years 2016 to 2021 are shown in **Table 2J**. This figure is lower than the total amount of business as expressed in Table 2E.

**Table 2J – Incoming High Court Business Trends 2016 to 2021**

Incoming Supreme Court Business			
Year	Civil Business (Cases)	Criminal Business (Offences) Central Criminal Court	Criminal Business (Offences) Special Criminal Court
2016	19,723	1,946	60
2017	20,439	1,761	54
2018	19,222	1,202	51
2019	17,015	1,982	70
2020	14,492	2,911	136
2021	12,784	3,602	145

**High Court: Waiting times by List**

The work of the High Court is wide ranging and complex in the context of both its civil and criminal law jurisdiction. The Courts Service reports on this work in its Annual Reports. While the pattern across the various lists varies, there is a general increase in waiting times in a number of lists. Details of current waiting times for the main type of cases in the High Court (non-criminal matters), are at **Annex 5**.

**High Court: Waiting Times in the Special and Central Criminal Court**

At the time of drafting this Report, the Criminal Courts in the State are operating normally again following the lifting of all Covid-19 restrictions in trial venues. There has been a reduction in waiting times for the Central and Special Criminal Courts since January 2022. Even so, the Central Criminal Court’s waiting times remain considerably longer now than before Covid-19.

### Central Criminal Court

- ▶ Cases involving child witnesses or vulnerable witnesses are given priority and will be given a hearing date 6 months from the date the case enters the list.
- ▶ The next level of priority are cases involving accused persons in custody. Those cases will usually receive a hearing date within 12 months of the case entering the list. However, it is not always possible to do so.
- ▶ In all other cases, the current waiting time runs from 17 months to 2 years.

Not every case will get a hearing the first time it is listed. On occasion, all judges will already be involved in hearings on the date scheduled for hearing, in which event, the case will have to be adjourned to the next list to fix dates when a new trial date is fixed often many months later. It is estimated that between 30% to 50% of cases fall into this category.

### Special Criminal Court

The waiting time is 11 months compared with a pre-Covid waiting time of 12 months (as at end September 2022).

The expansion of technology in the courtroom network has also enabled more courtrooms to support remote Courts. Video-link technology has also enabled increased levels of remand hearings to be dealt with from prisons without the need to bring prisoners to courtrooms. There is also the continuation of the practice whereby the Central Criminal Court sits outside of Dublin with hearings held recently in Cork, Castlebar, Kilkenny, Sligo, Tullamore and Waterford. This will now be a permanent feature of the Central Criminal Court's calendar helping to bring justice closer to the community where offences are committed. Five new judges were appointed to the High Court in September 2021 and this allowed the President of the High Court to assign two additional Judges to the Central Criminal Court. Up to ten Central Criminal Courts may now be sitting at any one time but in 2022, this has been the exception, rather than the rule. The Central Criminal Court also ran 6 separate Courts during the long vacation in September 2021 adding a total of 18 weeks of additional sittings in 2021.

### 2.3.8 The Circuit Court

#### Circuit Court: Incoming Business Trends

The Circuit Court caseload trends for the period 2016 to 2021 are shown in **Table 2K**.

**Table 2K:** *Circuit Court Incoming Business Trends 2016 - 2021*

Circuit Court Incoming Business		
Year	Civil Business (Cases)	Criminal Business (Offences)
2016	53,287	28,387
2017	53,795	32,787
2018	49,253	33,096
2019	50,723	34,616
2020	38,535	29,074
2021	30,938	32,565

#### Circuit Court: Waiting Times

The pandemic caused particular challenges for the conduct of criminal trials in the State. With restrictions on movements and public health advice recommending that the public avoid crowds, the arrangement of jury trials became particularly challenging, especially given the courthouse infrastructure, which was not designed to run trials remotely. However, by the end of 2021, the judiciary and Courts Service managed to double the number of courtrooms capable of hosting jury trials to 16 by modifying courtrooms, installing video link equipment to link multiple courtrooms and, when required, hiring additional outside venues for overflow of attendees. This also enabled the holding of multi-defendant hearings with all the increased number of attendees this entailed accommodating.

Courts were unable to operate normally during the most severe periods of Covid-19 lockdown and Court sittings were cancelled in order to comply with public health guidelines. Circuit and District Courts responded quickly to the easing of restrictions and returned to near normal levels of operation once public health guidelines were eased. Additional Circuit Courts sat during September 2021, delivering a further 12 sittings.

Despite the close cooperation of judges, staff from justice public bodies and the commitment of the public, arrears have built up in the conduct of criminal business. In the Dublin Circuit Criminal Court, the arrears are as follows:

- i. Persons on Bail awaiting trial – 27 months vs 12/15 months pre-Covid waiting time (as at end September 2022)

- ii. Persons in custody awaiting trial or where the case is a priority - 6 months, broadly similar (as at end September 2022)

The overall picture nationwide for the Circuit Court (crime) has changed very little over the course of 2022 with a small increase in the overall length of waiting times being registered (see *Table 2L*).

**Table 2L:** Circuit Court next available Court dates: Crime (Quarter 3 (2022) Vs Quarter 2 (2022))

Qrt 3 (2022)	Crime		
Next Court Hearing Dates (Months)	Trials No. of Offices	Sentences No. of Offices	Appeals No. of Offices
Next Scheduled Sitting	0	5	5
Between 3 and 9 Months	3	15	15
Between 10 and 18 Months	8	5	4
Between 19 and 24 Months	6	1	1
More than 24 Months	9	0	1
Qrt 2 (2022)	Crime		
Next Court Hearing Dates (Months)	Trials No. of Offices	Sentences No. of Offices	Appeals No. of Offices
Next Scheduled Sitting	0	5	5
Between 3 and 9 Months	3	15	25
Between 10 and 18 Months	7	5	4
Between 19 and 24 Months	9	1	1
More than 24 Months	7	0	0

**Table 2M:** highlights the situation concerning Court data for civil and family law in the Circuit Court (Quarter 3 (2022) Vs Quarter 2 (2022)).

**Table 2M:** Circuit Court next available Court date: Civil and Family Law (Quarter 3 (2022) Vs Quarter 2 (2022))

Qrt 3 (2022)	Crime		Family Law		
Next Court Hearing Dates (Months)	Trials No. of Offices	Appeals No. of Offices	Contested No. of Offices	Non- Contested No. of Offices	Appeals No. of Offices
Next Scheduled Sitting	0	2	0	11	4
Between 3 and 9 Months	8	16	13	14	19
Between 10 and 18 Months	14	7	10	1	3
More than 18 Months	4	1	3	0	0
Qrt 2 (2022)	Crime		Family Law		
Next Court Hearing Dates (Months)	Trials No. of Offices	Sentences No. of Offices	Appeals No. of Offices	Non- Contested No. of Offices	Appeals No. of Offices
Next Scheduled Sitting	0	2	0	11	5
Between 3 and 9 Months	11	16	13	14	17
Between 10 and 18 Months	12	7	11	1	4
More than 18 Months	3	1	2	0	0

The number of sitting days varies across Circuit Court venues and judges are assigned to sit in venues according to the incoming case and workload volume as well as to address any arrears which arise.

The lessons learned operating during Covid-19 in 2020 were built on in 2021. Both the Circuit and District Courts dealt with essential and urgent cases at all stages of the Covid-19 pandemic with a particular focus on ensuring that urgent family law (including domestic violence) and criminal matters were always dealt with at the earliest opportunity. Best practices were followed such as remote hearings, staggered Court lists and people management of Court buildings. Courthouses and courtrooms were also modified to maximise the throughput of cases that could be dealt with in an environment that remained safe for all Court users, Court staff and judiciary.

At the start of the Covid-19 pandemic, many courthouses were not able to accommodate circuit criminal trials

because of social distancing requirements with only 8 courthouses outside of Dublin able to accommodate jury trials. As highlighted in respect of the High Court, by the end of 2021, the Courts Service doubled this number to 16 by modifying courtrooms, installing video link equipment to link multiple courtrooms and, when required, hiring additional outside venues for overflow of attendees.

In the Circuit Court, family law activity in 2022 is running ahead of pre-pandemic levels. The volume of incoming applications for 2021 was 20% higher than 2019 and disposals are also above 2019 levels (disposals increased by 10%). Circuit Court waiting times did not improve between the last quarter of 2021 and the end of the 2nd quarter of 2022 and, in fact, marginally increased across both civil and family law.

**Circuit Court: Waiting Times**

Circuit Court waiting times for 2021 are contained in **Table 2N**.

**Table 2N:** Circuit Court Waiting Times (in weeks) by Circuit (2021)

Office	2021			2021		2021		
	Criminal Court			Civil Court		Family Law		
	Trials	Sentences	Appeals	Trials	Appeals	Contested Cases*	Non-Contested Cases	Appeals
Carlow	NS	6	NS	NS	NS	NS	NS	NS
Carrick on Shannon	9	3	12	9	6	6	3	6
Castlebar	9-12	9-12	9-12	9-12	3-6	6-9	NS	NS
Cavan	12	3	6	3	3	3	3	3
Clonmel	12	6	18	12-18	18-24	12-18	3	12-18
Cork	18-24	3-9	6-12	6-12	3-6	6-12	0-3	3-6
Dublin	NS	NS	3-4	6-9	6-9	9	3-6	6-9
Dundalk	26	3	2	9	9	4-6	2M	1.5M
Ennis	24	6	6-12	12-18	6-9	9-12	6-9	6-9
Galway	18	6	3-4	9-12	9	12	6	9
Kilkenny	24-30	3-6	3	3-6	3-6	3-6	3	3-6
Letterkenny	12-18	6	6	4	5	6	NS	6M
Limerick	12	3	6	12-18	12-18	9	NS	9
Longford	30	14	6	18	6	6	2	3
Monaghan	18-48	3-6	3-6	18-24	0-4	6-9	0-4	0-4
Mullingar	36	6	6	12	6	6	3	6
Naas	12-18	NS	NS	6-9	6-9	6-9	NS	6-9
Portlaoise	18-24	6-9	6-9	26	NS	26	Next F/ Law Sitting	NS
Roscommon	30	18	6-12	6	3	6	6	3
Sligo	6	3	3	6	6	6	3	3
Tralee	18	NS	NS	5	3-6	8	NS	NS
Trim	30	5	12	8	6	6	2	6
Tullamore	24	1-3	4	18-24	6	18-24	3-6	6-9
Waterford	18	NS	NS	9-12	6	9-12	3-6	3-6
Wexford	12-15	6-9	3	9	9	9-12	3	9-12
Wicklow	24	NS	NS	12	NS	12	NS	NS

### 2.3.9 The District Court

#### *District Court: Incoming Business Trends*

District Court incoming business trends for the years 2016 to 2021 are shown in **Table 2P**.

**Table 2P:** *District Court Incoming Business Trends 2016 to 2021*

District Court Incoming Business		
Year	Civil Business (Cases)	Criminal Business (Offences)
2016	133,724	382,325
2017	133,823	391,207
2018	137,493	391,296
2019	144,485	406,480
2020	93,719	382,455
2021	91,577	353,495

As the Court of first instance, District Courts collectively deal with the largest number of cases in the State. The travel and social distancing restrictions during the Covid-19 pandemic had a serious impact on case processing by the District Court, which limited the numbers of cases which could be safely transacted each day and consequently increased the numbers and lengths of adjournments. The result has been the build-up of a significant backlog of cases on hand.

#### *District Court: Waiting Times by District*

Waiting times for cases in the District Court for 2021 are highlighted in **Table 2Q**.

Table 2Q: District Court Waiting Times in Weeks (2021)

Office	2021		2021	2021	
	Summonses	Charge Sheets	Applications	Domestic Violence Applications*	Maintenance / Guardianship Applications
Athlone	20 - 22	NS	4	NS	4 to 8
Ballina	20 - 22	NS	24	4	4
Bray	20 - 22	NS	26	6	6
Carlow	20 - 22	NS	6	10	10
Carrick-on-Shannon	20 - 22	NS	4 to 8	NS	NS
Castlebar	20 - 22	NS	16	NS	16
Cavan	20 - 22	NS	NS	12	12
Clonakilty	20 - 22	NS	4	NS	4
Clonmel	20 - 22	NS	10	6 to 8	6 to 8
Cork	20 - 22	NS	13	NS	13
Donegal	20 - 22	NS	4 to 8	NS	4 to 8
Dublin	20 - 22	NS	20	Same Day	25
Dundalk	20 - 22	NS	16	8 to 12	16 to 20
Ennis	20 - 22	NS	6 to 8	2 to 8	8
Galway	20 - 22	NS	8	12	12
Kilkenny	20 - 22	NS	4 to 6	1	10 to 12
Letterkenny	20 - 22	NS	8	NS	8
Limerick	20 - 22	NS	20	4	8
Longford	20 - 22	NS	8 to 12	NS	4 to 12
Loughrea	20 - 22	NS	26	NS	8
Mallow	20 - 22	NS	4 to 6	NS	4 to 6
Monaghan	20 - 22	NS	0	0	4
Mullingar	20 - 22	NS	4	NS	4 to 8
Naas	20 - 22	NS	17	4	32
Nenagh	20 - 22	NS	10	26	26
Portlaoise	21 - 22	NS	24	8	8
Roscommon	20 - 22	NS	17	14	14
Sligo	20 - 22	NS	NS	NS	NS
Tralee	20 - 22	NS	4	NS	10 to 12
Trim	20 - 22	NS	12	4	8
Tullamore	20 - 22	NS	8	16	16
Waterford	20 - 22	NS	8	23	23
Wexford	20 - 22	NS	24	4	4
Youghal	20 - 22	NS	21	NS	12

### Criminal Matters before the District Court

The volume of offences appearing before the District Court remains well in excess of pre-pandemic levels. The number of prosecutions for offences listed for the District Court in the first 3 quarters of 2022 increased by 13% compared with the same period in 2019. However, the pattern of disposals vis-à-vis adjournments remains out of kilter. There was a large increase of 40% in the number of adjournments and a 10% reduction of applications disposed of when figures for 2019 and 2022 are compared.

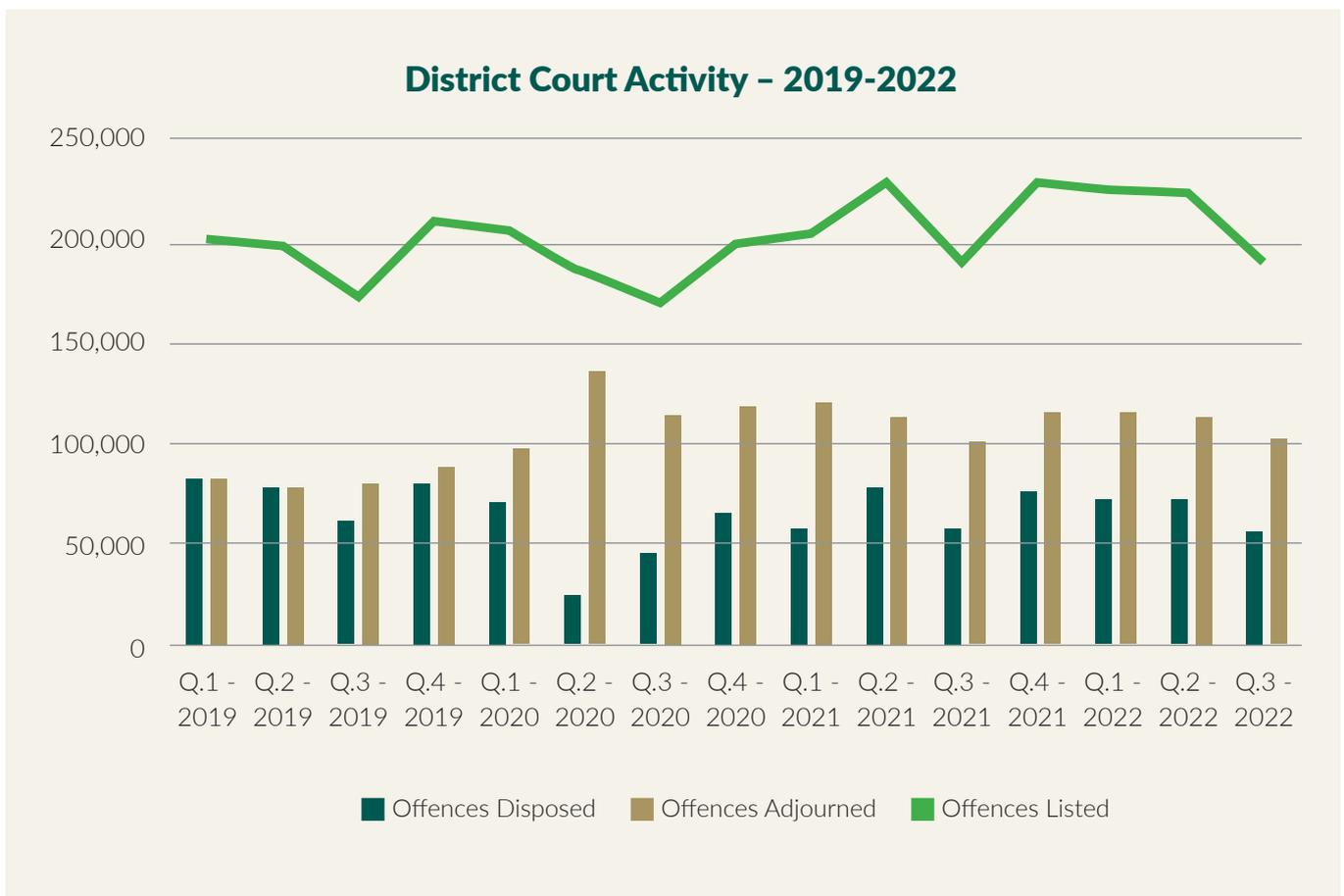
There were also 70,467 summons applications awaiting scheduling at the end of September 2022. This is a reduction of 10,000 since the end of June 2022 but

the backlog is not reflective of the overall situation. With the exception of Dublin and 3 to 4 other Districts, summons applications by An Garda Síochána are largely back to pre-Covid-19 levels. These few Districts account for over 90% of the backlog. The situation in these Districts has not changed over the last two years and will not change unless more summonses can be listed before Court.

### District Court: Civil and Family Law waiting times

The picture in relation to civil and family matters before the District Court is illustrated in **Table 2R**. District Court results are mixed with civil matters seeing a slight increase in times in contrast to a slight improvement in family law.

**Graph 1:** District Court Crime: Activity 2019 – Quarter 3 2022



**Table 2R:** District Court Waiting Times: Civil and Family Law (Quarter 3 (2022) Vs Quarter 2 2022)

Qrt 3 (2022)		Civil	Family Law	
Next Court Hearing Dates (Weeks)	Application No. of Offices	*DVA Hearings No. of Offices	Maintenance/Guardianship Hearings No. of Offices	
Next Scheduled Sitting	2	22	3	
Between 4 and 10 Weeks	17	8	19	
Between 11 and 20 Weeks	12	5	10	
More than 20 Weeks	4	0	3	
Qrt 2 (2022)		Civil	Family Law	
Next Court Hearing Dates (Weeks)	Application No. of Offices	*DVA Hearings No. of Offices	Maintenance/Guardianship Hearings No. of Offices	
Next Scheduled Sitting	1	21	2	
Between 4 and 10 Weeks	16	10	18	
Between 11 and 20 Weeks	12	3	11	
More than 20 Weeks	6	1	4	

\*Domestic Violence Applications waiting times for full hearing. Interim hearings dealt with immediately at next Court sitting.

## 2.4 Constitutional and other National and International Legal Issues

The requirement for legal proceedings, to be conducted within a reasonable timescale, is recognised by national and international law.

### Constitutional right to fair trial within a reasonable time

The right to have criminal and civil proceedings conducted with due expedition has been long recognised in the constitutional jurisprudence of the State. That right derives from Articles 34 and 38 of the Constitution, where Article 38 provides that no person shall be tried on any criminal charge save in due course of law.

*McFarlane v. Director of Public Prosecutions* [2008] 4 I.R. 117 held that a right of action existed for systematic

judicial delay. *Nash v. DPP* [2017] 3 I.R. 320 held that damages were clearly available to an applicant for a breach of their right to an expeditious trial.

In *Michael O'Callaghan v. Ireland, Supreme Court* [2021] IESC 68, it was held that the State had breached a person's constitutional right to an expeditious trial. This was because the deficiencies in the system were known to the State and were within its power to resolve. The person concerned was in custody for 23 months before his conviction was quashed by the Court. The Court considered the evidence of the registrar and held that the amendment application and the absence of a bail application did not justify the overall delay in the case. Similarly, there was no reality to a priority application being granted, so this could not weigh against the person concerned either. Although the Court stated that the present case was marginal, it

was not satisfied that a mere declaration would reflect the justice of the case. As such, the Court awarded €5,000 in compensation to the person-concerned for the breach of his rights. The Court held that the appeal had not been heard within a reasonable time and if Courts did not vindicate an individual's constitutional rights, then public confidence in the rule of law would be undermined.

### **ECHR Requirement for a trial within a reasonable time**

Under Article 6 of the *European Convention on Human Rights* (ECHR), in the determination of civil rights and obligations and criminal charges everyone is entitled to a hearing within a reasonable period of time by a Court or tribunal. The ECHR is recognised in Irish law by virtue of the Human Rights Act 2003. Excessive length of legal proceedings is the single most common complaint received by the European Court of Human Rights (ECtHR).

In proceedings for just compensation for breach of this obligation in Article 6 ECHR, whenever the duration of the proceedings appear, at first sight excessive or inordinate, the respondent State must "give satisfactory explanations". Otherwise, the State will be found in breach of the reasonable-time requirement. In such cases, there is something of a presumption against the State that the proceedings are unreasonably long, requiring that it show that it is not responsible for the time lapse.

Excuses, such as backlogs or general administrative difficulties, are not accepted as defences, since States are under an obligation to organise their judicial systems in such a way that their Courts can meet the European Convention standards. A temporary backlog before a Court, will not entail liability, provided that the authorities take reasonably prompt remedial action to deal with the exceptional situation. Where the state of affairs becomes prolonged or a matter of structural organisation, provisional methods such as giving priority to cases, are no longer sufficient and the State cannot further postpone the adoption of an effective measure.

In the 2020 decision in *Keaney v Ireland App.* 72060/17, the ECtHR reiterated, at [88] – [90]:

*the "reasonableness" of the length of proceedings must be assessed in light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what is at stake for the applicant in the dispute.*

The Court has recognised that in civil proceedings, the principal obligation for progressing proceedings lies on the parties themselves, who have a duty to diligently carry out the relevant procedural steps. However, a principle of domestic law or practice, that the parties to civil proceedings are required to take the initiative with regard to the progress of the proceedings, does not dispense the State from complying with the requirement to deal with cases in a reasonable time (see, for example, *McMullen v. Ireland*, no.42297/98, 38, 29 July 2004). In *Kearney v Ireland* Application No. 72060/17, the ECtHR held, at [132] that there 'is a strong, although rebuttable, presumption in favour of non-pecuniary damage occasioned by the excessive length of proceedings'.

### **Court Proceedings (Delays) Bill:**

The specific obligations under Articles 6 and 13 of the European Convention on Human Rights are now to be enforced in Irish law by the planned Court Proceedings (Delays) Bill which is due to be published shortly. The Bill provides for an effective remedy for delay in litigation amounting to a breach of Article 6.1 of the ECHR or the Constitution in order to comply with the 2010 Judgment of the European Court of Human Rights in *MacFarlane v. Ireland*. In that case, the criminal proceedings against the applicant had lasted over ten and a half years, from his arrest in January 1998 to his acquittal in June 2008.

The main aim of the Bill is to:

1. Provide for the appointment of independent Court Delays Assessors to assess claims for breach of Article 6.1 of the *European Convention of Human Rights* and the Constitution for excessive judicial delay at first instance and to award damages, if appropriate.
2. Provide for the procedures to be followed by the Board and the criteria by which claims and damages are to be assessed.

3. Establish a specific right of action in the Circuit Court should a claimant be dissatisfied with the assessment made by the Court Delays Assessor.
4. Provide for the criteria by which such a claim and damages should be assessed by the Circuit Court based on the ECHR caselaw.

## 2.5 Ongoing modernisation initiatives led by the Courts Service

In 2020, the Courts Service published its long-term strategic plan, for the period to 2030, entitled “Supporting Access to Justice in a Modern Digital Ireland”. The purpose of the plan is to provide a modern, transparent and accessible Courts system that is quicker, easier to access and more efficient.

The objectives of this long-term strategic vision are reflected in the desired characteristics of the future Courts system that the Courts Service will help facilitate, support and deliver and are as follows:

- ▶ **Just**, effective justice systems are anchored in efficiency, quality and independence. We will continue to support the independent judiciary in the administration of justice by providing them with the resources required.
- ▶ **User-centric** with an enhanced experience for Court users: services delivered through a range of channels that are most appropriate for any interaction, providing an easy to navigate, high-quality service and user experience.
- ▶ **Simplified** provision of access to justice for individuals and organisations through reduced complexity and associated cost, particularly in lower value/lower complexity cases, with people only having to come to Court to have their case dealt with where necessary.
- ▶ **Timely** in the administration of justice i.e the progress of cases through the Courts system will be optimised, with cases not unduly delayed due to administrative or case management issues.
- ▶ **Integrated** with other justice sector organisations sharing “whole system” information and insights with a focus on interoperability of systems and data.
- ▶ **Collaborative** working with other justice sector organisations towards “common purpose” outcome

ambitions; proactively and cooperatively working together towards shared goals.

- ▶ **Efficient and Effective** in the administration of justice, with the Courts Service supporting the judiciary using modern technology solutions and best practice processes and procedures to provide a Courts system that is value for money for the taxpayer.

The Courts Service Modernisation Programme, is underpinned by 4 key workstreams, namely, (i) Organisational Reform, (ii) Civil Reform, (iii) Family Reform and (iv) Criminal Reform.

The aims of the key elements of the work-streams are:

### (a) Improvements for Court users to include

- i. *improved user satisfaction*: reduced waiting times, case times and an overall improvement in the standard of facilities across, civil, criminal and family law.
- ii. *improved accessibility*: increase in the number of digital channels to enable cases/applications to be submitted online.
- iii. *reduced complexity* with simpler and more consistent processes for Court users, and
- iv. *reduced cost*: improvements in the ability for Court users to self-manage their own cases and applications.

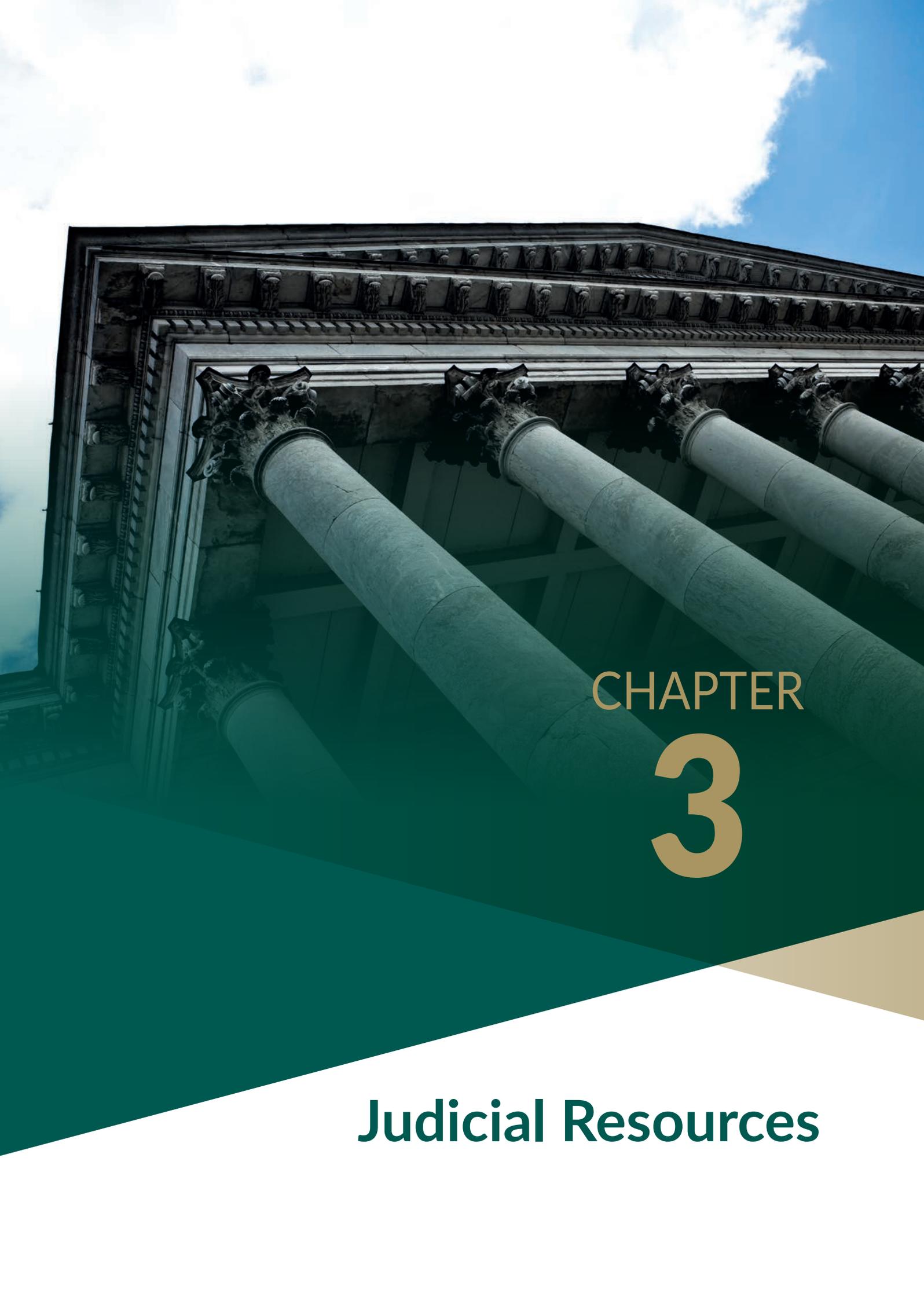
### (b) Better operational supports to include:

- i. *improved process efficiency*: increased digitalisation, automation and improved ways of working.
- ii. *improved reputation and trust*: increased confidence from Court users, staff and other service providers in the abilities of the Courts Service.
- iii. *improved sustainability*: reduced reliance on paper-based and manual entry processes and centralisation of services.
- iv. *increased organisational capability and capacity*: a more skilled workforce and the improved ability to move staff to under-resourced areas.

**(c) Better financial accountability** to include:

- i.** *improved Court venue utilisation*: the estates strategy and Courts venue review will ensure future facilities support new service models.
- ii.** *reduced data storage costs*: the records management policy and data retention schedule will support organisation-wide activities to improve electronic and hard copy data management.
- iii.** *reduced costs due to service disruption*: a new business continuity framework and plans will increase the capacity to maintain services and minimise disruption.
- iv.** *improved data quality*: the data quality framework and overarching data strategy will inform management decision-making, requests for information and support daily operational activities.

As indicated, priority is being given by the Courts Service to digitalisation and the provision of online facilities for Court users. This is particularly important in the context of this Report, as the provision of enhanced services to people living in Ireland as well as better data on the work of the Courts are issues identified by many of those who made submissions to the Working Group.



CHAPTER  
3

**Judicial Resources**

### 3.1 Introduction

This chapter considers the issue of judicial numbers including the need for a more planned approach to judicial resource allocation and management. The chapter includes the Working Group's analysis and recommendations on increasing judicial numbers and Court support staff. Substantial reference is made to the submissions to the Working Group in this regard from the Chief Justice and other Court Presidents. The chapter also considers, inter alia, the impact of planned new legislation and public policy on judicial and Court resources.

### 3.2 Judicial Numbers over time

**Table 3A** shows the number of judges by Court jurisdiction for each year from 2000 to 2022 together with the census population in relevant years. The increase in the total number of ordinary judges in that period, 55%, has exceeded population growth. Indeed, the total number of ordinary judges increased in the last decade by 21%, nearly double the rate of population increase of 12%, though it should be noted that these increased numbers were all in the Superior Courts where numbers increased by 76% and there was no increase in District and Circuit Court judge numbers in the last decade (indeed if specialist judges were to be included there may even be an effective decline). The overall increase in judge numbers was broadly in line with increases in public sector numbers in that period (50% since 2000; 24% since 2012). The forecasted population increase up to 2026 is estimated to be between 1.5% and 6.2%.

### 3.3 Judicial numbers and international comparators

International comparative assessments in respect of the effectiveness of justice systems have consistently reported that Ireland has the lowest number of judges per head of population in Council of Europe member states.<sup>6</sup> In its evaluation of European judicial systems published in October 2022, the European Commission for the Efficiency of Justice (CEPEJ) indicated that Ireland has 3.3 professional judges per 100,000 inhabitants. Most of the 46 Council of Europe Member

States have between 10 and 30 professional judges per 100,000 inhabitants while the European average is 17.6. It is worth recognising, however, that some of this disparity reflects the differences in legal systems with Ireland having a common law system compared with more inquisitorial civil law legal systems in other States. Increasing harmonisation of EU law can impose obligations on judges in Ireland, which brings their roles closer to the inquisitorial approach.

### 3.4 OECD Report

A key input for the Working Group was a study commissioned by the Department of Justice from the OECD specifically to inform the Working Group's work which is published by the OECD in parallel with this Report. The purpose of the study entitled "Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System" was to analyse judicial staffing, assessing whether the judiciary is adequate in size and composition in light of current case and non-case workloads. The study builds on previous OECD research, which uses data to measure existing justice needs, map the available justice services and match them to allow an optimal allocation of resources and identify where targeted investments are required. The weighted workload methodology used relies on data to ascertain the judicial workload needs and establish the judge numbers required. This was the first time this type of methodology was applied in the Irish system and the OECD has highlighted some significant caveats that apply to its work and in particular, the difficulty arising from major data limitations by comparison with other jurisdictions where these studies are undertaken. The OECD study also identifies areas where reforms are desirable and these recommendations are addressed elsewhere in this Report.

Overall, the OECD study found that the Irish justice system has a shortfall of judges along with limited efficiency of Court operations and case management capacity. The OECD states that while its study suggests the notional need for an average minimum increase of 26% in the number of fulltime judges, these conclusions do not capture potential efficiency

<sup>6</sup> European judicial systems CEPEJ Evaluation Report (Part 1) 2022 Evaluation cycle (2020 data): (pages 46 – 48). <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>

The 2022 EU Justice Scoreboard published by the European Commission also highlights that Ireland has the lowest number of judges per head of population in the EU. (see - 2022 EU Justice Scoreboard published by the European Commission (COM (2011) 234 (Figure 36) – page 29. [https://ec.europa.eu/info/sites/default/files/eu\\_justice\\_scoreboard\\_2022.pdf](https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf)

**Table 3A: Number of Judges 2000 to 2022 and Population Per Census Data**

Year/ Court	District Court	Circuit Court	High Court	Court of Appeal	Supreme Court	Ordinary Judges Total	Court Presidents	Miscellaneous	Total Judges	Population per census data (percentage increase)
2000	50	27	24*		7	108	4	2	114	
2001	50	27	24		7	108	4	2	114	
2002	52 (4%)	30 (11%)	26 (8%)		7	115	4	2	121	3,917,203 (8.0%)
2003	52	30	28 (7%)		7	117	4	2	123	
2004	54 (4%)	30	31 (11%)		7	122	4	2	128	
2005	54	30	31		7	122	4	2	128	
2006	54	30	31		7	122	4	2	128	4,239,848 (8.0%)
2007	54	37 (23%)	31		7	129	4	2	135	
2008	63 (16%)	37	31		7	138	4	2	144	
2009	63	37	31		7	138	4	2	144	
2010	63	37	31		7	138	4	2	144	
2011	63	37	31		7	138	4	2	144	4,588,252 (8.2%)
2012	63	37**	31		7	138	4	8	150	
2013	63	37	31		9 (28%)	140	4	8	152	
2014	63	37	31	9	9	149	5	8	162	
2015	63	37	37*** (19%)	9	9	155	5	9	169	
2016	63	37	37	9	9	155	5	6	166	4,761,865 (3.8%)
2017	63	37	37	9	9	155	5	6	166	
2018	63	37	37	9	9	155	5	6	166	
2019	63	37	37	15 (66%)	9	161	5	5	171	
2020	63	37	37	15	9	161	5	5	171	
2021	63	37	42 (13%)	15	9	166	5	5	176	
2022	63	37	43 (2%)	15	9	167	5	2	174	5,123,536 (7.6%)
<b>Total % increase (00-22)</b>	26%	37%	79%	66% (Since est.)	29%	55%				31%
<b>Total % increase (12-22)</b>	0%	0%	16%	66%	28%	21%				12%

The Miscellaneous Column reflects fluctuating judicial numbers that occur through other legislation. Such provisions are provided for in regards to GSOC and the LRC, which allows for an increase of one additional judge were a serving Superior Court judge is appointed to the relevant external body. Additional miscellaneous numbers are specific to the Circuit Court in which specialist judges were appointed under Section 191 of the Personal Insolvency Act 2012. There are currently no judges serving in those positions, as of August 2022.

**Table 3B: OECD STUDY: Current Number and Suggested Additional Judges Required by Court Jurisdiction**

Court	Current Number <sup>7</sup>	Available FTE per OECD	OECD Min <sup>8</sup>	Increase on current available WTE	OECD Low mid-point	Increase on current available WTE	OECD Mixed	Increase on current available WTE	OECD range	Percentage Increase range
District Court	64	61.6	75	13	88	26	100	38	13-38	21% - 62%
Circuit Court	38	34.7	47	12	66	31	86	51	12-51	35% - 147%
High Court	44	40.8	48	7	83	42	118	77	7-77	17% - 189%
Court of Appeal	16	14.6	19	4	24	9	29	14	4-14	27% - 96%
<b>Total</b> <sup>9</sup>	162	151.7	189	36	261	108	333	180	36 - 180	24% - 119%

gains in required judicial time from the improved and streamlined Court operations that the Report is also recommending. The OECD identified a range of possible numbers of judges per jurisdiction in this respect and these are summarised in **Table 3B**. It might be noted that the OECD figures are based on current work and do not take into account additional work or increasing trends in case numbers. The details of the OECD assessment are set out in the OECD Report.

The OECD proposes that considering all caveats and in the context of existing procedures and technology, the data indicates that the number of total positions needed ranges between the minimum figure and the low mid-point figure ie: in terms of total judge numbers between 36 and 108 extra judges. It also states that introducing procedural, operational and organisational improvements, adjustments to support staff and registrar resources, and investments to modernise case management systems and IT infrastructure may enhance efficiency and hence possibly reduce the number of judicial positions required.

### 3.5 Submission from Court Presidents

The Chief Justice and Court Presidents made a comprehensive submission to the Working Group, which provided considerable detail on the operation, workload and challenges facing the Courts and detailed material substantiating the case for additional

judicial resources as well as suggestions in relation to other aspects of the Group's work covered in other parts of this Report. The Working Group wishes to acknowledge the work involved in providing it with an extensive body of valuable information on which to base its work.

In relation to judicial numbers, the submission made a number of general points:

- (i) A low number of judges in Ireland in an international context even taking into account significant differences in functions and organisation;
- (ii) The need for adequate judicial resources for the reform of the family justice and Childcare system, to commence the implementation of the Assisted Decision Making (Capacity) Act 2015 and to address the Programme for Government commitment to establish a new Planning and Environmental Law Court;
- (iii) The likelihood that economic factors will result in the increase in the demand on judicial resources in areas such as corporate insolvency, family and litigation more generally;
- (iv) The impact of legislative change such as, amendments to the Data Protection Act 1988, the Residential Tenancies Act 2004, the Criminal Procedure Act 2019, and the Electoral Reform

<sup>7</sup> Numbers do not include additional judges made available under other legislation, where a serving Superior Court judge is assigned to work at external agencies such as GSOC or LRC. Numbers do not also include specialist/insolvency judges of the Circuit Court.

<sup>8</sup> It should be noted that the OECD minimum figure in the third column of **Table 3B** does not represent the minimum number of judges that the OECD considered to be necessary to deal with a Court's workload but is a calculation based on the number of judges that would be necessary if all cases before that Court were of a low level of complexity.

<sup>9</sup> Totals may reflect a slight variance from FTE positions as rounding was used.

Bill 2020 as well as the commencement of the Communications (Retention of Data) Act, 2011;

- (v) The need for sufficient judges to reap the benefits of Court-led case management in terms of reducing costs and saving Court time;
- (vi) The consequences of the involvement of judges in the work of the Judicial Council, in attending judicial training as well as the increasing commitments to participate in committees in the justice sector, outreach and international work;
- (vii) Expenditure on judicial salaries is low relative to public expenditure generally and by comparison with equivalent expenditure internationally and the value and importance of timely access to justice both as a fundamental right for all citizens and a key element of economic performance and the business and investment climate.

Specific points made in relation to individual Court jurisdictions, are covered in sections 3.5.1 to 3.5.4.

### **3.5.1 Summary of submission from the President of the Court of Appeal**

The following points were made by the President of the Court of Appeal:

- (i) As of the end of June 2021, there were 495 civil appeals and 370 criminal appeals on hand. The average waiting time to get a hearing date is 20 weeks in the case of a criminal appeal and 22 weeks in a civil appeal. However, while the Court is in a position to give hearing dates within those time frames, this does not reflect the length of time which a litigant must wait for the appeal to be concluded. Written judgments are required in the vast majority of appeals and, notwithstanding the huge amount of work done on the preparation of judgments, the time taken to deliver judgment is not satisfactory. As of July 2021, there were 121 judgments outstanding on the civil side (of which 28 dated from 2020) and there were 24 outstanding on the criminal side.
- (ii) Because of the voluminous books of appeal that must be read and digested by judges in advance of an appeal hearing, there is only a limited amount of time available for judges to work on the preparation of judgments. Given that the Court is an appellate

Court, it is essential that its judgments should be of the highest quality so as to provide definitive guidance on the law for the Circuit and District Courts and the public.

- (iii) The Court of Appeal hears appeals not only from the High Court but also criminal appeals from the Circuit Court. If additional judges are appointed to the High Court and the Circuit Court, there will be an inevitable increase in the number of appeals to the Court of Appeal. If the Court is to cope with the expanded workload and, at the same time, to offer reasonably early hearing dates and the delivery of high quality judgments within a reasonable time, then it must follow that additional resources will be required. It is also important to highlight that a greater pool of judges facilitates assembling a panel of suitably qualified judges to hear appeals of all kinds.

### **3.5.2 Summary of submission from the President of the High Court**

The following points were made by the President of the High Court:

- (i) Significant backlogs of cases have been building for some time in almost every area of work of the Court. These principally arise at two stages of the proceedings, first in allocating hearing dates and secondly, in civil cases and in cases before the Special Criminal Court, in the delivery of judgments. Delays arise in allocating hearing dates because there are insufficient judges to deal with the cases on the Court's books in a timely way. Delays arise in the delivery of judgments in circumstances where judges are hearing cases back to back and have a significant number of additional commitments such as committee and working group work, tribunals and a variety of statutory roles.
- (ii) Delay causes severe hardship to litigants. In criminal proceedings, the victim of a serious crime or their family will be unable to find closure until a verdict has been reached at trial. Where the accused is on bail, the delay in securing a trial date in the Central Criminal Court is currently more than 2 years from the date when the case is ready for trial. Equally, an accused person refused bail, despite the presumption of innocence, is likely to spend

between 12 and 18 months in prison awaiting trial. It should be noted that the work of the Central Criminal Court is increasing year on year rising from 139 bills of indictment in 2017 to 205 in 2020.

- (iii) In civil cases, delay causes stress and anxiety and, for those of limited means, financial hardship. In both civil and criminal cases, evidence may be lost in the period of delay or the recollection of crucial witnesses may wane thus making it difficult to successfully prosecute or defend the case. In civil cases, wrongdoers may exploit delays to their advantage either by withholding an offer of settlement altogether or by making an insufficient offer in the knowledge that the innocent party may have no option but to accept it due to the latter's strained financial position. In addition, civil litigation can delay the taking of important steps which would have been taken in the absence of that litigation.
- (iv) A further area of delay in civil cases arises in allocating hearing dates to pre-trial applications that are necessary to put cases in a state of readiness for trial. At present, with the exception of the Commercial List, there is a waiting time of between 7 and 10 weeks in securing a date for the hearing of such applications and this waiting time will be extended where the opposing party wishes to contest the application. In contested cases, the period of delay in hearing such an application will be in the region of 3.5 months. Given that, in most cases, several pre-trial applications will be required before the case is ready for trial, the cumulative effect of this delay is substantial in each individual case.
- (v) The work of the High Court is divided into a number of individual lists. The President's submission examines each of these lists and makes the case that additional judges are required in the case of most of them. In total, the President submits that 24 additional judges are required to meet current demands and reduce Court delays increasing to 27 for a three-year period due to the effects of the anticipated commencement of the Assisted Decision-Making (Capacity) Act 2015

and the fact that the State is now a party to the Schengen Information System with the associated impact on the hearing of extradition matters.<sup>10</sup>

- (vi) In so far as the *Central Criminal Court* is concerned, the President estimated that four additional judges were required. In the case of the Bail List, the President submitted that one additional judge is required. There has been an increase of 37% in the number of bail applications between 2019 and 2020. As of 31 July 2021, the number of bail applications stood at 1,025 for the first seven months of 2021 nearly equalling the total number of bail applications for 2020 of 1,177. In addition, in circumstances where the number of extradition cases has risen sharply since the State became party to the Schengen Information System II, the President estimates that one additional judge is required for the Extradition List in 2021 and one further judge in 2023. The President highlights that, in the case of European Arrest Warrant applications, the applications are required to be determined under EU law within 60 days from the date of arrest and that the European Commission has called upon the State to comply with this obligation. The President also stresses that this work is inquisitorial in nature thus requiring the judge to take a pro-active role in the gathering of information.
- (vii) In relation to *Asylum cases*, the President estimates that two additional judges are required for a two-year period (reducing to one judge after that period) in order to deal with the existing backlog of cases in combination with a significant number of new negative decisions (c. 650) made by the immigration authorities following the end of the Covid-19 pandemic. In the case of the *Chancery List*, the President submits that two additional judges are required; the same submission is also made with regard to the *Civil Jury List* (in which there is currently a 2-4 year delay in securing hearing dates) but this could be reduced to one additional judge after 2 years.
- (viii) In the case of the *Commercial List*, the President is of the view that a further two judges are required to deal with the complex cases that arise in this

<sup>10</sup> These figures do not take account of the six additional judicial appointments under the Civil Law (Miscellaneous Provisions) Act 2021, which were made subsequent to the submission.

list and which frequently require both lengthy hearings and very lengthy judgments. The need for additional judges here must also be seen in light of the promotion of the List internationally by the Ireland for Law Project. An additional two judges are also required for the *Commercial Planning and Strategic Infrastructure List*. The work of this list is important in light of the fact that its decisions have repercussions not only for the parties but often for the economy as a whole.

- (ix) The President submits that one additional judge is required for the *Family List* (where there has been an increase of 41% in divorce and judicial separation cases in 2020 when compared with 2019). A similar submission is made in respect of the *Hague Luxembourg Convention List* (dealing with child abduction) where there is an EU requirement to render a decision within 6 weeks from the date of filing of the case.
- (x) In the case of the *Non-Jury/Judicial Review list*, the President submits that three additional judges are required in circumstances where there is an upward trend in cases and where, having regard to the legal issues raised, judges are required in almost every judicial review case to give a written judgment. A case for three additional judges is also made for the *Personal Injury List* in order to address the increasing number of clinical negligence claims and the fact that 650 cases, which had been expected to go to the Cervical Check Tribunal, appear now to be destined for hearing in the High Court.
- (xi) The President has estimated that, within 12 months, one additional judge is likely to be required for the *Personal Insolvency List* given the removal in the Personal Insolvency (Amendment) Act 2021 of the time restriction on cases involving the debtor's family home. Finally, the President has also calculated that three additional judges will be required for a three-year period in order to address the obligation imposed on the Court by the Assisted Decision Making (Capacity) Act 2015 to supervise the discharge of each of the existing Wards of Court from wardship within a three-year period from the date of commencement of the Act.

### 3.5.3 Summary of submission from the President of the Circuit Court

The following points were made by the President of the Circuit Court:

- (i) At the date of the Circuit Court submission in September 2021, the President of the Circuit Court, after consulting with her judicial colleagues, estimated that there was an urgent need of 8 additional judges of the Circuit Court immediately with consideration been given to the appointment of an additional 8-10 judges in early course. However, since that submission, the remaining 2 Specialist judges have retired and 1 Ordinary judge who used to preside over insolvency matters for part of each term has also retired. The 2 Specialist judges have not been replaced. Insolvency work is now carried out by the Ordinary judges of the Circuit Court.
- (ii) Under the Personal Insolvency Act, 2012 there was provision for 8 judges. There was originally 6 nominated in June 2013, reduced to 3 judges by December 2016 and 0 by August 2022.
- (iii) Since the last increase in the number of Ordinary judges in the Circuit Court 2008, the general population has substantially increased. In 2016, 1 extra Circuit Court judge was assigned to the Special Criminal Court meaning that on average there are two judges assigned to this work each Court term.
- (iv) There is a large backlog in criminal, family law and civil lists in the Circuit Court. Some areas are more affected by others.
- (v) As noted by the OECD, adult skills survey showing a low level of adult literacy involving 1 in 6 adults is particularly challenging in family law and civil law where legal aid is frequently not available.
- (vi) The Circuit Court has concurrent jurisdiction with the High Court in family law cases. It therefore deals with most applications for separation, divorce and annulments. The increase in lay litigants in recent years has of necessity lengthened many Court hearings. The Circuit Court also deals with appeals from the District Court including public law hearings in Child Care cases.
- (vii) The Circuit Court has a wide jurisdiction in civil

law matters, which has substantially increased in recent years. This is particularly noticeable in insolvency, mortgage repossessions, data protection, landlord and tenant disputes and commercial law such as, for example, in Court examinership. In addition, the recent changes in the Judicial Personal Injuries guidelines are anticipated to dramatically increase the number of civil law cases, which would otherwise have been dealt with by the High Court.

**(viii)** One of the most dramatic changes in the civil jurisdiction will be the imminent commencement of the Assisted Decision-Making (Capacity) Act 2015. The Circuit Court is "*the Court*" for the purposes of the Act and therefore will replace wardship applications currently carried out by the High Court. It will involve a substantial increase in the number of Court applications for substitute decision-making representatives, co-decision making representatives and possible disputes for an increasing elderly and vulnerable population. It is a complex area of law requiring training and specialisation.

#### 3.5.4 Summary of submission from the President of the District Court

The President of the District Court considered that there was an urgent need for the appointment of eighteen additional judges on the basis of factors such as:

- i.** The increase in population since the last increase in the number of District Court judges in 2008.
- ii.** Delays predating Covid-19.
- iii.** Judicial Ratio/Shortage of judge.
- iv.** Burdens imposed by new legislation.
- v.** Lack of Capacity in the District Court to deal with the volumes of new cases.
- vi.** Backlogs arising from the Covid-19 pandemic.
- vii.** Increased number of Family law and Childcare cases.
- viii.** Complexity of Family law and Childcare cases.

Detailed material was provided on the above points. Some specific points referred to in the President's submission include the following:

- I.** The high volume of work in the District Court: the District Court has 34% of the country's judges but, in 2020, handled 82% of the work of the Courts. There are 208 bodies, agencies, Government Departments, local authorities, and regulators who can initiate prosecutions, in the majority of cases by way of summary prosecution in the District Court.
- II.** The number of Courts to be serviced and the number of available judges by Dublin Metropolitan District (DMD) and districts - there are insufficient judges available to cover all Courts with particular challenges in the DMD and some areas have caseloads in excess of what can be handled by a single judge. The number of available judges is less than the number of judges in legislation at any time. In the case of illness or other unexpected absences, scheduled Courts have had to be cancelled causing immense difficulty for those affected. Therefore, the President of the District Court submitted that there are only 55-59 out of 64 judges available at any one time. In addition, although 18 judges are permanently assigned to the DMD, in practice this work requires some 22 judges.
- III.** In each of the three years from 2017-2019 up to 25% of cases coming before the District Court could not be resolved; in 2020 this figure rose to 55% not resolved.
- IV.** Family law cases can be very time consuming, with often heightened/emotional/distressed litigants, many of whom are unrepresented, which often leads to protracted hearings. Between 2014 and 2019 applications for various orders increased by 40% with no increase in resources.
- V.** Public law/Childcare cases are a complex and increasingly specialised area of law. Cases can vary between multiple interim monthly care orders to full care orders. The latter can take several weeks or even months to complete. This is due to legal complexity and multiple witnesses including the need for expert evidence from various state agencies and legal representatives. These cases are also emotionally challenging for the parties involved and delay adds to these challenges. In one recent example, a case took 115 days at hearing, spread over three years, because it was

only possible to provide the judge for periods of 2 to 3 weeks at a time.

- VI.** New personal injuries guidelines published in 2021 were likely to lead to sharp increase of such cases in the District Court.
- VII.** At the time of composition of the submission, there were 114,000 fines enforcement notices scheduled before the District Courts that would take 1.5 years to clear even if no new notices were issued. 82,206 summons yet to be issued as held in abeyance during the pandemic and without additional resources would take a year and a half to clear.
- VIII.** Between 2014 and 2019, the number of prosecutions and appeals from statutory bodies listed before the District Court has risen by 63.6%.
- IX.** There has been a substantial increase in the number of lay litigants as well as a changing multi-cultural society, where the first language of Court users is not English. This requires additional time and sensitivity for the participants in Court hearings.
- X.** Increased volume and significant backlog in Mutual Assistance applications.
- XI.** Delays in case hearings add to trauma and distress and may prejudice defence.

The President said that if 18 extra District Court judges were appointed this would allow:-

- (a)** 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.
- (b)** Contested childcare cases to be listed for hearing within three months of being certified as ready for hearing.
- (c)** Urgent family law matters to be dealt with without delay.
- (d)** Urgent public law childcare matters to be dealt with without delay.

- (e)** Judges to be able to deal with non-Court commitments and training and professional development.
- (f)** Sufficient headroom to allow for illnesses or unavailability.
- (g)** Consistency in the provincial districts by enabling the same moveable judge to deal with family law lists in a number of districts each month.

### Summary of Judge numbers requested by the Court Presidents<sup>11</sup>

In summary, the Court Presidents’ requests for additional judges are set out in **Table 3C**.

Court	Current Number	President's Request	Percentage Increase
District Court	64	18	28%
Circuit Court	38	16-18 <sup>12</sup>	42% - 47%
High Court <sup>13</sup>	44	24(18-21)	54% (41%-48%)
Court of Appeal	16	6	37%

The total put forward by the Court Presidents would indicate a requirement for more than 60 additional judges in the short term - an increase of more than a third on the total complement at present.

### 3.6 Feedback from the public consultation process

Many of the submissions received as part of the Group’s consultation process, highlight the need for additional judges to keep pace with the increase in the judicial caseload and the backlog of cases on hands.

The *Department of Enterprise, Trade and Employment* stated in its submission that additional judicial resources were required to maintain Ireland’s competitiveness and attractiveness for Foreign Direct

<sup>11</sup> Numbers do not include additional judges made available under other legislation, where a serving Superior Court judge is assigned to work at external agencies such as the Garda Síochána Ombudsman Commission or the Law Reform Commission.

<sup>12</sup> The request from the President of the Circuit Court, does not take account of the retirement of 2 specialist judges from the Circuit Court, which occurred after the original submission was made to the Working Group. The resourcing need should be viewed as requiring an additional 2 judges on this basis.

<sup>13</sup> It should be noted that the High Court request was for 24 extra judges in 2021, 26 by mid - 2022, 27 in 2023 and 25 in 2024 reflecting one-off work associated with Assisted Decision-Making. As the requests in other areas reflected immediate requests, the 2021 request of 24 is shown in the Table 3C. Taking account of 6 additional posts in 2021 and 2022 would bring this request to 18-21 depending on the year.

Investment. The submission observed that on the issue of planning permission, “IDA Ireland, Ireland’s inward investment agency, cites Ireland’s common-law legal system as one of Ireland’s value offerings when working to attract and maintain FDI.” It was also noted that there was a need for appropriate resources within the Commercial Court of the High Court to ensure Ireland maintains its reputation as an attractive setting for parties seeking to resolve such disputes in as timely and cost-effective manner as possible. The submission includes observations from the *Consumer Protection Commission* and the *Company Law Review Group*, which both indicate support for additional judicial resources being available in the courts.

The *Department Housing, Local Government and Heritage* noted in its submission that the Planning and Environmental Court, provided for in the Programme for Government, should be adequately resourced to ensure the timely and efficient disposal of the increasing number of applications for judicial review related to planning and environmental matters.

The *Dublin Solicitors Bar Association* outlined its view that sufficient additional judicial resources should be made available in the High Court, Circuit Court and District Court and highlighted an expected increase in workload post-pandemic. The submission noted that sufficient judicial resources should enable a target wait time to receive a hearing date, of no more than 8-12 weeks from date of application.

The *Irish Business and Employers Confederation (IBEC)* in a submission highlighted that it “strongly supports the appointment of several additional judges to the High Court” given the role of the courts in enhancing the country’s attractiveness as a place to do business through its excellent reputation in relation to international commercial litigation.

*Women’s Aid* and *Safe Ireland* both observed in their submissions, the clear need for greater resources to be made available in the courts to deal with Family and Criminal law matters. In particular, they outlined the impact of waiting times on those engaging with the courts in family matters and in relation to the trial of domestic violence cases. In conclusion, *Safe Ireland* noted that the “effective administration of justice is not all

about speed and cost. It is primarily about making every effort to live up to high standards in the quality of the justice delivered.”

### 3.7 Factors affecting numbers and complexity of caseloads

The increase in legal complexity and volume of judicial caseloads (with a corresponding increase in the amount of judicial time needed to hear and decide a case) is placing a growing burden on judicial resources and has a substantial impact on the operation of the Courts. This was a common theme of the submissions received from the Court Presidents and some examples are set out below.

On the *legislative front*, there are:

#### **Domestic Law**

- (i) the impact of section 99 of the Criminal Justice Act 2006 and how it deals with individuals accused of new offences while benefitting from a suspended sentence on other charges. In addition, the Fines (Payment and Recovery) Act, 2014 removed the option of imprisonment in default of payment of fines and replaced it with a system where multiple Court appearances may be necessary before a case can be disposed.
- (ii) the development of the penalty points system since 2002 and the expansion of the numbers of offences subject to penalty points.
- (iii) the requirement of all Courts to hear the voice of the child in family law or other cases where the decision of the Court has an impact on the children concerned. The issue of the infrastructure for Guardians Ad Litem and other means to hear the voice of the child continues to be a challenge. Similarly, applications to bring children into care have become more complex and take longer to hear.

#### **International law**

- (i) In 2012, Ireland ratified the Aarhus Convention (regional UN treaty for Europe) under which members of the public and environmental non-governmental organisations can ask for a review of decisions from a public authority which may impact on the environment. Article 9(3) of this Convention provides that, subject to the criteria laid

down by national law, each State party must allow members of the public access to administrative or judicial procedures “to challenge acts or omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” Article 9(4) further stipulates that any such proceedings must not be “prohibitively expensive”.

The Oireachtas has sought to approximate the State’s domestic law to the requirements of the Aarhus Convention in two main ways. The first is through a *protective costs mechanism* whereby an applicant can seek a declaration under Part 2 of the Environment (Miscellaneous Provisions) Act 2011 that this mechanism applies to his or her proceedings. The second is by means of section 50B of the Planning and Development Act 2000, as amended. This, in essence, provides for a *no-costs default rule* in respect of judicial review proceedings challenging decisions taken pursuant to a “statutory provision that gives effect to” specified EU environmental Directives.

The Supreme Court in the recent case of *Heather Hill Management Company v. An Bord Pleanála Supreme Court [2022] IESC 43* held that the combined effect of Articles 9(2), 9(3) and 9(4) of the Aarhus Convention is that contracting states must ensure that proceedings in which decisions granting development consent, are challenged for non-compliance with national law relating to the environment, are not prohibitively expensive. These costs mechanisms facilitate increased environmental litigation.

- (ii) Ireland’s participation in the Schengen Information System (SIS II), is governed by EU law. Ireland connected to SIS II on 15 March 2021 and can now provide and receive data under SIS II, taking part in the police and criminal judicial co-operation measures, which are part of the Schengen Agreement. This means that because of the use of technology, more people may be brought before the Irish Courts having been detected as being the subject of an outstanding European Arrest Warrant, issued either in the EU or in this jurisdiction. In addition, there are exacting requirements as to when and how quickly matters can be disposed of. Because, the jurisdiction under the EAW system is

inquisitorial rather than adversarial, the judge will have to actively seek information from the relevant foreign State but is still under an obligation to finalise the extradition decision within 60 days from the date of arrest.

More generally, there has been a substantial increase in the complexity of applications before the Courts in areas such as Bail, Asylum and Immigration.

### Societal effects

Developments in wider society also have an impact on case types and numbers coming before the Courts. Examples include:

- (a) The post-2008 financial crash and the increase in the number of possession cases followed by changes in rules dealing with enforcement of possession orders and the retrenchment in the banking industry where mortgages are in arrears.
- (b) The enhancement of computer and mobile phone technology and its impact on discovery and the suite of data protection enforcement rights.
- (c) The continued year-on-year increase in the numbers of new barristers and solicitors coming into their professions.
- (d) Appointments of increasing numbers of Gardaí.
- (e) The continued holding of thresholds of eligibility for legal representation under the civil legal aid system, resulting in more people representing themselves as lay litigants, especially in civil and family law cases.

### Other factors

Finally, three additional factors adding to caseload complexity are also highlighted. First, the increased use of highly specialised expert witnesses. Second, the range of sources of international case law that are now so readily available on line to legal teams and third, the extensive statutory framework which now exists in the case of criminal trials involving child complainants. Special measures are now required in the case of child complainants in criminal trials which while entirely appropriate, require extensive pre-trial engagement by the judge in various applications that are required to be made and which add to the time that must be allocated to the trial. The net result of these developments is that if a Court is to consider all of the applicable law

in cases, that task is more difficult in many instances than it was at the start of the millennium. The task of disposing of cases has become more complex and longer.

### 3.8 New and Emerging Work

New work for the Courts can come from a variety of domestic and international sources. The most notable of these are primary legislation from the Oireachtas, which introduces new oversight and enforcement arrangements to be carried out by Courts. Ireland's membership of the *European Union* also involves new work for the Courts on foot of the State's ratification of international agreements. There is also the issue of secondary legislation such as statutory instruments, which gives effect to *EU Directives*. There are Government decisions/policies that will require additional judicial work/resources. Some of this is completely new work that would require additional resources to those identified as necessary in the OECD workload study whereas some would have been encompassed to a degree by the OECD work. Noteworthy examples of this new work are outlined in the following paragraphs.

#### **Commencement of the Assisted Decision-Making (Capacity) (Amendment) Act 2015-2022**

This legislation envisages a system whereby the current wardship system is replaced by a three-tier framework:

- ▶ A decision making assistance agreement ("DMAA") (Part 3), in which a relevant person appoints another person to help them make specified decisions for a period of time or on an on-going basis;
- ▶ A co-decision making agreement ("CDMA") (Part 4), in which a relevant person appoints another person as a co-decision maker with legal authority to jointly make certain decisions with them
- ▶ A decision making representation order ("DMRO") (Part 5) made by the Circuit Court, in which the Court appoints a decision making representative to make certain decisions on the relevant person's behalf.

It should be noted that the first two tiers of the framework are designed to be non-Court processes; only the third tier necessarily involves an application to the Court.

Implementing this legislation will place significant one-off demands on the High Court in discharging individuals from wardship and additional ongoing work mainly in the Circuit Court. There are currently 2,815 people in wardship who will need to be discharged within a three-year period.

The High Court President has sought additional resources (3 judges) to support the commencement of the Assisted Decision-Making (Capacity) Acts 2015-2022. These figures are included in the President's submission but as new work would not be encompassed in the OECD workload study. It should be a temporary requirement for a number of years.

It is envisaged that three judges would be appointed in advance of the commencement date who can be ring-fenced to replace those judges who are currently being trained to move to the wardship division on commencement of the legislation. The President expects greater demands on the resources of the High Court as transitional arrangements to assist in clearing wardship applications are in train.

In assessing the potential impact on the Courts, the Decision Support Service (DSS) has estimated demand as set out below (**Table 3D**). The DSS looked at various demand scenarios and considers that demand will not go below the 75% of what is estimated. Legislative provision is being made for three Circuit Court judges to deal with the annual workload that is associated with the implementation. As new work, this would not have been encompassed in the OECD assessment.

**Table 3D:** Forecast numbers of applications for Decision Making Representation Order 2022 - 2026

Year	Number of Applications
2022	2,057
2023	2,088
2024	2,119
2025	2,150
2026	2,184

Source: Decision Support Service 2022

### **Environment and Planning Court**

There is a commitment, both in the Programme for Government and in the Government's *Housing for All* Strategy to establish a new Division of the High Court dealing with planning and environmental issues. On 2 November 2022, in line with that commitment, the Minister for Justice received Government approval to proceed with establishing such a dedicated division of the High Court. This approval followed on from work undertaken by officials in the Department of Justice who have been working with the Courts Service and the Department of Housing, Local Government and Heritage in advancing the commitment and who have put in place a Steering/Implementation group to progress this matter. The scope of the new Court, how it will operate, and the steps involved in its establishment, were among the issues examined by the group. Bilateral discussions are also ongoing between Department of Justice officials and the Department of Environment, Climate and Communications and will also be undertaken with other relevant Departments.

The new Court is to provide for specialism through dedicated judicial assignment and is intended to support improvements in the time taken to deal with environmental and planning cases and to reduce the costs involved. The Government agreed that the new Court should be established in a similar manner to that of the Commercial Court, if necessary on an administrative basis by end February 2023. To ensure the Programme for Government and *Housing for All* commitments are met, additional judicial resources will be required. This work is not new work, so is likely to be captured in the OECD workload study.

While primary legislation would be needed to allow for the appointment of additional judges, the actual establishment of the Court can be effected without the need for amending primary legislation. This work is expected to be completed as soon as possible.

### **New Family Law Court structure**

The Family Court Bill aims to reform the family justice system so that Courts are more efficient and user friendly and put families and children at the front and centre in the process. It represents a significant change to the current Court structure and operational model with significant additional capital and current costs and

a multi-year implementation requirement. The Courts Service has estimated the additional judicial resources at 6 Circuit Court and 7 District Court judges. Family law cases are included in the OECD examination so this is not new work as such. However it is understood that it is envisaged that the new way of working may in the short/medium term involve more judicial time per case as existing constraints mean the time allowed for cases is insufficient; in the longer term it is hoped that the new approach and supports as well as providing speedier access to justice, would reduce the degree of litigation and therefore judicial input currently required.

### **Data Retention Judge**

Following the passing of the Communications (Retention of Data) (Amendment) Act 2022, the Courts Service undertook an assessment of how these new legislative requirements would be met and what resources would be needed to support same. The recommendation is for a full-time centralised data retention Court based on estimates from the Gardaí that the volumes are such that the Court will need to sit 4-5 days a week after the initial settling in period. This is a full-time District Court role. This is new work not taken into account in either the OECD work or the President's submission.

### **Ireland for Law**

Ireland for Law is the Irish Government's International Legal Services Strategy. This strategy has been created to represent and position Ireland's international legal services industry. It seeks to promote Irish Law and Irish Legal Services to the international business community, particularly in areas where Ireland is already a world leader, including aviation finance, funds, insurance, tech, pharma and life sciences. This is a key part of the Government's wider strategy of pursuing trade and investment opportunities from Brexit and from our position as the only English speaking common law country in the EU. The strategy complements "Ireland for Finance", the strategy for the international financial services sector to 2025. The key messaging around the IFL initiative is focussed on the following points:

- i. Ireland is the only English-speaking full common-law jurisdiction in the *European Union*;

- ii. the quality of the experienced, independent and impartial judiciary, particularly those dealing with commercial matters, also brings significant added value in attracting legal services to Ireland;
- iii. an experienced and highly specialised legal profession with expertise in a number of areas of EU law and the ability to advise on EU law across the EU and the UK;
- iv. the ability to have Irish legal rulings recognised in all EU/EEA jurisdictions as well as, uniquely, in the UK.

Delivering this initiative will have implications for judicial resources.

### 3.9 Addressing criminal justice backlogs

As indicated earlier in the Report there is a significant backlog in criminal cases which has been exacerbated by the impact of the Covid pandemic. Delays in this area have a major impact on an individual's rights, as well as impacts on victims and all involved. The Department of Justice is engaged with the Criminal Justice Agencies including the Courts Service to formulate plans to address the criminal backlogs within the justice system. Addressing these backlogs will require additional judges and support staff for a period though these demands may be temporary. As existing work cases, this workload would have been captured in the workload study of the OECD.

In order to support this work, the Department of Justice's Research and Analytics Unit, worked in collaboration with criminal justice agencies to examine the impacts an increase in throughput would have in the District, Dublin Circuit and Criminal Court on the criminal justice system. The impacts for the various agencies that support the work of the Courts Service (for example, *Forensic Service Ireland (FSI)*) or are 'downstream' in the Criminal Justice System (for example, the Probation Service and Prisons) have been considered.

### 3.10 Judicial Training Requirements

The Judicial Council has estimated that the equivalent of the working time provided by 8 additional full-time judges would be needed to provide sufficient judicial time for the judge training required as well as meeting other key commitments in the context of the work of

the Council. The training need was not encompassed by the OECD analysis.

Judicial Skills and Training are addressed in more detail in *Chapter 7*.

## 3.11 Capacity Constraints in Courts Service and wider Justice System

### 3.11.1 The Courts Service

An increase in the number of judges, particularly if the increase is of significant scale, gives rise to major requirements in terms of Courts service staff and infrastructure. The Working Group received detailed input from the Courts Service on this aspect of its work and the staffing implications and costs associated with our judge number recommendations are identified elsewhere in the Report. There are constraints in the pace at which judicial numbers can be brought in to the system and supported to work effectively.

Currently there are recruitment and operational challenges facing the Courts Service in resourcing support for its existing functions, let alone the scale envisaged in some proposals. The present recruitment landscape is characterised by very significant competition for talent across all organisations. The cost of living particularly for Dublin posts makes junior posts unattractive. Allied to this is the front-line nature of the work where remote-working arrangements are not available and the curtailed nature of the working year, limiting ability to take holiday leave. The age profile of staff is such that a large number of the most experienced Court-going staff have retired. This has led to significant knowledge management challenges. While learning and development efforts are continuing, the Courts Service has included this issue on its Corporate Risk Register, given the threat to its ability to provide frontline services while modernising.

The Courts Service also notes that there are ongoing capacity issues in county Dublin for courtrooms and ancillary facilities, although greater capacity can be found in areas outside of Dublin.

Successful delivery of the Courts Modernisation Programme depends on subject matter experts being released from their day job, which is a challenge at

present. In addition the OECD Report and the work of this Group has identified other modernisation and efficiency requirements which will also require strong leadership and staff time to deliver.

The Courts Service have advised that the scale of the numbers of judges to be appointed, proposed by the Court Presidents and the OECD, represent a significant challenge to the Courts Service, given the demands that will be placed on recruiting and training additional support staff, and increasing capacity in the context of the modernisation programme. Phased recruitment of new judges will therefore be essential to ensure that any new judges appointed are properly supported in their roles by the Courts Service from the start if judicial resources are to be used efficiently.

The Working Group is very mindful of the importance of ensuring that current operations continue smoothly and any additional judges appointed are fully supported for effective deployment. The delivery of an efficient and effective Courts system over the next 5-10 years depends crucially on the delivery of a significant transformation programme in the Courts Service and the Group is conscious of the need to balance addressing short-term pressures with the longer-term key strategic programme.

### 3.11.2 Wider Justice System

It is evident that Courts do not sit in isolation within the system and the nature of the business transacted, particularly in the criminal sphere, will have an upstream and downstream impact on a number of key justice agencies. This level of increase must be managed correctly with the appropriate timing applied to the scaling of resources and a clear defined structure of indicators for performance of additional resources put into place, to allow other justice system agencies to adjust, upskill and bring on-board resources also. If this does not happen, any increase in resources for the judiciary may not result in improvement in the overall performance of the justice system. There is also a risk of inefficiencies and resource wastage because of the inability of other services to meet the demand placed on them by an increased level of Court output. This risk can be mitigated greatly if the appropriate staggering of resources is factored into any considerations and it is recognised that a holistic view of the system is taken.

The work of the Department of Justice's Research and Data Analytics Team, alongside criminal justice agencies, indicates that significantly increasing the output of one agency will have wider implications for other criminal justice agencies in terms of meeting service demand and risks resources not being used cost effectively. It highlights that there are challenges for key agencies such as *Forensic Science Ireland*, the *Prison Service*, the *Probation Service* and the *Office of the Director of Public Prosecutions* in meeting the demands arising from a significant increase in the number of Court sittings.

Some of the key **up-stream impacts** that an increase in Court operations for criminal agencies may create are as follows:

#### **An Garda Síochána:**

- ▶ Increased number of prosecutions to undertake, placing pressure on Court Presenters offices and Inspectors.
- ▶ Increased number of Gardaí required as witnesses/ investigating Gardaí/support functions.

#### **Forensic Service Ireland:**

- ▶ Increased pressure to manage Court date notifications.
- ▶ Increased time to support defence visits and undertaken Court appearances.
- ▶ Ensure the provision of continuity certificates.

#### **Office of the Director of Public Prosecutions:**

- ▶ Increase in prosecutions since start of the pandemic has meant more time now taken in preparing books of evidence and serving them. Impact on capacity.
- ▶ Increase in representation for prosecutions at District and Circuit Court.
- ▶ Increase in Appeals, which will have resource implications for both the ODPP and State Solicitors.

The **downstream impacts** that may be seen are as follows:

#### **Prison Service:**

- ▶ Increase in the number of committals and those on remand, leading to rise in prison population.

- ▶ Potentially more staff time required to support escorts.
- ▶ Pressure on the delivery of prison services.
- ▶ Potential disorder in prisons.

#### **Probation Service:**

- ▶ Increase in pre-sanction reports and Community Service assessments.
- ▶ Increase demands in pre-release planning, Parole Board assessments, re-integration planning and Community Return assessments.
- ▶ Increase in Community Service Caseloads and managing offenders.

In each of these areas, agencies have noted that additional capacity is required. Even then it would take time to put resources in place.

Submissions from public organisations/agencies involved in the Justice system to the Working Group also cite risks and implications for the system if there is an increase in the throughput of the justice system. *An Garda Síochána* for example, note that increasing output may result in an increased demand on Gardaí to be available in Court to provide evidence if more cases are being heard. This has implications for rostering of Gardaí and the downstream impact potentially is an increased number of Gardaí being unavailable for other work while attending Court.

The *Office of the Director of Public Prosecutions (ODPP)*, noted that it is important that a system of resourcing be developed across the justice system so that the knock on impact of any increased resources in one part of the system on other organisations is addressed. The *ODPP* would welcome an increase in judicial resources to ensure speedy access to justice. It was emphasised by the *ODPP* that any increase requires cross-sectoral co-ordination to ensure that these Courts can be effectively resourced by other participants to ensure there is an improvement to users of the system.

The *ODPP* notes the increase in the knock on implications of an increase of 31% of new criminal matters appearing before the Circuit Court lists in Dublin, between 2017 and 2021. The *ODPP* identified

that this created considerable challenges in preparing for and staffing this projected high level of Court activity. Retention of prosecution counsel proved problematic as barristers are briefed by both the prosecution and the defence. With a professional duty to give precedence to acting on behalf of an accused who is in custody, increasingly prosecution counsel have needed to hand over cases at short notice (in order to deal with cases where they act for the defence). It can be difficult to quickly find replacements given the number of cases scheduled to proceed for trial on a particular date.

In addition to the immediate costs of salary, supports (both human and digital) and continuing professional education, additional judges in the criminal system will mean factoring in registrars, Court facilities, prosecution solicitor and counsel, defence solicitor and counsel with attendant legal aid costs, victim support services, prison/detention services and probation services.

*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, *FSI* advises it must be recognised that speeding up criminal trials through the appointment of additional judges will increase pressures on other sectors of the criminal justice system. The *FSI* specifically cites already increasing demand on their services in 2020, *FSI* received 29,000 cases but only had capacity to process 22,000 cases. The integration of the Fingerprints and Documents and 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.

The specialist knowledge training and skills required by *FSI* staff to meet the needs of the system, in terms of testing and providing evidence to support Court cases, takes time to develop. It is noted that although the *FSI* have an ambitious workforce plan agreed with the Department of Justice, the *FSI* note a need to ensure an appropriate level of staffing is resourced and time is provided to on-board such specialist staff to enable

them meet the possible increased level of Court output of the criminal justice system.

The *Irish Prison Service (IPS)* submission highlights that the number of people in custody in prisons has always been subject to fluctuation. Factors external to the Irish Prison Service are the main driver in these changing trends. These include overall population changes; changes in Garda numbers and the resulting crime detection rates; increases in Court sittings and the resultant increase in Court outcomes leading to custodial sentences. It is reasonable to follow that an increased level of Court operations will impact services within the IPS such as:

- ▶ Increased demand on waiting lists for already stretched services such as the psychology service, resettlement service, training and employment service, working and vocational training, the education centre, and addiction services.
- ▶ An increase in the remand population would have an impact on prison operations, particularly in respect of facilitating Court appearances. Court escort requirements routinely lead to the redeployment of staff from other duties in the Irish Prison Service to ensure the security needs for each escort can be met. This results in closures of Prison Workshops and Schools on a routine basis.
- ▶ As numbers within prisons increase, potentially this can lead to increased tensions within the prisons and result in the potential for violence towards staff and prisoners.
- ▶ The increase in prison numbers would also put the Irish Prison Service under significant financial pressure.

The Irish Prison Service states that in order to address this demand the increase must be managed appropriately to again allow for an on board of staff and resources to meet any increase in demand, and similarly the need for appropriate facilities to cope with demand would take time to bring online.

The Probation Service also cited in their submission implications of increased demand on their services. The Probation Service stated that in the event that the review leads to an increase in the members of the

judiciary appointed to deal with criminal cases, this would most likely have a significant increase in the work of the Probation Service. The likely increased numbers will place increased demands on the Probation Service for both the provision of reports and in carrying out the orders of the Court. The first of these may become a limiting factor in increasing efficiencies if not addressed.

Overall, it can be surmised from the submissions, that if judicial resources are increased and there is an increase in the level of trial capacity, there are substantial implications for the wider justice system.

### **3.12 Potential Scale of Required Judicial resources**

The Working Group considers that there is strong evidence from the material available to it that a significant number of additional judges will be needed over the next five years if access to justice is to be provided in a timely manner and existing backlogs and excessive waiting times addressed:

- ▶ The OECD Report commissioned as an input to the Working Group's work indicated the need for significant extra judicial posts.
- ▶ The Court Presidents' detailed submissions identified current and emerging work pressures requiring additional resources.
- ▶ Planned new work and changes to work require additional resources
- ▶ Clearing backlogs will require additional resources for a number of years
- ▶ Trends in case numbers and complexity
- ▶ Need for additional judicial capacity to cover increased judicial education, sick leave and other absences, and judge participation in management and modernisation of the Courts/Judicial system as a whole.
- ▶ Likely population growth over the next five years.

While there are some data limitations and uncertainties the Working Group considers this requirement could be of the order of 60 to 108 additional judges over the next five years, if trends continue in the system as currently operated.

### 3.13 Potential Efficiencies

The Implementation Plan, *Civil Justice Efficiencies and Reform Measures (A Civil Justice System for the 21st Century)*, published in May 2022 should support a more effective use of judicial resources. However, there is no quantitative data currently available on the expected impact of the Plan that could be used as part of a resource quantification exercise in estimating judicial requirements for the next 5 years and into the future. Many of the measures in the Plan with the potential to impact on judicial resources will not be in place for a number of years given the legislative and other work involved.

Benefits of the Courts Service Modernisation Programme may be as much for wider public service budgets and for legal costs for the public and the economy. As an example, the Irish Prison Service gains significantly from the installation of the video technology equipment as it reduces its need to transport prisoners to Court for routine appearances. Solicitors are also advantaged by being able to attend court proceedings remotely, rather than having to attend in person at the relevant courthouse. A recent analysis concluded by the Courts Service suggests that there were savings of €7.127m to the State in 2021, from savings on prisoner transport, from the introduction of this technology. The Courts Service has a benefits realisation process as part of their work, which will allow the benefits of the programme to be measured over time as different modules are implemented.

The Working Group has agreed other recommendations that should support a more effective deployment of judicial resources and use of Court infrastructure - a five day working week as standard across all jurisdictions, greater powers and supports for Court Presidents in managing judicial resources, better data to support resource allocation decisions, potential reorganisation

of District and Circuit Court areas and piloting different approaches to vacation periods.

### 3.14 Recommended Approach to Increasing Judge Numbers: Discussion

The Working Group recognises that there are major operational constraints on the scale and pace at which additional judges can be added, given accommodation and support staff requirements within the Courts system, combined with the level of existing resources in the wider justice system. The view of the Working Group is that additional numbers need to be phased in gradually on a planned basis with the Courts Service.

The Working Group also notes that there are programmes of work underway to modernise and bring efficiencies to the Courts system and that a significant number of additional recommendations are made in the OECD Report and as part of the Working Group's work which together amount to an essential largescale multi-annual change programme. Over time, the implementation of these recommendations and programme should lead to a more effective deployment of resources with benefits to service users, financial savings to Court users and to the Exchequer as well as improved data to support resource decisions.

The Working Group considers that the likely need for additional judges over the next five years to be in the range 60-108 as set out in **Table 3E**. The Working Group recommends that a phased approach should be taken to addressing judicial resourcing. It recommends that 44 additional judges be appointed between now and end 2024 in two phases, Phase 1 as soon as practicable and Phase 2, subject to satisfactory review, before the end of 2024. Additional numbers in further phases should be determined by a review in 2025 of judicial needs up to 2028. Phases 1 and 2 are broken down in **Table 3E**:

**Table 3E:** Proposed Phasing of Judicial Resources

	Current Number	Phase 1	Phase 2	Total	Future Phases 2025-2028	Total
<b>District Court</b>	64	8 (+12%)	6 (+9%)	14 (+22%)	4 - 12	18 - 26
<b>Circuit Court</b>	38	8 (+21%)	6 (+16%)	14 (+37%)	4 - 17	18 - 31
<b>High Court</b>	44	6 (+14%)	6 (+14%)	12 (+27%)	6 - 30	18 - 42
<b>Court of Appeal</b>	16	2 (+12%)	2 (+12%)	4 (+25%)	2 - 5	6 - 9
<b>Total</b>	<b>162</b>	<b>24 (+15%)</b>	<b>20 (+12%)</b>	<b>44 (+27%)</b>	<b>16 - 64</b>	<b>60 - 108</b>

<sup>14</sup> This includes the 3 additional positions in the Circuit Court provided for the Assisted Decision-Making (Capacity) Amendment Act 2022.

The Working Group recognises that while Phase 1 represents a significant increase in judicial numbers, this will mainly be required to address urgent backlogs and new work. Addressing some of the wider issues involved can only be carried out over time.

The Working Group is also of the view that before additional judges in Phase 2 are appointed there should be an assessment of the impact of the extra judges appointed in Phase 1 and progress against key milestones in the Change Programme. Appropriate targets/metrics in these areas should be agreed in advance between the judiciary, the Courts Service and the Department of Justice in tandem with the arrangements being put in place for the appointment of the judges. The Department, working with the Courts Service and the judiciary, should agree a suite of indicators that are capable of measuring the impact of additional judicial resources. These indicators should be capable of capturing improvements in efficiency and effectiveness and have regard to increased caseloads, changing demographics, economic conditions, and the impact of new legislation as well as improvements from the implementation of modernisation measures. The results of the work programme should also be used to underpin the business case for future judicial resourcing requests.

An indicative list of potential elements would be:

- i. The service impact/improvement from the previous tranche of additional judges.
- ii. Quantified benefits from implementation of Courts modernisation projects.
- iii. Implementation of new case management system in place for some elements of Courts work and the associated process and data improvements.
- iv. Identifiable progress in collecting the type of data set out in Annex D of the OECD Report i.e. this set of data available for some case types and a plan in place for when information will be available for the full system as part of data strategy/new case management systems.
- v. Progress in implementing work practice changes. In this regard, by early 2024, all judges should be available for judicial work on five working days per week and Court sittings should be scheduled where possible on a five-day per week basis.

Legislative powers should be provided for the issue of any required practice directions from the relevant Court President.

- vi. Examination and possible trialling of alternative approaches to vacation periods.
- vii. More extended use of courtrooms throughout the day.
- viii. Progress in delivering on the recommendations in the Report of the Judicial Planning Working Group in relation to the organisation and effective use of judicial resources.
- ix. Increased education and training delivery.

The table above sets out a range of numbers of additional judges likely to be needed over the next 5 years. However, the Working Group is very conscious of the less than comprehensive data to underpin the OECD work, uncertainty about some trends post-Covid, and the impact of the change and modernisation programme. The figures in the table above are intended to give an indication of the likely scale of demand.

In early 2025, there should be a review of the balance of judicial resource requirements for the period up to 2028. This should be based on factors such as (i) the impact of additional judges appointed in 2023 and 2024, (ii) actual trends in new business before the Courts, (iii) the capacity of the Courts Service and courts infrastructure to support additional judges, (iv) the potential impacts at that point on the wider Justice system, (v) progress in the programme of modernisation and change pursued by the Courts Service.

### 3.15 Assessment of likely impact of Phase 1 Judges

The allocation of the additional judicial resources recommended under Phase 1 is a matter for the individual Court Presidents in the light of Court requirements. We set out here some illustrative material on the potential impact.

#### Impacts on the District Court

If additional judges are allocated to the District Court, the Courts Service has modelled two scenarios for the type of cases that they could hear. Both scenarios are listed below and represented in **Table 3F**.

- (i) 8 judges assigned to hear all types of business outside Dublin.
- (ii) 7 assigned to hear all types of business outside Dublin and 1 assigned to hear family law in Dublin.

This outlines a base scenario that represents pre-Covid case rates. In *Scenario 1*, additional judges will make a substantial impact in increasing the criminal case clearance rate. However, this approach only has a marginal impact in family law case clearance rates. *Scenario 2* represents a more balanced solution in that it increases the criminal case clearance rate above 100%, thus tackling backlogs but does not improve the case clearance rate for family law activities sufficiently to halt a subsequent increase in waiting times.

The intention in future is for the Courts Service and Department of Justice to develop a system to track the impact of such measures on the efficient operation of

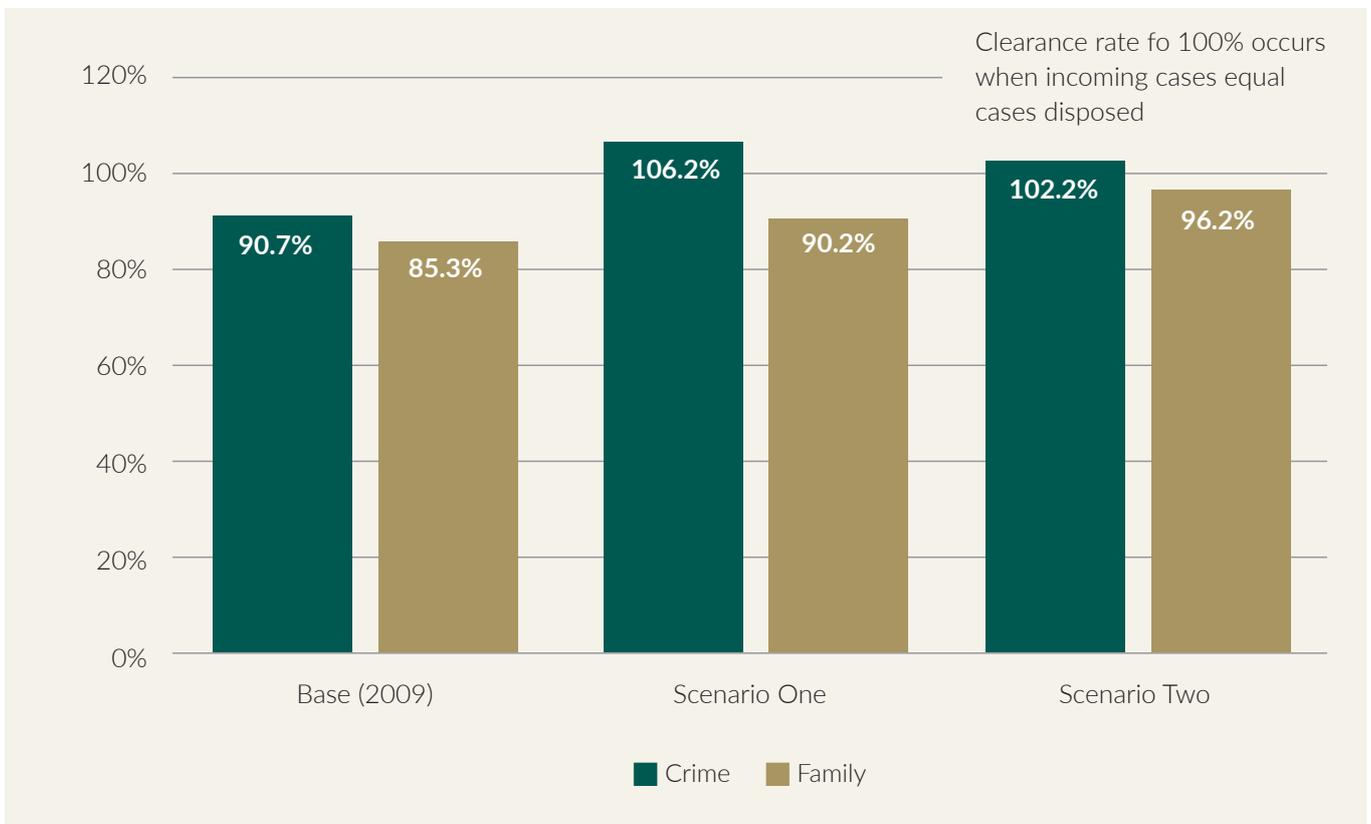
the Courts as well as in the wider justice sector. This will include the identification of a set of indicators to reflect progress made, and to measure the impact of additional resources on various parts of the judicial system.

### Impacts on the Circuit Court

If additional judges are allocated to the Circuit Court, the Courts Service has modelled three scenarios in the Circuit Court for how these judges could impact on existing work as well as current arrears. These are:

- (i) 5 judges assigned to crime outside Dublin and 3 to family law outside Dublin.
- (ii) 3 judges assigned to crime outside Dublin and 2 to family law outside Dublin.
- (iii) 2 judges assigned to crime outside Dublin and 1 to family law outside Dublin.

**Table 3F:** Impact of Additional Judicial Resources in the District Court



**Table 3G:** shows the impact of each scenario listed above alongside a base scenario



(pre-Covid) on case clearance rates. It should be noted that Scenario 1 does not envisage any judges being assigned to assisted decision-making duties or personal insolvency and, while this is unrealistic given that 3 judges will be assigned, it does nonetheless represent a useful indication of how case clearance rates might be expected to increase in the absence of the commencement of the Assisted Decision-Making (Capacity) Acts 2015-2022.

Both scenarios 2 and 3 provide for some of the additional judges assigned to new work coming to the Court. *Scenario 2* envisages 3 judges working on assisted decision-making, 3 on crime outside of Dublin, and 2 on family law - again outside Dublin. *Scenario 3* envisages 3 judges assigned to assisted decision-making, 2 to insolvency with the 3 remaining judges being available to deal with existing work and current arrears - 2 to crime outside of Dublin, and 1 to family law outside of Dublin.

**Table 3G: Impact of Additional Judicial Resources in the Circuit Court**

As **Table 3G** indicates, pre-Covid case clearance rates for crime and family law were 89% and 85%. In other

words, the number of incoming cases exceeded the number of cases that were cleared.

In *Scenario 1*, both crime and family law case clearance rates are above 100% and thus would reduce the waiting time for both areas. The same applies to *Scenario 2*, albeit the number of cases being cleared will effectively match the number of cases cleared. *Scenario 3* is likely a more realistic view of crime and family clearance rates. In this scenario, the clearance rates for both areas increase relative to pre-Covid, but not to the extent that would see the number of incoming cases matching the number of cases cleared. In *Scenario 3*, waiting lists increase for crime and family law in the Circuit Court.

**Impacts on the High Court**

A different approach to tracking the impact of the appointment of additional judges will be necessary in the High Court, because of the new work coming to it and the nature of the jurisdiction.

If 6 additional Judges are appointed to the High Court, options for assignment could include the following areas:

- ▶ 3 to hear applications to discharge people from wardship on foot of the Assisted Decision-Making (Capacity) Act 2015. There are currently 2,901 wards of court. Under the 2015 Act, the High Court will be required to discharge each of these wards over a three year time period from the date of commencement of the Act. It is envisaged that this task will require the work of three judges.
- ▶ 1 to sit in the Central Criminal Court. It is anticipated that the allocation of an additional judge will lead to a one-eighth increase in the number of trials, and a reduction generally in waiting times.
- ▶ 1 to sit in the Planning and Environment Court/List. As a new Division of the High Court, establishment requires the appointment of a judge to deal with cases relating to planning and environmental issues.
- ▶ 1 to be assigned across the other lists. The intention is to address significant arrears in a number of lists against an upward trajectory of incoming cases. The first half of 2022 (1 January to 30 June) saw 5,418 incoming cases in the High Court, while the second half of 2022 (1 July to 29 November) saw 5,748

cases, demonstrating a clear upward trajectory for “incoming cases” in the High Court.

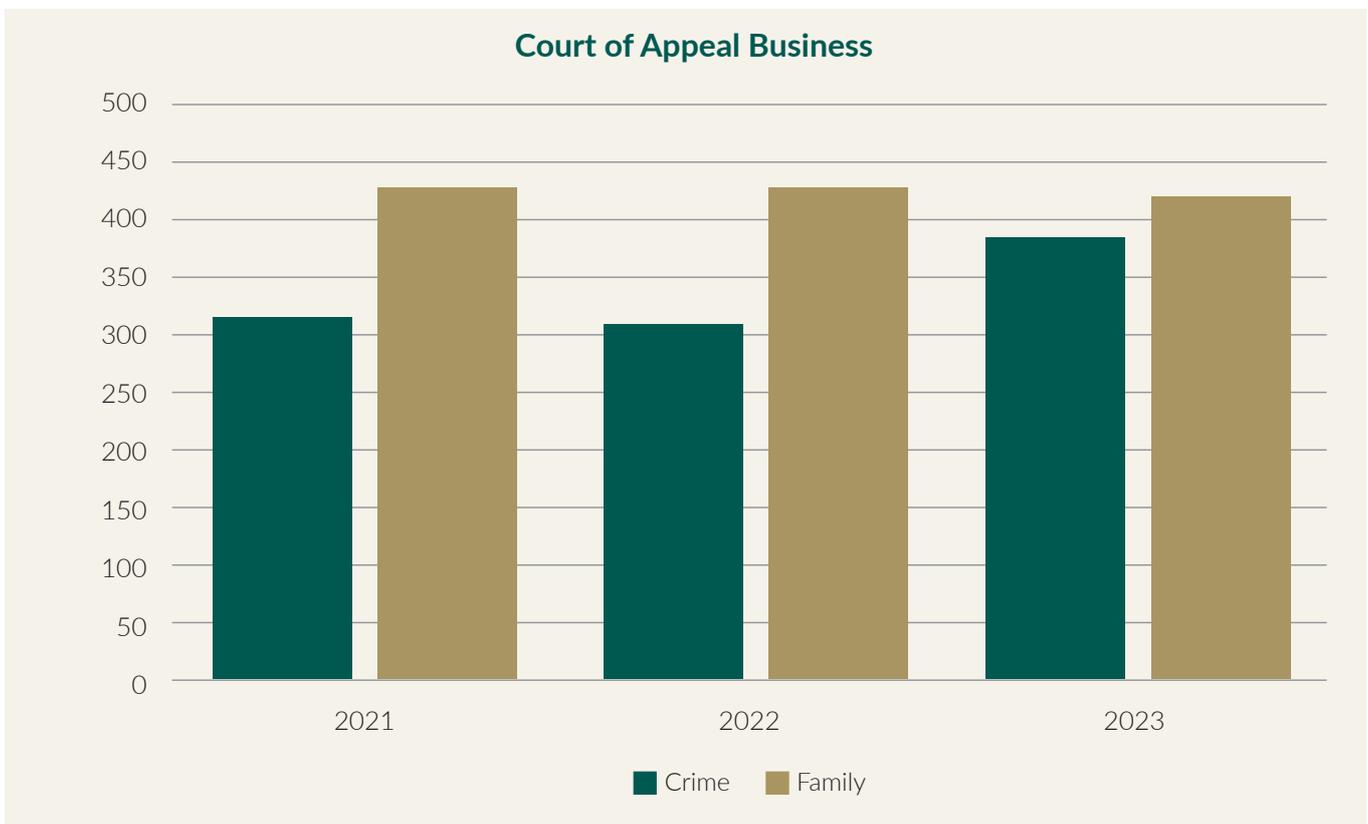
### Impacts on the Court of Appeal

#### Civil Cases:

If two additional judges are appointed, this would increase the numbers assigned to the Court to 18. However, the net impact is likely to be 1.6 FTE given that an additional judge was appointed to the Court, following the appointment of Mr. Justice Maurice Collins to the Law Reform Commission, who devoted approximately 60% of his time to that role.

The Courts Service estimate that 2023 could see a projected increase of 20% in incoming civil cases relative to 2021 case numbers. If two additional judges are appointed to the Court, **Table 3H** contains projections on the number of pending civil cases at year end 2023. The caveats behind this analysis include an assumption that it will be the start of Q3 before the new additional judges will start work so if this is to happen earlier, the case clearance rate will improve accordingly.

**Table 3H:** Court of Appeal - Incoming Cases/Resolved cases (Civil Business)



**Criminal Business:**

Unlike civil business, criminal business continued apace throughout the pandemic in all jurisdictions, albeit at a slightly lower rate in respect of trials for indictable matters (where a jury was required). However, it is anticipated that this business is likely to grow for the following reasons:

- ▶ The increase in the numbers of judges sitting in the Central Criminal Court in 2022, which is anticipated to increase again in 2023, upon the appointment of additional judges to the High Court.
- ▶ The anticipated increase in the numbers of judges sitting in the Circuit Criminal Courts in 2023, upon the appointment of additional judges to that Court.

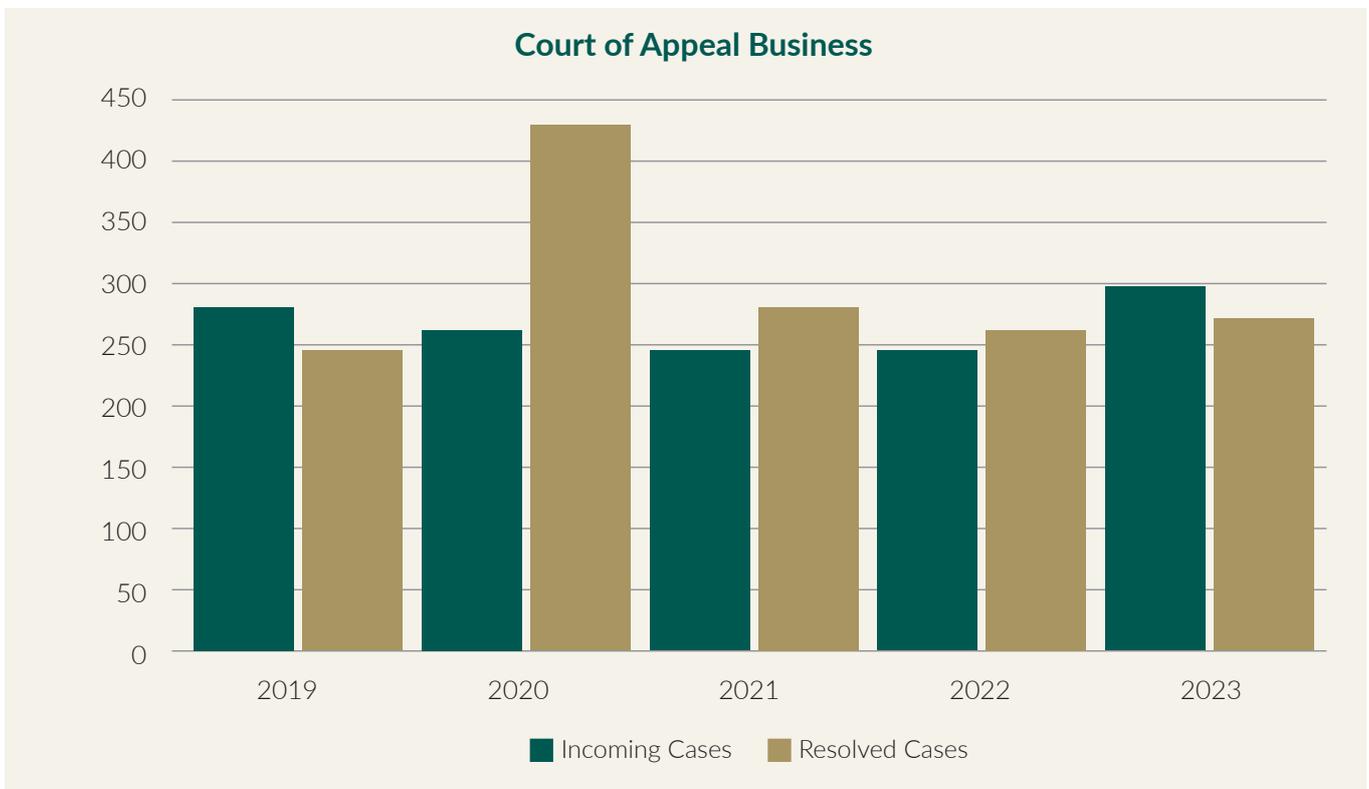
The Courts Service estimate that 2023 could see a projected increase of 20% in incoming criminal cases to the Court of Appeal, based on 2021 case numbers (see **Table 3**).

Under the Phase 1 proposal to appoint two judges to the Court of Appeal, there will be an improvement in the number of cases resolved, albeit the time of recruitment having a significant impact on the total number of cases resolved within 2023.

**3.16 Courts Service Staff**

Providing extra judges will only have an impact in improving the administration of justice for the public if the necessary additional Courts Services staff are also provided. Some Courts Service staff directly support judges in the conduct of their judicial work including a Registrar per judge<sup>15</sup> and an officer carrying out quasi-judicial functions in each jurisdiction, a Judicial Assistant or Usher/Crier per judge in each jurisdiction except the District Court, Judicial Researchers who assist all judges in carrying out research of their behalf and some secretarial support in some Court jurisdictions. In order to support the operation of the Courts, an infrastructure is in place to provide this support including

**Table 3:** Court of Appeal – Incoming/Resolved Cases (Criminal Business)



<sup>15</sup> As the Court of Appeal sits as a divisional court, an additional Court Registrar is required for every 3 additional judges.

- i.** Staff in Court Offices whose roles are to receive and process Court papers and deal with all enquiries in relation to the operation of the Courts.
- ii.** Staff working in ICT whose role is to maintain and enhance the ICT infrastructure supporting Courts and Court Offices.
- iii.** Staff working in Estates Management whose jobs are to maintain the Court buildings estate.
- iv.** Staff working in the Offices of the High Court, such as the Wards of Court and Probate Offices, who provide direct services to Courts users.
- v.** Staff working in learning and development, whose role includes the provision of technical training to Courts Service staff.
- vi.** Staff whose role is to manage the interface between the Service, the Departments of State, the Oireachtas, the EU as well as international justice entities and associated protocol activities.
- vii.** Staff working in Communications and Media Relations including the provision of information to the public and outreach activities.

The work of all of these staff, including those providing direct support to the judges, is overseen by managers and Heads of Offices.

While the appointment of one additional judge might be accommodated by providing only the additional direct staff, the scale of increase being considered is such that it would not be possible to implement without an equivalent adjustment to the full Courts Services operational staff. The increased numbers under consideration could also involve an increase of between a third and two thirds of the existing judicial complement. Even on a phased basis, this would have a major impact on the Courts Service. Phases 1 and 2 recommended above, represent an increase of a quarter in judicial numbers. Not only will the operational support requirement need to be increased, the Working Group also recognises that there will be a significant organisational effect in terms of managing and training an increased number of initially newly recruited and less experienced staff as well as addressing courtroom and other accommodation constraints requiring the enhanced management of existing courtrooms and the acquisition of additional space. At the same time, there will be a need to deliver

on an ambitious modernisation programme, implement the recommendations contained in the OECD Report and, deliver the organisational change involved in scaling up the organisation of the Courts Service and deliver a “digital first” public service to Courts users.

Over time the modernisation programme will remove the need to recruit staff for low value added activities and free resources up to enhance the operation of the Courts system. While this may deliver efficiencies in staff numbers, this will not have a major impact on the numbers required in the short-to-medium term. The main reason for this will be the requirement for the Courts Service to carry out new work not currently carried out, such as more in-depth case management. The appointment of a significant number of judges will require the appointment of extra Courts Service staff for every additional judge.

The recommendations from the OECD Report and this Report will involve additional workstreams beyond the existing Courts Service modernisation programme in relation to better data collection and management, enhanced case management, better support for lay litigants and HR arrangements for the judiciary. To implement these developments, there will need to be intensive engagement, with the judiciary in the main but also external stakeholders, to agree metrics by which the new work will be measured and reported upon. Oversight of this new work will be necessary. Arrangements will need to be put in place to ensure that, for instance, those charged with recording what takes place in the Court, do so consistently and correctly. Unpinning all of these extra tasks will need to be an enhanced Learning and Development function that provides and sources training and support for staff on an on-going basis whose roles will include new activities proposed by the OECD. These will need additional staff resources as part of implementation though in the longer run the new functions in these areas will be resourced from staff savings from enhanced IT systems.

The Courts Service is currently resourced to provide support services to 174 judges. The OECD’s analysis of the judicial system identified a range of additional activities, which the Courts Service should take on, beyond providing support services to the Courts.

The Working Group accepts that additional resources will be required by the Courts Service to support the increased number of judges recommended in this Report and the enhanced roles required to be carried by the Courts Service, to support the judiciary. It is recommended that the Department of Justice seek to ensure, through the annual estimates process, that adequate resources are provided to the Courts Service to support the additional judges and to implement the recommendations in this Report.

### **3.17 A more planned approach to calculating judicial numbers**

As pointed out in the Report of the OECD, evidence-based rational approaches to estimating judicial numbers and staffing needs in the Courts process are important to improve their responsiveness to changing caseloads and work on hands, including forecasted future caseloads, taking into account also the requirements of the users of judicial and Court services at various geographical locations.

There is no scientific system for identifying the required judicial numbers in Ireland at present.

The present process is that the President of the relevant Court writes to the Minister for Justice and/or the Attorney General seeking additional judicial resources to be assigned to their Courts. This does not normally include any information on the related staff or other costs involved.

When follow up recommendations are being made to the Minister for Justice on the matter of additional judge numbers, these can be accompanied by more comprehensive supporting data and analysis usually generated with the assistance of the Courts Service.

It was in the context of the lack of a more planned approach to determining judicial numbers in Ireland, that the Minister for Justice requested the OECD to, inter alia, “*carry out an analysis to support the State in ensuring that the judiciary is appropriate in size and composition so that justice services can be provided in a timely and accessible manner, supported by an effective and efficient management and administrative structure.*” In doing so, the OECD was also requested to come up with a more scientific and evidence based approach to

calculating judicial numbers, which would also facilitate forward planning and forecasting.

More scientific approaches to judicial resource planning are to be found in other jurisdictions.

In the *United States* workload studies are conducted to assess judicial resource needs based on a full-time equivalent approach, which calculates the number of judges required to complete casework. The determination of the FTE is usually based on counting the hours in a full-time work week (usually five days in most *EU* countries), and multiplying this by work weeks in a year and taking into account weekends, holidays, vacation time, sick leave and continuing legal education obligations. As well as taking account of judicial time availability, a weighted workload model also takes into account other matters in order to calculate judicial time availability and position needs based on a Courts total annual workload. These include the number of new cases (by case type) being initiated each year as well as the average amount of judge time required to handle cases of each type over the life of the case.

In *Scotland*, the judicial authorities utilise a deployment modeller or management information system for workforce planning purposes for the deployment of sheriffs. The deployment modeller utilises data, including on caseloads on hands and timelines for hearing cases, gathered through an Integrated Case Management System of Scottish Courts and Tribunal Service. This data enables the modeller to highlight the judicial districts or circuits (Sheriffdoms) which are under resourced or over resourced and on this basis, sheriffs can be deployed in the Scottish Courts system in the most efficient manner. When a request is being made for additional judges in *Scotland's* higher Courts, the Scottish Judicial Office provides the head of the judiciary with relevant information needed to justify the increase sought including case volumes, waiting times and the volume of sitting days being used. The Judicial Office also provides information on the cost of any increase. This information is then provided to the Justice Directorate of the Scottish Government to inform the decision making process.

Similarly, in *England* and *Wales*, a more planned approach based on evidence is used to determine

judicial numbers. In this regard, for example, judicial supply and demand modelling is utilised by the Ministry of Justice to model future judicial resourcing requirements. Such modelling can include factors such as case complexity, policy and legislative changes that would result in changed demand and changes to the judicial complement. Modelling also factors in changes in trends affecting the supply of judges such as expected retirement rates going above or below what is expected based on mandatory retirement age or expected promotions to other Courts, which would result in consequential vacancies. Modelling can be used to optimise the deployment of judicial resources. A full time equivalent formula is used to determine the number of available sitting days for judges taking factors such as leave training days and other factors into account.

A more planned approach to be taken in *Ireland* to the calculation of judicial numbers could take the form of a formal or structured evidenced supported model. This would be based, for example, on a whole of systems assessment so as track, plan and update judicial resources to include both judicial numbers and associated support staff and infrastructure. Such a model would be expected to take account of changing caseloads in each Court jurisdiction, and other factors influencing the efficiency and effectiveness of the judicial process and the Courts system, such as enhanced case management techniques, the use of information technology as well as the impact of changing legislation and procedural rules. Changes in demographic trends in the State and their impact on Court caseloads also need to be considered.

The recommendations of the Working Group in relation to the division of responsibility for the collection and analysis of data and its inputting into the proposed model are contained in *Chapter 5*.

### **3.18 Judicial Numbers: additional matters**

As well as the broader budgetary/cost implications, it is considered that the planning and forecasting process in relation to requirements for additional judicial numbers and related support services as set out in *Chapter 5.4*, should take account of and highlight the following factors:

- i. the phasing in and prioritisation of any numbers recommended in relation to judicial capacity/ resources in light of broader cross- system (criminal and civil justice) capacity constraints in the Courts, Office of the Director of Public Prosecutions, Office of the Chief State Solicitor, Probation Service and the Irish Prison Service.
- ii. the interplay between numbers recommended and efficiencies over time from Court modernisation, better case management tools, implementation of the Report on the Review of the Administration of Civil Justice (October 2020) and implementation of the recommendations in the Report of this Working Group.
- iii. the requirement for any additional Courts Service posts and infrastructure to carry out the additional tasks recommended in the OECD Report.
- iv. the need for a review mechanism to be built into any agreed process for the allocation of judicial resources. This review mechanism should be comprehensive and focus on more than just the impact of judicial numbers.

In the context of forward planning generally and taking into account issues such as anticipated trends in caseloads, Court planning systems also need to embrace and take account of developments in the wider environment and society, which influence judicial numbers and their distribution. The most important of these for the operation of the Courts are new legislation, new legal precedents as well as population growth and the associated changes in demographics and economic circumstances.

### **3.19 Impact of new legislative proposals on Court resources and the use of alternative enforcement mechanisms**

Judicial time is a scarce national resource and it is incumbent on all of those working on the development of public policy and new legislative initiatives to ensure that the potential impact of any new legislation or policy on the Courts system is clearly assessed from a resource perspective in advance. More specifically, the process of a Regulatory Impact Assessment for all legislative proposals should capture the full impact of legislation including the impact on the Courts. At the present time new developments, particularly in

the area of legislation, submitted to Government by all Departments, including the Department of Justice, do not include an assessment of the implications for the Courts and the Courts Service on foot of new enforcement and oversight roles. This is of concern given the substantial additional costs involved and the impact of this new business, to the possible detriment on other Court business and court users.

With regard to the development of new legislation which may impact on the Courts Service and associated resources, the legislative planning process in Scotland is noteworthy of consideration. The Judicial Office of the Scottish Courts and Tribunal Service (SCTS) feeds into the legislative development process including potential impact, from the time a legislative proposal is first conceived. The SCTS models out the data to estimate likely cost implications for the SCTS and by extension the impact on judicial resources. This information is then included in relevant budgetary requests to the Justice Directorate prior to the legislation being enacted. In the context of the legislative development process, the SCTS works with the Scottish Judicial Office in relation to the impact of proposed legislation on judicial resources prior to the legislation being submitted to the Scottish Executive for consideration.

The Working Group considers this a key issue that needs to be addressed as part of a strategic and structured process of addressing judicial and associated Court resourcing requirements.

The Working Group recommends that Government Departments developing legislative or other proposals, which impact on Court operations, should engage at the earliest opportunity with the Department of Justice in respect of their potential impact on the Courts. In the case of proposals with such potential, the Department of Justice should ensure that when developing its own proposals or when engaging with other Departments on their proposals that an assessment is provided by the Courts Service of the impact on Court operations. This assessment should identify additional resource implications and the impact on Court users and business if no additional resources are provided. The Department of the Taoiseach, in its role as Government Secretariat, should ensure that

existing requirements for a regulatory impact and full costs assessment of legislative and policy proposals being submitted to the Government, and which impact on Court operations, are implemented.

In the context of policy and legislative development and design generally, it is not always the case that the enforcement of legislation, at least initially, should be a matter for the Courts system. Other dispute resolution fora fulfil quasi-judicial functions and the extent to which this could be expanded will depend on government policy and subsequent legislation. In this context, and subject to the fair and efficient administration of justice, from the perspective of both cost and effectiveness, alternative enforcement mechanisms which do not involve the use of Court/judicial time, could be looked at when new legislation and policy is being developed. In this regard, the possible use of administrative modes (or determination by a body carrying out quasi-judicial functions) could be considered in areas such as enforcement of fines for motoring offences. At a broader level, existing legislation, which involves enforcement by Courts, such as parking fines and television licence enforcement, could also be examined to establish if there are other administrative or quasi-judicial means to encourage compliance.

## Recommendations: Judicial Resources

### Judicial resources

1. A significant number of additional judges will be needed over the next five years if access to justice is to be provided in a timely manner and existing backlogs and excessive waiting times addressed. The Working Group recommends that a phased approach be taken to addressing judicial resourcing. It recommends that 44 additional judges be appointed between now and end-2024 in two phases, **Phase 1** as soon as practicable and **Phase 2**, subject to satisfactory review, before the end of 2024. Additional numbers in further phases should be determined by a review in 2025 of judicial needs up to 2028.

Phases 1 and 2 are broken down as follows:

	Current Numbers	Phase 1	Phase 2	Total
<b>District Court</b>	64	8 (+12%)	6 (+9%)	14 (+22%)
<b>Circuit Court</b>	38	8 (+21%)	6 (+16%)	14 (+37%)
<b>High Court</b>	44	6 (+14%)	6 (+14%)	12 (+27%)
<b>Court of Appeal</b>	16	2 (+12%)	2 (+12%)	4 (+25%)
<b>Total Number of Judges</b>	162	24 (+15%)	20 (+12%)	44 (+27%)

The Working Group recommends that before additional judges in Phase 2 are appointed, there should be an assessment of the impact of the extra judges appointed in Phase 1 and also of progress against key milestones in the Change Programme. Appropriate metrics in these areas should be agreed in advance between the Judiciary and Courts Service and the Department of Justice in tandem with the arrangements being put in place for the appointment of the judges. Implementation of Phase 2 will be subject to the review and satisfactory progress against these metrics.

There should be a review early in 2025 of the balance of judicial resource requirements for the period up to 2028. This review should consider

factors such as (i) the impact of additional judges appointed to date (ii) actual trends in new business before the Courts, (iii) the capacity of the Courts Service and courts infrastructure to support additional judges, (iv) the potential impacts at that point on the wider Justice system, and (v) progress in the programme of modernisation and change.

### Courts Service Resources

2. The Working Group accepts that additional resources will be required by the Courts Service to support the increased number of judges recommended in this Report and the enhanced roles required to be carried out by the Courts Service, to support the judiciary. It is recommended that the Department of Justice seek to ensure, through the annual estimates process, that adequate resources are provided to the Courts Service to support additional judges and to implement the recommendations in this Report.

### Establishment of a formal judicial resource-planning model

3. A structured system for assessing judicial resource requirements and related support resources should be put in place jointly by the Courts Service and the Department of Justice through a planned approach based on comprehensive data and a whole of system approach. Building on the OECD workload study a set of data and metrics should be developed that allows judicial workload to be assessed through weighted caseload data and that takes account of caseload trends across different types of business, the effective deployment of judicial resources across existing work, population trends, the impact of new legislation, judicial training and other non-Court judicial work. As the full rollout of this will be dependent on a 10-year project to develop a digital case management system across all Courts business it is recommended that in the shorter term a set of available data should be identified as part of the proposed assessment in 2025 that could be used while the full system is being developed.

***Regulatory Impact Assessment of proposals impacting on Court operations***

4. Government Departments developing legislative or other proposals that impact on Court operations, should engage at the earliest opportunity with the Department of Justice in respect of potential impacts on the Courts. In the case of proposals with such potential, the Department of Justice should ensure when developing its own proposals or when engaging with other Departments making proposals that an assessment is provided by the Courts Service of the impact on Court operations. This assessment should identify additional resource implications and the impact on the Courts' users and business if no additional resources are available. The Department of the Taoiseach, in its role as Government Secretariat, should ensure the implementation of the existing requirements for a regulatory impact and full cost assessment as part of any such legislative or other proposals being submitted to the Government.

***Consideration of alternative enforcement mechanisms in new policy proposals***

5. The design of any proposal for policy change which requires the initial enforcement by the Courts should first require consideration, from the perspective of both cost and effectiveness, of whether an alternative enforcement mechanism is available (such as determination by a body carrying out quasi-judicial functions or an administrative sanction) which does not involve the use of Court/ judicial time.

***Review of legislation: alternative means of compliance***

6. A process should be commenced, led by the Department of Justice, to critically analyse existing legislation which involves enforcement by Courts to establish if other administrative means could be employed to encourage compliance.



CHAPTER

4

**Effective Use and  
Management of Judicial  
Resources**

## 4.1 Introduction

This Chapter considers the effective use of judicial resources as well as the development of a modern and strategic human resource management framework for the judicial process including the possibility of establishing a set of terms and conditions for the judiciary within the framework of their statutory and constitutionally independent roles. It also examines the issues of diversity and the enhancement of judicial expertise. It looks at the use of judges on a temporary part-time fee-paid basis and for the period after retirement for judgment writing and includes some comments on the issue of the judicial retirement age. Finally, it considers important organisational and structural matters to do with Court administration such as Court sitting days, the possible reconfiguration of Court Districts and the strengthening of the powers of Court Presidents to ensure the maximum and efficient use of judicial resources.

## 4.2 Human Resource Management: Organisational Framework

Judges are appointed to office as independent office holders and are assigned business by the President of the Court in the jurisdiction in which they are serving. In many ways, they are on their own thereafter, being unsupported by any structured human resource management framework and having no clear terms and conditions of service to which they can refer. This is also the position for certain officers carrying out quasi-judicial functions - High Court Master and County Registrars who also do not benefit from formal training programmes to support their work responsibilities.

This situation may be contrasted, for example, with the position in *England, Wales* and *Scotland* where a more elaborate support framework is in place for members of their judiciary in the context of what is called the Judicial Office.

In *England* and *Wales*, the Judicial Office which is dedicated to supporting the judiciary and which reports to the Lord Chief Justice and Senior President of Tribunals, supports some 22,000 judicial office holders

in areas such as welfare, judicial leadership, judicial education and training, communications and human resources. The Judicial Office includes support teams with a wide range of professional experience including professional trainers, and HR and communication experts.<sup>16</sup>

The Judicial Office for Scotland, which is part of the Scottish Courts and Tribunals Service (SCTS), provides support to the head of the Scottish judiciary in areas such as training, welfare, judicial deployment, and guidance and conduct of judges. While the Judicial Office is staffed and supported by members of the SCTS, those staff can act independently of it in line with the Lord Presidents independent role. The Lord President, as head of the Scottish judiciary, is the executive head of the Judicial Office and Chairperson of the SCTS Board.

The OECD Report also highlighted the need to strengthen strategic human resources planning and management for the judiciary in a number of areas to, inter alia, ensure strong leadership in this area.

## 4.3 Terms and Conditions

In the context of judicial resources and judicial human resource management needs generally, it is important to develop a clearly defined set of terms and conditions of appointment for the judiciary, which do not exist at the present time. A set of terms and conditions of appointment for a judge, could take into account various issues including weekly working hours, sitting days, judgment writing days as well as annual leave and sick leave arrangements in line with public service norms.

## 4.4 Strengthening Human Resources Management

### Judicial Human Resources

A strategic and comprehensive approach to the development of a new judicial human resources function should be implemented and prioritised in the judiciary and Courts system. This should encompass the full range of human resource management and

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<sup>16</sup> <https://www.judiciary.uk/about-the-judiciary/training-support/jo-index/>

support functions as well as a strategic multi-annual approach to judicial human resource planning.

Human resource management should include establishing clearly defined terms and conditions, the development of a full suite of human resource supports including welfare supports and the collection and management of relevant HRM data (sick leave, holiday/vacation days, retirement schedules, diversity characteristics) in a standardised manner across all courts to support decision-making and planning.

Strategic human resources planning should be evidence based and aimed at ensuring that the maximum approved judicial numbers are always available to deal with caseloads on hands. Such planning should also address matters such as designing effective hiring practices with a view to attracting the best talent from the legal profession to the judicial function and the Courts process generally, supporting long-term position planning generally, and ensuring that the recruitment process has adequate data on which to base strategic decisions on needs. Such data should include, for example, (i) details of upcoming and retirement schedules as well as sick leave trends to plan for better back-up options, (ii) data on hiring to inform about applicant trends to understand if current needs in terms of skills and diversity can be met in the future and (iii) data that helps to understand the reasons successful applicants have been attracted to the judicial functions and to various jobs in the Courts system. Such data would also support workload planning in ensuring that adequate information is available to enable judicial resources to be maximised with a view to processing caseloads on hand.

The Court Presidents, the Judicial Council, Judicial Appointments Commission and the Courts Service, supported by the Department of Justice and the Department of Public Expenditure and Reform, working individually and collectively will be critical to successful human resource management and workforce planning. In looking at the totality of human resource planning, each have an element of responsibility and a contribution to make to ensure successful implementation. Appropriate structures for managing judicial human resource matters should be considered including the interface between the role of the Court

Presidents and the Judicial Council.

### Judicial performance management

The issue of judicial performance management is also important to consider having regard to the independence of the judicial function. In this regard, performance management in this section of the Report, should be seen as focussing on matching judge's skills to the right positions, understanding the requirements of a particular type of list and the judge assigned to it and creating the conditions that allow judges to undertake their work functions to the best of their ability. It should also allow the tracking of performance to understand what on the job support an individual may need. In this regard, the requirements of section 7 of the Judicial Council Act, 2019 should be noted. This section provides that the functions of the Judicial Council shall be to promote and maintain

- a) *Excellence in the exercise by judges of their judicial functions;*
- b) *High standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity;*
- c) *The effective and efficient use of resources made available to judges for the purposes of the exercise of their functions;*
- d) *Continuing education of judges;*
- e) *Respect for the independence of the judiciary, and*
- f) *Public confidence in the judiciary and the administration of justice.*

### Review of Support Staff Roles in the Courts Service

A strong factor in the effective use of judicial resources is the support from Courts Service staff. Support staff roles in the Courts Service should be reviewed to take into account emerging judicial needs and the requirements of the Courts Service arising from its Modernisation Programme and other developments including the recommendations of the OECD study and the work of this Working Group. Any review should look at the following areas.

- (i) The role of the Court Office in correctly issuing and recording initiating documents to ensure accurate

data on the basis and listing of proceedings and so support effective case management.

- (ii) The role of the Court Registrar in correctly recording the decisions of the Court to ensure accurate data on the activity of the Court and so support effective case management. The capacity of registrars to take on additional decision-making activities envisaged by the OECD, beyond their core role of being the definitive record keepers for the Court, will need to be carefully considered.
- (iii) The provision of effective case management staff support for District Court Judges. In addition, consideration should be given to developing an initial central support pilot team, and test online staff support options for judges in different areas.
- (iv) A review of Judicial Assistant role and job requirements and the role of research staff including consideration of the role of staff lawyers to support complex legal research and judgement writing functions.
- (v) A review of the different roles and skill sets to support the modernisation and digitalisation of Court services.

### Research Strategy for the Courts

At a more general level, in terms of support for the judiciary, the Working Group is of the view that a Courts research strategy should be developed which would be overseen by a joint research group, including the judiciary and other key stakeholders, in Court management.

### Officers carrying out Quasi-Judicial functions: Human Resource arrangements

Appropriate human resource management arrangements and training should be put in place for officers carrying out quasi-judicial functions (High Court Master(s) and County Registrars) with any underpinning legislative provision required.

## 4.5 A Diverse Judiciary

From a rule of law perspective, a judiciary should be representative of the diverse nature of society. Diversity helps to recognise the talents and skills of

all members of society and provides for a culture that seeks, respects, values and harnesses differences. Increased diversity provides an opportunity to improve performance and gain a better understanding of the people served.

The Working Group acknowledges that the concept of diversity should at a minimum include - age, civil status, disability, family status, gender, ethnicity, including membership of the Traveller community, religious belief, sexual orientation and socio-economic status. The focus of this section is primarily gender diversity given the lack of data collected on diversity in the Irish judiciary. The Working group recognises the steps being taken by Government to address this issue through the Judicial Appointments Commission Bill.

The European Commission for the Efficiency of Justice in Council of Europe Member States, in its most recent Report published in October 2022,<sup>17</sup> looks at gender balance issues among judges. The report highlights that gender distribution in relation to professional judges varies widely between the 46 Council of Europe States. The ratio of women judges serving in Ireland was 42% as at 21 October 2022. The average ratio of female professional judges at Council of Europe level overall in 2020 was higher than of their male counterparts at 56%. A conclusion of the CEPEJ is that common law countries continue to present a high percentage of men in judicial office.

In terms of judicial appointments by gender, **Table 4A** highlights the position in the State between 2020 and 2022. **Table 4B** provides similar information by Court jurisdiction. **Table 4C** highlights judicial appointments by type (barrister, solicitor, elevation from lower Court) for the period 2020 to 2022. **Table 4D** provides information on the gender balance in relation to the judiciary for each Court jurisdiction.

**Table 4A:** *Judicial appointments by gender 2020 to 2022.*

	2020	2021	2022
Male	5	12	11
Female	6	9	6

<sup>17</sup> European judicial systems CEPEJ Evaluation Report (Part 1) 2022 Evaluation cycle (2020 data): (page 69). <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>

**Table 4B:** *Judicial appointments by gender/Court 2020 to 2022*

	Supreme Court	Court of Appeal	High Court	Circuit Court	District Court
Male	4	3	7	5	9
Female	0	2	9	4	6

**Table 4C:** *Judicial Appointments by type 2020-2022*

	Supreme Court	Court of Appeal	High Court	Circuit Court	District Court
Solicitor	0	0	1	1	12
Barrister	2	0	11	5	2
Elevation	2	5	4	3	1

**Table 4D:** *Gender Balance (Courts) (as at 21/10/2022)*

	Supreme Court	Court of Appeal	High Court	Circuit Court	District Court	Total
Male	6	8	28	21	35	98
Female	3	9	16	16	27	71
<b>Total</b>	<b>9</b>	<b>17</b>	<b>44</b>	<b>37</b>	<b>62</b>	<b>169</b>
<b>4 vacancies across the courts as at 21/10/2022</b>						

The Working Group notes the position concerning diversity and judicial appointments in other jurisdictions as follows:

The Judicial Appointments Commission for **Scotland**, has already published an *equality and diversity statement* meeting its obligation under the European Network of Councils for the Judiciary (ENCJ), Dublin Charter. This would be a similar model to what is proposed for the Irish Judicial Appointments Commission.

**England and Wales** have a formal process of judicial appointments through the Judicial Appointments Commission (*England and Wales*). The Commission has a detailed *diversity strategy*. It also has an outreach programme targeting four 'target groups' that data shows are under-represented in the judiciary; women, black, Asian and minority ethnic (BAME) people,

disabled people and solicitors. They also provide a range of support schemes that are targeted at candidates from underrepresented groups.

The *Law Society of Ireland*, in highlighting in their submission to the Working Group the diversity of their profession stated that "*the solicitors' profession is proud of the diversity of its members. Since 2015, women have outnumbered men and the profession has also proven attractive to mature entrants with 10% - 15% of applicants to our Professional Practice Course in the last decade being 30 years and over.*" The Law Society is of the view that there should be enhanced practices to engage with the solicitor profession for appointments to judicial office, similar to practices in place to enhance gender and diversity of appointments.

The Working Group notes that the Minister of Justice is sponsoring legislation before the Oireachtas to reform the judicial appointments process by setting up a new Judicial Appointments Commission to recommend persons for appointment as judges by the President on the advice of the Government under the Constitution. It is proposed that the Commission will have a clear remit to have regard to having equal numbers of men and women judges in all Courts; having a judiciary reflective of the diversity of the people in our country; and to meet the need for the conduct of Court proceedings in the Irish language. The Commission is anticipated to have a legal obligation to set out its strategy for the achievement of the diversity objective and will have to publish a diversity statement no later than 2 years after the coming into operation of that section and thereafter at least once in every 4 year period or less. The Commission will also be required to monitor and review, among other things, the effectiveness of the procedures set out to achieve the objectives of gender balance, diversity and Irish language needs in Court proceedings, and to report to the Minister for Justice in the matter.

## 4.6 Specialist Judges/Expertise

The judicial process benefits currently from the assignment of judges with particular forms of expertise which was gained from their service as lawyers, to similar areas of specialty on the bench. One issue considered by the Working Group was the issue of the appointment of specialist judges. It noted that

specialist insolvency judges were appointed to the Circuit Court but there are none currently in place. Different forms of Court specialisation also exist in other jurisdictions such as *England and Wales* (judges with financial experience dealing with a Financial list for financial matters between businesses), *the Netherlands* (a Patents Chamber specialising in intellectual property) and *Canada* (specialising in family law).

The Working Group is of the view that persons being appointed to judicial office, should, as a general rule, be appointed initially as ordinary judges and have the opportunity to deal with various areas of litigation during their careers. This approach will continue to be important to maximise judicial expertise. However, experience shows that persons appointed as judges are required, on the direction of the relevant Court President, to specialise as judges in a particular area of law for a specific period.

There is a growing trend for increased flexibility in the development of judicial competencies after a judge is appointed as an ordinary judge of a Court jurisdiction and for a judge to be assigned to particular areas of work. This can be seen, for example, in proposals for Family Justice Reform, which will result in the creation of Family Courts in the District Court, the Circuit Court and the High Court with judges assigned to these divisions for a three-year period. Specialisation of expertise leads to increased familiarity with the case types and issues that may arise and may improve consistency, and ultimately creating efficiencies. However, as previously highlighted, specialisation should not always mean that judges should serve in the one area of the law for all their careers.

The Working Group received correspondence from the Joint Oireachtas Committee on the Irish Language, the Gaeltacht and the Irish-Speaking Community highlighting the need for the appointment of bilingual judges functioning in Irish and English in every Court in the country. The Working Group notes that under proposed legislation establishing the Judicial Appointments Commission, the Commission will have to take this factor in to account in its recruitment.

The Working Group notes that the Judicial Appointments Commission Bill provides for the

preparation and publication by the Commission of a judicial selection statement and makes detailed provision in respect of consultation in the matter. The selection statement comprises a statement of requisite knowledge, skills and attributes and a statement of selection procedures. The requirement to have undergone particular education and training programmes, or to have undergone judicial training is referenced. The statement of knowledge, skills and attributes will be referenced against criteria including relevant treaties, conventions and statutes with respect to judicial office outside the State and relevant knowledge and experience at different Court levels in the State. Specific benchmarks include the skills required to deal with different judicial offices, different classes of Court business, Court practice and procedures, diversity awareness, and for international Courts, language skills and the requirements otherwise of working in an international environment.

#### **4.7 Increasing the flexibility of judicial resources: Retirement age, Flexible/Part-time working, use of temporary/fee-paid judges, period post retirement for case completion, cover for long-term absences**

The submission to the Group from the Chief Justice and the Court Presidents identified some specific measures to consider: (i) increasing the mandatory judicial retirement age, (ii) the sitting of judges in retirement to help to meet the judicial resource demands arising out of temporary and/or unexpected shortages; and (iii) the need for a legislative change/provision 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. The OECD report suggests that opportunities for adjusting retirement options should be assessed to better reflect the current needs of the judicial work environment and to provide flexibility to address temporary resource needs. It also suggested exploring the possibility of engaging temporary or part-time judges, while ensuring appropriate safeguards to protect judicial independence and impartiality. In discussing the link between job satisfaction and performance and the range of factors affecting job satisfaction the OECD points to the impact of working conditions including

options to choose part-time work when needed or for a certain period of time and suggested considering more flexibility options. The OECD report also suggests that limited flexibility in work conditions might be one of the reasons inhibiting diversity in the first instance courts and may be one aspect to address to encourage a more diverse applicant pool. A submission to the Group from the *Irish Women's Lawyers Association* highlighted the importance of flexible work options along the lines of other jurisdictions.

#### 4.7.1 Retirement Age

The mandatory retirement age for members of the judiciary is currently set at 70 years of age in line with public pay and pensions policy. While there are a number of countries internationally with a retirement age for judges below the age of 70, most equivalent common-law countries have a mandatory retirement age of at least 70 with a higher retirement age in some and/or provisions that allow judges to work part-time for a number of years beyond retirement at 70. For example, following a review of the retirement age it has been decided to increase the mandatory retirement age of judges in England and Wales from 70 to 75.

It can be argued that the benefit of a change in retirement age would be to retain highly experienced judges and it might also encourage a wider pool of people to apply for judicial office if they were given the opportunity to do so later in their legal careers. The OECD report points out that the wish to increase the retirement age primarily applies in countries where younger lawyers may not consider the judiciary a top career choice, or where select specialty positions cannot be filled within a few years. Otherwise, it suggests that increased retirement ages may limit the courts' ability to renew, diversify and bring in younger generations. The Group understands that there is not currently a difficulty in attracting applicants to judicial positions in Ireland. The OECD also points out that more recent research has pointed to some of the negative sides of increasing the retirement age. For example, a 2020 study undertaken in the *United States* found a drop in productivity when retirement ages are increased. The OECD considered that the loss of expertise can be partially avoided by offering options for phased retirements and serving on a temporary or part-time basis for select tasks after retirements and

that this aspect could be considered in Ireland.

The retirement age of 70 for the Irish judiciary is in line with the position elsewhere in the Irish public service, which is that the standard compulsory retirement age for public servants was consolidated following the enactment of the Public Service Superannuation (Age of Retirement) Act 2018, to the greatest extent possible, at the age of 70. Selecting 70 as the new compulsory retirement age followed extensive discussions with public service employers and a consultation process culminating in a report entitled "*Interdepartmental Group on Fuller Working Lives*" which informed the enactment of the 2018 Act. The Group also understands that this position on a retirement age of 70 represents current Government policy, and is a policy, which the Department of Public Expenditure and Reform (DPER) seeks to implement in a consistent manner in order to protect the integrity of that policy. Accordingly, the Group is not making a recommendation to change the policy in this area.

#### 4.7.2 Flexible/Part-time work options within Judiciary

Currently all judges are appointed on a full-time basis. Options for part-time and flexible working available widely in the Irish public sector are not available currently to the judiciary. This contrasts with the situation in some other comparable jurisdictions. A factor in encouraging a diverse judiciary is the ability to opt for flexible working practices to support family friendly/work life balance arrangements including flexible working in line with the approach in the public service generally. Some other jurisdictions have adopted these types of practices in order to address potential barriers for those considering applying for judicial positions as outlined in *Irish Women's Lawyers Association* submission to the Working Group. For example in the *United Kingdom*, the Crime and Courts Act 2013 extended the right to salaried part-time work to judges in the High Court and above (this was already available at lower court levels). Reducing working hours may also be attractive for judges who wish to reduce their working hours in the later stage of their career prior to retirement. It may also be an attractive option for those who might wish to serve as a judge but not full-time at different stages in their careers, thus widening the field of potential candidates.

The Group recognises that the implementation of flexible work options within the judiciary will require more detailed consideration of how this would work in practice within the range of judicial work, in consultation with the Court Presidents, of the pay and pension arrangements to apply and of the legal framework and practical mechanisms to ensure the full-time equivalent of judges working part-time is compliant with the statutory ceiling on judge numbers. The Group recommends in principle the adoption of flexible work arrangement options for the judiciary together with any necessary legislative underpinning. With the detailed arrangements for implementation should be developed by the Department of Justice in consultation with the Chief Justice and Court Presidents and in agreement with the Department of Public Expenditure and Reform.

#### 4.7.3 Use of judges on a temporary fee-paid basis

Many jurisdictions use retired judges on a part-time basis to supplement full-time judges usually with an upper age limit, for example, in *England, Wales, and Northern Ireland*, retired judges can undertake such work on a fee-paid basis up to the age of 75. Some jurisdictions such as *England, Wales, Scotland and Northern Ireland* also have provision for legal practitioners to act as judges on a fee-paid basis. The availability of retired judges or others that can be drawn upon to act as temporary judges for a period or for specific cases is regarded as a useful contribution to judicial capacity. It is drawn upon to deal with absences due to sick leave, to cover for a judge caught up in a particularly long case, to facilitate release for judge training, to draw on specific expertise or to deal with specific challenges such as spikes in caseloads or lengthening backlogs and waiting times such as those arising from Covid.

The submission from the Chief Justice and Court Presidents suggested that allowing for retired judges to serve for a certain length of time after retirement would allow the system to benefit from the expertise of senior experienced judges when the need arises and this would help meet judicial resource demands arising out of temporary or unexpected shortages.

The OECD report suggested that exploring appointing

temporary or part-time judges may be an approach to consider particularly for dealing with particular short-term needs, providing for special expertise and for addressing backlogs. It also suggests that there should be clear rules to avoid conflict of interests and that it should not be seen as a permanent solution to staff shortages.

It was suggested to the Group that in a relatively small country such as Ireland it might be difficult to manage the perception of conflict of interest should legal practitioners be permitted to act as part-time judges. The Group understands that this has not been an insurmountable difficulty in Northern Ireland where both retired judges and current legal practitioners are used to supplement judicial capacity. An added benefit has been the opportunity for those who are considering applying to become a judge to serve on a temporary fee-paid basis initially.

The submission from the Chief Justice and the other Court Presidents suggested that the option of retired judges may be a better option than the option of fee-paid judicial officeholders who may also practice as lawyers given the tradition provided for 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.

A significant constraint in the Irish context is the requirement in Article 35.3 of the Constitution that “No judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument”. The Group understands that the interpretation of this provision is that a person could not be appointed to be a part-time fee-paid judge while still earning other income on a salaried or self-employed basis though it would not be a bar to those with pension or other non-employment income. Accordingly, without constitutional change the potential for the use of fee-paid part-time judges would be more constrained than in other jurisdictions.

There is precedent for retired public servants to be paid for different types of work following retirement though the payment for such work is adjusted to take account

of pension payments under “pension abatement rules”. The Department of Public Expenditure and Reform has indicated that proposals to employ retired judges as judges beyond the age of 70 on a part-time, fee-paid basis, even on pension-abated terms, would not be consistent with Government pay and pension policy. There is a distinction between work undertaken by public servants including judges on particular projects following their retirement and paying a retired person over 70 on pension to continue undertaking the job being undertaken prior to retirement.

The Group considers there is potential for arrangements for temporary part-time judges to deal with temporary or particular needs effectively. It notes that many other common-law and civil law jurisdictions operate such arrangements, with appropriate provisions to protect judicial independence and manage conflicts of interest. It could be beneficial to have access to such capacity. However, the Group recognises the considerable constraints outlined above arising from constitutional provisions, public pay and pension policy and conflict of interest concerns and is not making any recommendation to introduce such arrangements currently. It considers there would be merit in further consideration of the issues involved in the future.

#### 4.7.4 Period after Retirement for Judgment-Writing

The submission from the Chief Justice and the Court Presidents to the Group raised the ineffective use of judicial resources from the constraints posed by the date of retirement of a judge operating in a collegiate court. Collegiate courts work together to deliver judgment in cases before the court regardless whether this includes 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 may be 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. 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. The submission points out that placing a judge approaching the end of his or her tenure on ‘lighter’ duties is not the most efficient use of judicial resources, and that 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. They cite the example of legislation that allows this in equivalent common law jurisdictions such as Canada and the United Kingdom.

The Group considered options to address this issue. The Canadian provision allows a judge of the *Supreme Court of Canada* who has retired, with the approval of the Chief Justice of Canada to continue to participate in judgements in which he or she participated before retiring, for a period not greater than six months. It also provides for remuneration in addition to pension for this work. The UK provision provides that a judge who has ceased to hold office may continue to deal with, give judgement in or deal with an ancillary matter related to a case begun by him before retirement and will be for these purposes regarded as holding Office. Payment is on a fee-paid basis.

The Group understands that legislation along the lines suggested in the Chief Justice and Court Presidents’ submission is possible in an Irish context. There is no constitutional objection to having judges continue in office after the normal retirement age or otherwise to bring back retired judges to sit, provided legislation provides for this and there is a warrant of appointment presented by the President of Ireland to the judge concerned. However the key point about either the engagement of retired judges or the grace period idea is that the judge when giving a judgment or making any order has to be acting under a warrant of appointment given by the President under the Article 35 of the Constitution; that could be done by allowing a judge to work past the statutory retirement age for a period of months to deliver written judgments or to reappoint him or her for a short period of time after he or she formally retires in order to give those judgments. However, as the difficulty from a public sector pay and pensions policy perspective which was highlighted earlier in this section in relation to the employment of

judges after retirement at the age of 70 would apply in this case as well, no recommendation is made by the Group on this issue.

#### **4.7.5 Flexibility in judge numbers to cover long-term absences: legislative change**

Given the pressures on judicial capacity, a reduction for any significant period of time can impact on court operations. Such gaps can arise for a variety of reasons such as longer-term absences due to long-term sick leave or other reasons, the time between a retirement and a replacement judge being appointed or the appointment of a judge to another body. The absence of any provision for employing temporary judges makes it difficult to provide cover in such cases. In many comparable situations in the wider public service agreement would be reached to allow an additional appointment to cover a long-term absence with the supernumerary position suppressed the next time a vacancy arises or to make arrangements to commence the process to recruit a successor for a planned retirement in advance of the retirement. In the case of judges, the legislative ceiling on judge numbers can limit the scope for such pragmatic solutions.

The Group considers this problem could be addressed by amending the relevant legislation to enable additional flexibilities to be built into the process. Legislative provisions could allow for a small number of additional judges - in excess of the limit in each category - to be appointed (i) to cover long-term absences and (ii) to appoint a judge in advance of a planned retirement to ensure a smooth transition with no time gaps including judgement writing time before departure and the potential for early on-boarding and induction. Any such legislation should be drafted so that the flexibilities provided could only be used in limited circumstances and be subject to Government decision. It would undermine the purpose of the flexibility if it were used to address permanent needs. The implementation of this approach should be in parallel with addressing the need for a set of terms and conditions of employment in relation to issues affecting absences such as sick leave. In addition, legislation requiring a judge to sit full-time on another body should ensure that there is provision for an increase in the number of judges to replace a judge who is no longer able to actively hear cases.

## **4.8 Some organisational and structural matters**

This section considers some organisational and structural reforms with particular reference to Court sitting days, the scheduling of courtrooms and the structure of the districts of the District Court. It also considers the powers of the Court Presidents to effectively and efficiently manage the business of the Courts.

### **4.8.1 Court sitting days and responsibility for courtroom scheduling**

Judicial time is a scarce national resource and it is incumbent on all of those working in the Courts system to ensure that the best use is made of this time. Experience has shown that cases can be concluded more expeditiously where it is likely that Court hearings will go ahead on the day that they are scheduled. The Courts infrastructure, including courtrooms, are also a finite and expensive resource. It is important that the best use is made of the physical infrastructure, including technology to support remote Courts. This is even more critical in the context of a significant increase in judge numbers.

The current position in relation to Court sitting times is mixed. Most Courts sit on the basis of a five-day week. However, in addition, Courts can sit at weekends, outside normal working hours and in emergency sittings to deal with urgent business. In the Superior Courts, there can also be significant casework and judgment writing time outside of actual court sitting time.

In the case of the District Court, there are 23 District Court Districts of which there are currently 26 permanently assigned District Court judges as well as the Dublin Metropolitan District (DMD) of which there are currently 18 judges including the President. There are also 20 Moveable District judges who assist the permanently assigned judges in the Districts and the DMD. Judges in the DMD and moveable judges sit 5 days a week as directed by the President of the District Court; the remaining permanently assigned District Court judges sit 4 days per week or at their own discretion 5 days a week.

In the case of the Circuit Court, which comprises the President and 37 ordinary judges, Ireland is divided into 8 Circuits. One judge is assigned to each Circuit except for 10 assigned in Dublin and 3 assigned in Cork. The remaining judges of the Circuit Court are unassigned. In criminal law and subject to courthouse availability the Circuit Court sits 5 days a week throughout the country. In addition, in Dublin the Circuit Court sits 5 days a week in family and civil law. Circuit Court judges who are not in Dublin frequently use Monday as a day to deal with outstanding long cases in civil and family law or deal with adjourned cases subject to courtroom availability.

It is acknowledged that all judges of the Circuit Court and District Court are expected to devote themselves to judicial business throughout the year, that there is out of hours work such as the execution of warrants, weekend cover for emergency sittings and other Court duties outside sitting times. There is also significant travel involved for some judges. However, the Working Group considers it important that the standard approach of sitting 5 days per week every week as applies to many should be the standard approach for all. There will be circumstances and business needs when this approach may need to be varied and the President of the relevant jurisdiction should have the discretion to vary this in such exceptional circumstances.

All options for maximising the effective use of judicial resources in courtrooms should be explored. Hearings could be scheduled over longer sitting days, in locations where courtroom availability is an issue. Subject to resource availability, this could be done, for example, on the basis of blocks of allocated time slots for hearings in any given day to enable more daily hearings to take place. For example, if one judge and one court registrar were to sit from 9.00 a.m. to 1.00 p.m., that would allow another judge and registrar to sit from 1.30 p.m. to 5.30 p.m. in the same courtroom, making more efficient use of scarce courtroom availability.

There may be a case for specialism and consolidation for certain work. Having more than one judge sitting on a continuous basis in a venue will enable more business to be transacted.

In parallel with this objective, and building on the work of the Courts Service in the context of the Covid pandemic, there should also be an emphasis on the maximum use of on-line or remote hearings. These are particularly relevant in cases where no direct witness evidence is required.

The maximisation of the use of courtrooms is also important for the effective and efficient use of judicial and Court resources. This is dependent, inter alia, on the coordination of dates and the use of courtrooms between jurisdictions, including in relation to the High Court when it sits on circuit whether for civil or criminal business.

This could be better achieved if the Courts Service, as part of its statutory role, had responsibility for the scheduling of all courtrooms in the State supported by the necessary IT solutions.

#### 4.8.2 Court vacations

In relation to Court vacations, the Courts follow a pattern set in the 19th Century with all Courts, other than the District Court, normally sitting for approximately 36 weeks in the year, with court vacations which take place at Christmas, Easter and during August and September as well as for just under two weeks in late May and early June. Work still takes place during vacation periods including judgment writing and urgent hearings. As, highlighted in *Chapter 7* (Judicial Skills and Training), training for judges also takes place during vacation periods.

The District Court sits all year round with out of hours and weekend sittings being a regular feature of the working year. Broadly, the month of August, two weeks at Christmas and a week at Easter are set aside for Court vacations but in practice, scheduled and unscheduled sittings of the District Court take place throughout the year.

There would be potential for a better utilisation of Court infrastructure and other resources if there could be a spread of utilisation across the year including current vacation periods. It is noted, that particularly for the Superior Courts, uninterrupted vacation time is particularly important for judgment writing. However, having different vacation periods for different divisions

of the High Court, for example, such as July/August for some and August/September for others, might facilitate better utilisation of resources.

The Working Group believes that consideration should be given to staggering Court vacation periods across different Courts by trialling a different vacation period on a pilot basis. In doing so, consideration should be given to the different requirements in relation to holiday sittings, judgment preparation as well as judgment writing and vacation periods across different Court jurisdictions. Over time, as sufficient additional judges are appointed to enable this to happen, all Courts should move to scheduling trials over a longer working year, with any period of Court closure limited to some days in December and a short period in the summer.

#### 4.8.3 Judgment Writing

Judgment writing is complex and time consuming. It must draw on a large range of case law as well as on written legal submissions, booklets of authorities and other sources including a judge's own notes.<sup>18</sup> The extent of citation of case law has increased very significantly over the years. At the hearing, all citations have to be addressed and debated and, in turn, they have to be considered and applied (or distinguished) when a judge is drafting an often complex judgment. The early delivery of judgments is important for the administration of justice and adequate time should be provided to judges for this purpose. This is not always the situation at present because judges usually move from one case to another as part of their daily duties with judgment writing sometimes taking place out of normal working hours or during vacation time. This is often an inefficient use of judicial time as, if there is significant passage of time since the conclusion of the hearing, judges have to re-read papers. While it may not be possible to build the full judgment writing time in between hearing cases, allowing a number of days to sketch out the broad outline of the judgment would speed up full judgment writing later.

The Working Group considers that it would be useful to take this into account in scheduling cases across

sitting days and in planning and assessing the need for judicial resources.

#### 4.8.4 Reconfiguration of Court Districts

It is noted that the OECD Report recommends that in the District Court in the short term, boundaries should be assessed and alternatives considered for provincial coverage, possibly creating larger districts to allow for more flexibility in assigning judges across an area. The issue of the review of the organisation of District Court districts was also referred to in the Report of the Review of the Administration of Civil Justice (2020) but that Review Group did not consider it appropriate to make recommendations in the matter at that time because proposals from the then President of the District Court were being discussed between the Minister for Justice and senior judiciary of the Court.

A reconfiguration of District Court districts to meet present day needs of Court users, would enable the more effective allocation and use of resources and better service delivery. The Working Group is recommending that the District Court be restructured into a smaller number of larger Districts. Any reconfiguration should be based on the following *principles*:

- i. Providing more effective and quality services to Court users having regard to the fair and efficient administration of justice.
- ii. The more effective and efficient use of resources.
- iii. Locating resources in order to achieve greater specialisation and expertise in the main/central areas of population.

The matter of the reconfiguration of Circuit Court circuits was also referred to in the Report of the Review of the Administration of Civil Justice (2020) in the context of recommendations made by the then President of the Circuit Court to the Minister for Justice. With the exception of Dublin and Cork, the then President envisaged a modernisation and reconfiguration of the circuits that would result in an increase in the amount of work done at Circuit Court venues through longer continuous sittings. One

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<sup>18</sup> Ms Justice Nuala Butler has written about the issues involved in judgment writing in "Where do I begin? (Thoughts from a new judge on judgment writing)", Irish Judicial Studies Journal, Vol. 5, No. 2, 2021. <https://www.ijsj.ie/assets/uploads/2021%20edition%202/3.%20Butler%20judgment%20writing.pdf>

important advantage of the proposed reconfiguration was to enable assigned judges to hold Court sessions, which would clear the optimum amount of work. Again that Review Group decided against making recommendations on this issue on the basis that the proposals from the then Circuit Court President were to be the subject of discussion between the Minister for Justice and senior judges of that court. The Working Group recommends that the Circuit Court geographical areas should be reviewed in parallel with any review of District Court areas to ensure that the allocation, management and processing of caseloads on hands is maximised.

#### 4.8.5 Powers of the Court Presidents

The effective transaction of business of the Courts with a view to ensuring the maximum and efficient use of resources is important in all Court jurisdictions and is a key role of Court Presidents. In this regard, it is important that Court Presidents have the power to effectively and efficiently allocate, re-allocate and manage the business of their Courts and they should be given additional powers, as required for this purpose. This is particularly important in situations where case volumes are higher in some districts or circuits than in others. These powers could include, for example, the issue of practice directions for the benefit of judges, officers carrying out quasi-judicial functions and Court users generally.

The Report of the Review of the Administration of Civil Justice (2020) recommends by way of procedural reform, that early consideration be given to codifying the powers of Presidents of the first instance jurisdictions as has already been done for the Supreme Court and the Court of Appeal. The OECD Report recommends expanding the capacity of the President of the District Court to draft practice directions or guidelines for the Court as a whole or for particular districts *“in collaboration with their assigned judges as necessary, to facilitate co-ordination and coherence”*.

The Working Group is of the view that Court Presidents should also be empowered, as required, to distribute work to judges in their jurisdictions so that there is an equitable allocation of work between, for example, urban and rural locations.

#### 4.8.6 Strategic Approach

The OECD study considered that there is a need for a long-term strategy for the judiciary at each court level, framed by a broader joint strategic outlook for the Irish Justice system as a whole, with a view to reaping the optimal benefits of Ireland’s current reform agenda. It also considered it important to establish effective mechanisms to sustain meaningful collaboration among the key justice stakeholders, and develop and implement change management plans that align with a common long-term vision for the future of the Irish justice system. It considered it important for the courts to outline a vision for the future from the perspective of and for the judiciary and that a strategic outlook to frame decision-making is necessary for the entire courts system as well as for each court level for the next few years to align with the Courts Modernisation strategy of the Courts Service.

The Working Group is conscious of the major interlinking programmes and actions underway and recommended to develop a more effective and efficient courts system that better meets the needs of court users. It supports the OECD view of the importance of developing a long term strategy for each court jurisdiction that would support these improvements.

## Recommendations: Effective Use and Management of Judicial Resources

### Comprehensive and strategic approach to human resource management for the judiciary

- 1 An evidence-based, comprehensive and strategic approach to human resource management for the judiciary should be developed and the necessary resources and supports provided to the Court Presidents, the Judicial Council and the Judicial Appointments Commission to undertake these in consultation with the Courts Service and the Department of Justice, as appropriate. Issues to be addressed include the following:
  - i. Noting the lack of explicit terms and conditions applying to judges, appropriate terms and conditions should be developed as a priority in line with public service norms including those applying to sick leave and other forms of leave.
  - ii. A full suite of human resource supports including welfare supports should be developed.
  - iii. Workforce planning should strategically reflect future, as well as current, needs including enhancing diversity and positioning the Courts to support the needs of those wishing to conduct their business in the Irish language.
  - iv. Judicial needs and application trends for judicial positions should be assessed.
  - v. Relevant HRM data (sick leave, vacation days, retirement schedules, diversity characteristics) should be collected in a standardised manner across all Courts to support decision-making and planning.
  - vi. Appropriate structures for managing judicial human resource matters should be considered including the interface between the role of the Court Presidents and the Judicial Council.

### Quasi-judicial office holders: Human Resource arrangements

- 2 Appropriate human resource management arrangements and training should be put in place for officers carrying out quasi-judicial functions (High Court Master(s) and County Registrars) with any underpinning legislative provision required.

### Review of the roles of support staff in the Courts Service

- 3 Support staff roles in the Courts Service should be reviewed to take into account emerging judicial needs and the requirements of the Courts Service arising from the Modernisation Programme and other developments including the recommendations of the OECD study and the work of this Working Group.

### Appointment and specialisation of judges

- 4 It is recommended that in order to gain a broad range of experience during their judicial careers, persons obtaining judicial office, should, as a general rule, be appointed as ordinary judges of a Court jurisdiction. However, such persons may be required, on the direction of the relevant Court President, to specialise as judges in a particular area of law for a specific period of years.

### Flexible work arrangements

- 5 Options for flexible working arrangements in line with the approach in the public service generally and as applies to judges in other jurisdictions internationally should be developed and implemented underpinned by the required legislative amendments to the operation of the statutory ceiling on judge numbers.

### Legislative change to provide flexibility to cover absences

- 6 The actual number of judges is set by legislation. It is recommended that additional flexibilities be built into this process subject to appropriate safeguards:
  - i. Legislative provisions should allow for a small number of additional judges in excess of the limit in each category to be appointed to cover long-term absences and to appoint a judge in advance of a planned retirement to ensure a smooth transition with no time gaps including judgement writing time before departure and the potential for early on-boarding and induction.
  - ii. Legislation requiring a judge to sit full-time on another body for long duration should ensure that there is provision for an increase in the number of judges to replace the seconded

judge who is no longer able to actively hear cases.

### Proactive allocation, deployment and management of resources

**7** Judicial and other Courts resources should be proactively allocated, deployed and managed to maximise effectiveness and the necessary legislative and other supports should be provided to enable this.

### Management and Restructuring of Districts of the District Court

**8** It is recommended that:

- i.** The operations of the District Court should be restructured into a smaller number of larger districts (and aligned as required with Circuits) with a view to the more effective and efficient use of resources, and achieving better service delivery to Court users.
- ii.** The President of the District Court should be assigned sufficient powers and to ensure the optimum deployment and use of resources on the larger districts with a view to enhancing the provision of more effective and efficient services to Court users. This would facilitate greater flexibility in judicial assignments allowing the President to react quickly to any upswing or decrease in business in a given area.
- iii.** There should be greater use of specialisation for example, in family and childcare law, which should be possible in a smaller number of districts.

### Circuit Court: Review of geographical areas.

**9** The Circuit Court geographical areas should be reviewed in parallel with the District Court areas.

### Powers of Court Presidents

**10** It is recommended that:

- i.** The President of each Court jurisdiction should be provided with any additional powers needed to ensure the maximum and efficient use of resources within that jurisdiction including the power to re-distribute work to judges in those jurisdictions, according to

needs.

- ii.** The President of the District Court should be enabled to issue practice directions with applicability across every district of the District Court. This would allow consistency across all judicial districts and facilitate coordination and coherence.
- iii.** As recommended in the Report of the Review of the Administration of Civil Justice (the Kelly Report), the powers of the Presidents of the first instance jurisdictions to issue practice directions should be codified in statute.
- iv.** Existing legislative provisions, including practice directions, should be used, as required, to ensure that there is consistency of approach in relation to the arrangement of business of the Circuit and District Courts across all of the Circuits and Districts, respectively.
- v.** The President of each Court should be given the power to issue practice directions to officers carrying out quasi-judicial functions who function within their jurisdiction, such as the Master in the High Court or County Registrars in the Circuit Court.

### Courts organisation of sitting times and Maximisation of Courtroom use

**11** Changes to the organisation of Courts and in Court sitting times should be made where they would facilitate a better deployment and use of judicial resources to respond to particular needs. In particular,

- i.** District Court and Circuit Court sittings, should, where possible, be scheduled over 5 days (Monday to Friday) subject to the direction of the relevant Court Presidents. Court Presidents should also have discretion to make allowance, as appropriate, for exigencies such as the factoring in of vacation sittings, out of hours sittings (including at weekends), maintaining a roster of on call judges, judicial training requirements and travel time.
- ii.** Sitting arrangements for the courts should be streamlined and courtroom use should be maximised. Subject to adequate resources

being available, a number of hearings should be scheduled over longer hearing days through, for example, allocated time slots.

### **Court vacations: pilot project**

**12** Consideration should be given to staggering Court vacation periods across different Courts with an initial pilot. In doing so, consideration should be given to the different requirements in relation to holiday sittings, judgment preparation as well as judgment writing and vacation periods across different Court jurisdictions.

### **Court vacations: time periods**

**13** Over time, as sufficient additional judges are appointed to enable this to happen, all Courts should move to scheduling trials over a longer working year, with any period of Court closure limited to some days in December and a short period in the summer.

### **Judgment writing**

**14** Judgment writing should be made more efficient including enabling judges to set aside sufficient time for the production of written and oral judgments soon after a case has been heard. In particular, consideration should be given to developing sound judgment writing schedules for different case types, including timelines, and to review options for staff and IT support for judgement drafting.

### **Responsibility for the scheduling of courtrooms**

**15** To ensure the most efficient use of judicial and Court resources, the Courts Service, as part of its statutory role, should have clear responsibility for the scheduling of all courtrooms.

### **Data collection on court activity**

**16** There should be regular and permissible data collection on issues affecting Court activity, such as the average hearing time, or the number of hearings that require one or more full days, recognising that the development of a fully comprehensive data set requires the implementation of new systems over the medium to long term.

### **Adoption of court performance measurements**

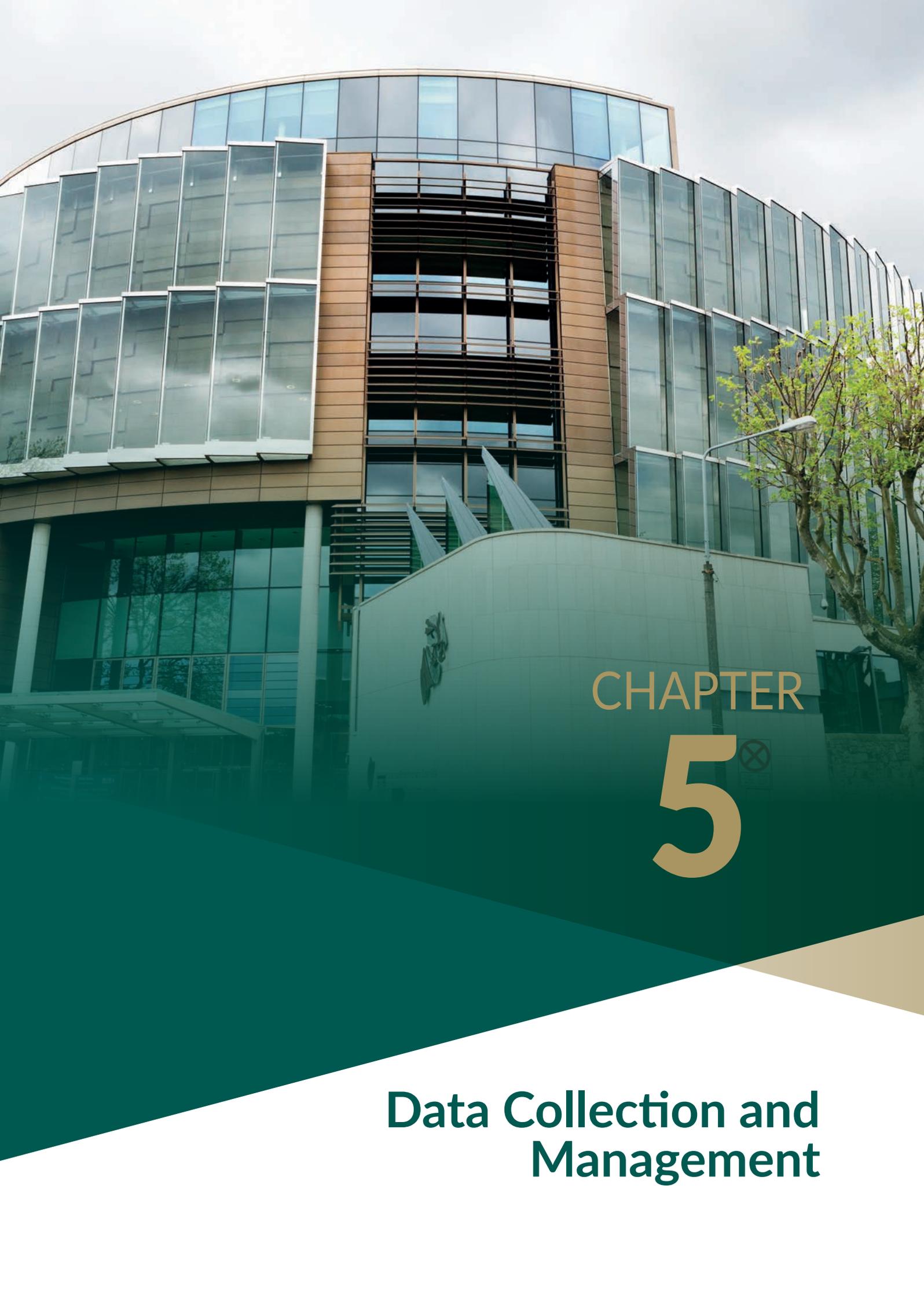
**17** In due course, consideration could be given to adopting broader Court performance measures including metrics, benefiting from experiences in other countries.

### **Development of research strategy for the courts**

**18** Develop a Courts research strategy overseen by a joint research group including the judiciary and other key stakeholders in Court management.

### **Develop long-term strategy for each Court jurisdiction**

**19** A long-term strategy should be developed for each Court jurisdiction that aligns with the Courts Service Modernisation Programme and Courts Service's strategic development generally in order to transform the Courts into a more modern institution. This should articulate a broader strategic outlook and framework for the full justice process, including the criminal justice system.



CHAPTER

5

# Data Collection and Management

## 5.1 Introduction

This chapter considers the issue of data in the judicial process and Courts system including its collection, management and dissemination. It highlights the need for substantial reform and enhancement of data management systems currently in place.

The availability of quality data supports the effective management and future planning for the judicial process and the Courts system. It is also essential for evidence based policy making in this area. This is why a data strategy is a key part of the 10 year Courts Service Modernisation Programme.

## 5.2 Data collection, planning and resource management

Data collection and management that would allow for (i) analysis on an ongoing basis of the match between judicial work/needs and resource management, (ii) proactive planning in the light of trends (for example, litigation caseloads) and (iii) anticipated developments that would require a different allocation of resources or new resources, are key to decision-making about the judicial process and Courts system. The ready availability of quality data is also critical for the operation of Courts by judges, who would benefit from having information on the progress of cases easily to hand. Better data will also support the monitoring of Court activity such as the tracking of caseloads, managing backlogs and monitoring timelines for the processing of cases. Finally, good data also supports a quality strategic planning process including for effective resource and work force planning.

It is noted that there is currently a lack of comprehensive key management data of the sort mentioned previously. This would support the judiciary/ Courts Service in effectively allocating and managing judicial and other resources to underpin a robust system of identifying additional judicial and associated requirements in a structured way.

In its Report *“Modernising Staffing and Court Management Practices in Ireland: Towards a More*

*Responsive and Resilient Justice System”*, the OECD refers to the fact its research work has highlighted that several gaps exist in the availability of data within the Irish Courts system.<sup>19</sup>

The OECD concludes that the main reason there is limited data of the type needed is that either the data is not collected or used for case and Court management purposes, *“but rather only for annual reports”*. This limited use of data has led in the OECD’s view, to the creation of data gaps which means that the Courts Service and the judiciary do not have the data they need to *“effectively manage staff (and other resource) allocation, assess case trends and their impact on operations etc.”*. In its comments on data management, the OECD also highlights the importance of the recruitment of staff with data and statistical training as well as the need to provide training to staff and judges in this area. The importance of software development to capture, manage and make findings in relation to data is also highlighted as well as the need for consistency in case definitions. Finally, the OECD Report suggests at Annex D to its Report, the type of data, which could be collected by the Courts Service and the judiciary *“to better assess judicial (and other) resource needs in the future”*.

The provision of sufficient resources to carry out this data enhancement work will be essential if the decision makers in relation to the Courts system are to make appropriate decisions on resourcing requirements but also to develop an effective backlog management strategy. This is particularly critical in a post Covid-19 scenario where a substantial number of cases are awaiting a hearing and finalisation.

It is noted that current software in Courts Service offices cannot support a modern data collection and management strategy and this deficit needs to be addressed as part of a data enhancement strategy. Accordingly, IT systems, supported by consistent and transparent data and case definitions, should also be developed on a joined up basis, as part of an overall IT development process for the Courts, to support the enhancement of a modern data management strategy.

<sup>19</sup> In particular, the OECD points out that *“the lack of data impedes effective management and future planning for the courts, which has made developing the infrastructure for a solid data framework a core element of the Courts Service’s modernisation strategy. Similarly, the Criminal Justice System also faces data limitations, with available data being siloed and unable to track flows of cases, incidents and citizens in and out of the system. This urgently needed framework could have a significant impact on effective and efficient case management and evaluation of practices in Ireland”*.

The development of better IT systems will also enable the priority enhancement of data collection and the presentation of performance metrics by the Courts Service utilising a properly resourced data analytics team.

### 5.3 Work ongoing at present in the Courts on data and case management

The Courts Service has a *Data Strategy* in place for the period 2021-2024, which outlines a series of initiatives aimed at enhancing the Courts Service's capacity to manage and appropriately use data generated from its activities. This Strategy includes actions in relation to, for example, the collection, management, processing, use and quality of data as well as data governance.

There are in excess of 120 case management systems currently in use in the Courts, which do not meet the requirements of a modernising Courts Service and system. Under the Courts Service Modernisation Programme (which is a 10-year programme up to 2030), three separate operational work-streams are underway which are looking at the civil, family and criminal law Courts. Under these work-streams, teams are considering the adequacy of the supporting case management systems. The initial view of the Courts Service arising from this exercise is that most will need to be replaced.

The Courts Service aims to meet its future needs by developing a *single case management system* and the objective is to develop the elements of the new facilities in modules. The work-streams specific to each case type must be individually designed and developed as part of the new case management system, with the order of development being determined by a robust governance structure. It is noted from the Courts Service that there are significant challenges in the specification of new case management systems for Courts. The business transacted by each of the Courts is not generic and as a result, bespoke solutions need to be found for different business types.<sup>20</sup>

The Courts Service has further clarified for the Working Group that the development of new modules of a case

management system for the Courts will be incremental over coming years (up to 2030) which will include an ability to generate key management data to, inter alia, measure the activity and outputs of the Courts. The order in which work-streams are completed will be decided by the Courts Service over the coming years and it is intended that by the end of the development programme, the Courts Service should be able to report regularly on relevant data types.

The Courts Service is committed to the development of a case management system that will be front and centre of their efforts to modernise Court operations and provide a service that meets the needs of 21st century Ireland. In terms of development, the inaugural project in the civil work stream is a Debt Claims on Line system that will have benefits across the jurisdictions, given that the enforcement of debt can be initiated in any one of the Courts of first instance. A pilot project for this will be ready for testing by the end of 2022 and it is anticipated that by the middle of 2023, the new system will be in place. Depending on the availability of funding, the Courts Service hopes to build on the functionality of the system to roll out future case types to the case management system with increasing speed.

The collection, analysis, presentation and publication of all aspects of data on the operation of the Courts is critical to the effective and efficient management of the judicial process and the Courts system including resource allocation. This includes statistical data needed to identify the number of cases on hands in individual Courts at a particular time, the make-up of cases by area of litigation, relative complexity of cases, the likely range of hearing times for each type of case and timelines for the progress of cases enabling, for example, information to be available to best manage workflows. The enhancement of data collection is a priority of the Courts Service as part of its Modernisation Programme. In this regard, and noting the important work both ongoing at present and planned in the Courts, the Working Group makes a number of recommendations in relation to data collection, management and analysis at the end of this Chapter.

<sup>20</sup> For instance, in the High Court, there are 27 separate lists, each with its own separate arrangements and application type.

## 5.4 Data Management: Structures and Responsibilities

As highlighted previously, in making its recommendations, the Working Group recognises the importance of collaboration between the Department of Justice, the Courts Service and the judiciary in relation to data management with a view to providing a greater evidence base for both policy and operational planning for judicial resource allocation, planning and management. The first role of appropriate management data is to highlight for the Presidents of the Courts and for the Courts Service the opportunities for reassigning resources to manage the workload of the Courts. Where there is a potential shortage of judicial resources, the necessary data should be gathered to enable the Department of Justice to make a recommendation to the Minister and to the Government on the question of appointing additional judges.

New structures should be put in place in both the Department of Justice and the Courts Service for monitoring existing judicial resources and addressing the need for additional resources. These new arrangements should involve the Courts Service having primary responsibility for the collection of operational data in the context of general resource planning, allocation and management including judicial resource management. This work should be supported in the Courts Service by a new Unit, with the necessary expertise, to provide relevant data to support Court Presidents in the optimal allocation and management of their judicial resources and support the Courts Service Board in its oversight role. This Unit would also supply information to the Department of Justice for the purpose of judicial resourcing considerations.

The Department of Justice, as part of its governance function, and with the necessary expertise, should be responsible for the strategic assessment and determination of judicial resources including numbers, and managing the proposed judicial resource planning model (see Chapter 3.17). All of this work should be based on close collaboration with the Courts Service and other relevant public bodies. The Department should establish a specific Unit or process with dedicated resources and the necessary expertise for this purpose. In undertaking this work, factors to be taken into account should include the following:

- i. Information on the existing judicial workflow and allocation of judicial resources and case trends, backlogs and waiting times based on data supplied by the Courts Service, and
- ii. The need for forward and strategic planning to anticipate and provide for judicial resource needs arising from likely trends in litigation, Government policy/legislative proposals with an impact on judicial resources, demographic change and other matters likely to impact on judicial workload.

In the context of managing judicial resource planning, the Department should take a whole of system, cross-agency, approach to this process to respond to developments in the overall criminal and civil justice systems. Any request for additional judicial resources would be considered in the context of this process.

This approach will allow for better forecasting of judicial numbers and also, as part of the same planning model, enable necessary Courts Service support staff, facilities and other resources to be put in place as part of the overall planning process. In advance of the deployment of a more holistic method of tracking Court performance, the impact of the appointment of additional judges should be tracked in general terms to provide assurance on the business impact as a result of the appointments.

The judiciary should continue to be centrally involved in the development of any future data strategy including training requirements.

To support the more comprehensive approach recommended, it is also envisaged that members of the judiciary, their support staff and other Courts Service staff should receive appropriate training in data collection, recording and management as required.

## Recommendations: Data Collection and Management

### Data management: Structures and responsibilities

- 1 The development of a comprehensive data collection and data analytics system must be a key priority for the Courts Service in collaboration with the judiciary. In this regard, it is recommended that:
  - i. Responsibility for the collection and presentation of operational data should rest with the Courts Service in the context of general resource planning, allocation and management including judicial resource management.
  - ii. The Courts Service should establish a new Unit to provide relevant data to support the Court Presidents in the optimal allocation and management of their judicial resources. This Unit would also supply information to the Department of Justice for the purpose of judicial resourcing considerations.
  - iii. Responsibility for the strategic assessment and determination of judicial resources including numbers, and managing the proposed judicial resource-planning model, should be a governance function of the Department of Justice based on close collaboration with the Courts Service and other relevant public bodies.
  - iv. The necessary professional expertise and training should be available to Court Presidents and to the relevant staff in both the Courts Service and the Department of Justice. Recruitment of specialist staff in the Courts Service to support data analysis should also be considered.

### Data training

2. Members of the judiciary, their support staff and other Courts Service staff should receive appropriate training relevant to their role in the collection, recording and management of data, as required. This should include training in the analysis of data and the development and understanding of management reporting in order to track current work processes to see where challenges occur.

### Data management: Development of IT Systems

3. IT systems, supported by consistent and transparent data case definitions, should be developed on a joined up basis, as part of an overall IT development process for the Courts, to support the enhancement of a modern data management strategy. This will involve a process to agree the metrics by which activity in Courts are to be measured and understood by all stakeholders. Data reports and processes should be developed that assist in identifying delays early and allow Court Presidents to adjust the allocation of resources accordingly. Consideration should also be given to developing an IT dashboard that enables judges of the Superior Courts to track the pending inventory of their cases waiting written judgements.

Teach Cúirte  
Courthouse



CHAPTER

6

**Improving Services  
to Court users**

## 6.1 Case Management, Work Practices and Procedural Reforms including support to Court users

### 6.1.1 Introduction

This chapter examines the role and enhanced use of case management techniques to support the administration of justice. The use of case management techniques is endorsed from the perspective of both the operation of the judicial process and the delivery of Court services in a more effective and efficient manner while ensuring the fair and impartial administration of justice.

More specifically, the chapter sets out some guiding principles which the Working Group believes should support the application of case management approaches, work practices and procedural rules. The enhancement of information technology solutions to support case management including the need for an automated case management system, is also highlighted. Other reforms considered are the utilisation of alternative dispute resolution mechanisms and the enhancement of supports for lay litigants. Finally, the issue of backlog management is looked at and how this can be utilised to address the growing caseloads on hands in all Court jurisdictions.

### 6.1.2 Feedback from public consultation process

More active case management in the Courts is called for in a number of submissions received by the Working Group. The expectations of the authors of the submissions are that active case management should be aimed at reducing delays with parties also being encouraged to use alternative methods of dispute resolution. The need to transfer some work from the Courts (such as fines) to other bodies is highlighted. There is a call for the increased use of digital technology in the Courts with proper checks and balances to protect vulnerable litigants and always ensuring proper access to legal representatives. The Commercial Court is cited as a good example of efficient and effective case management and the enhancement of data collection and presentation in the work of the Courts is emphasised.

In relation to caseloads and waiting times, the impact of delays and uncertainty on litigants in respect of trial

dates due to backlogs on hands, particularly arising from Covid-19, is emphasised. There is a view that some of the new work practices introduced to manage the judicial caseload in the context of the Covid-19 pandemic should be maintained and developed. There could also be a greater role for public officials working in or with the Courts to take on quasi-judicial roles in the management of cases.

## 6.2 The OECD Report

In its Report, the OECD highlights the substantial challenges faced by the judicial process and Courts system in relation to case and backlog management. In addition to the greater use of case management and backlog management techniques, the OECD, inter alia, calls for greater investment in the structural modernisation of case, Court and data management practices together with the upgrading of information technology to support the necessary changes. In the OECD's view, this investment will lead to efficiency gains that have the potential to reduce the number of additional staff needed.

## 6.3 Case Management Principles

It is recognised that there are significant challenges in the specification of new case management systems for the Courts. The business transacted by each of the Courts is not generic and as a result, bespoke solutions need to be found for different business types. For example, in the High Court, there are 27 separate lists, each with its own arrangements and dealing with different application types.

Considerable work is being undertaken in the Court of Appeal and in the High Court (for example, the Commercial Court) to utilise case management techniques so as to enhance the ability of those Courts to do their work more efficiently and effectively thereby providing a better service to Court users. Officers carrying out quasi-judicial functions, such as the Master of the High Court and County Registrars also carry out case management work on behalf of the Courts. Case management lists are also taken by judges of the Circuit Court and the District Court.

The roll out of new technology to facilitate remote hearings, introduced during the Covid-19 pandemic, also provides additional opportunities for the more

efficient disposal of Court business. It is clear from the submissions received and from the contribution of members of the Working Group that there is room for the greater use of case management across the Courts. The Working Group recognises that addressing this area more comprehensively will require a multi-faceted approach involving both Courts and Court users including the need for primary legislation arising from the Report on the Review of the Administration of Civil Justice (October 2020). For cases to go ahead on the dates set, it also necessitates judges being available to sit, as and when necessary, on prioritised lists, ahead of other types of work.

Both primary and secondary legislation is required to give effect to elements of each of the work-streams covered by the Report on the Review of the Administration of Civil Justice.<sup>21</sup> It is understood that the Department of Justice plans to introduce reforms by way of two or more pieces of legislation. The first will support the changes recommended in civil procedures in the Courts work-stream and in the judicial review work-stream as well as some items to support the Courts Service Modernisation Programme. The second piece of legislation will address the changes required in areas such as discovery, litigation costs and facilitating Court users.

However, before looking at the issue of case management in more detail, including the digital aspects, this chapter commences by outlining some key principles, which the Working Group believes should govern the case management process generally.

In the context of the work undertaken by the OECD in its Report “*Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*”, it is noted that effective case management requires the existence of five component parts with a view to the achievement of justice in a timely, cost effective and fair manner. These are as follows:<sup>22</sup>

i. Use of triaging of processes to ensure that cases

receive attention proportional to their needs.

- ii. Process simplification to remove procedural barriers that unnecessarily complicate litigation.
- iii. Stakeholder engagement to ensure clear communication about case management objectives at every stage of litigation,
- iv. Effective use of Court staffing and technology resources, and
- v. Ongoing commitment to data management and performance management.

### Case management principles

(1) The Working Group agrees the following principles in relation to the application of case management approaches, work practices and procedural rules.

Recognising, in particular, that Court directed case management is beneficial to:

- a) encouraging efficient and effective use of judicial time and the throughput of litigation,
- b) enabling judicial resources to be, inter alia, concentrated on conducting trials,
- c) narrowing down and clarifying key issues in judicial proceedings (including by triaging approaches) and therefore resulting in shorter substantive hearings,
- d) early identification of issues in dispute and the assistance which this offers parties considering resolution at an early stage,
- e) the provision of a more accurate estimate of the length of trials,
- f) streamlining Court processes and procedures and assisting business functions to operate more smoothly.

and, all ultimately, leading to savings on time, reduction in costs of litigation and of demand on judicial resources, the following *principles* in relation to the application of case management approaches, work practices and procedural rules in all Courts having due regard to their respective constitutional and statutory jurisdictions are supported:

i. Case management, including existing provisions

<sup>21</sup> See Implementation Plan for the Kelly Report: Civil Justice Efficiencies and Reform Measures: A Civil Justice System for the 21st Century (May 2022) - page 8. <https://www.gov.ie/en/press-release/937eb-minister-mcentee-publishes-implementation-plan-on-civil-justice-efficiencies-and-reform-measures/>

<sup>22</sup> See Hannaford-Agor, P. (2021), Reimagining Civil Case Management, National Center for State Courts, page 3. [https://www.ncsc.org/\\_data/assets/pdf\\_file/0027/70668/NCSC-Reimagining-Civil-Case-Management.pdf](https://www.ncsc.org/_data/assets/pdf_file/0027/70668/NCSC-Reimagining-Civil-Case-Management.pdf)

dealing with same,<sup>23</sup> should be applied to the maximum extent possible in line with the fair and effective administration of justice,

- ii. The Courts carrying out case management activities should be judge led, and should have the authority to make binding decisions on the parties, the aim of which is to enhance the efficiency of the justice system. In this regard, communication should regularly take place on the principles being applied, to ensure the consistency of decisions with other Courts. It is essential that case management should not become an instrument to delay the progress of cases but instead be utilised to narrow the net issues for consideration by the Courts.
- iii. Case management should be supported by the enhanced use of information technology,
- iv. Case management, subject to the direction of the President of the relevant Court, should be carried out on the basis of close co-operation between the judges and the relevant officers carrying out quasi-judicial functions (such as Masters and County Registrars) within their respective jurisdictions in order to achieve maximum efficiency and to ensure the work is distributed in a timely and cost effective way.

This could involve the following:

1. Co-operation between officers carrying out quasi-judicial functions and judges being overseen by the appointment of a designated liaison judge whom officers carrying out quasi-judicial functions could consult for advice.
2. The issuing of binding practice directions by the relevant Court President on the work of officers carrying out quasi-judicial functions that would seek to give guidance and set standard procedures to be followed.
3. The carrying out of periodic reviews (involving active consultation between judges and officers carrying out quasi-judicial functions) of the functioning of the system.

4. Without delaying unnecessarily the progress of cases, the case management process should include an ability to encourage the use, on a voluntary basis and in appropriate circumstances, of ADR mechanisms, so that disputes only need to be resolved through litigation as a last resort.
5. The detailed arrangements required for the greater use of case management functions in the Courts should be put in place as part of the implementation of the recommendations of this Working Group and of the *Report on the Review of the Administration of Civil Justice (October 2020)*.
6. In making its recommendations in relation to the greater use of case management, a distinction should be made between those non-contentious and non-complex case management functions which could be undertaken by officers carrying out quasi-judicial functions (such as Masters and County Registrars) and more complex functions, which should continue to be undertaken by judges.
7. The aim of case management should be to enhance access to justice by narrowing down the issues to be determined at hearing, and so reduce costs and provide quicker access to justice to Court users and other participants in the judicial process.

## 6.4 Case Management generally including procedures

The Working Group notes the recommendations in the *Report of the Review on the Administration of Civil Justice (October 2020)* chaired by the former President of the High Court, which come within the Working Group's terms of reference, with particular reference to those dealing with Civil Procedure (including Case Management), Facilitating Court Users and Technology and e-Litigation.<sup>24</sup> It is considered that these recommendations will lead to the more efficient and

<sup>23</sup> See Chapter 5 (Civil Procedure in the Courts) of the Kelly Review, which outlines in some detail the current comprehensive legislative provisions/rules in relation to case management, which apply in the District Court, Circuit Court and High Court.

<sup>24</sup> See Report on the Review of the Administration of Justice (October 2020): Chapter 12 - Summary of Recommendations. [https://www.justice.ie/en/JELR/Pages/Review\\_of\\_the\\_Administration\\_of\\_Civil\\_Justice\\_-\\_Review\\_Group\\_Report](https://www.justice.ie/en/JELR/Pages/Review_of_the_Administration_of_Civil_Justice_-_Review_Group_Report)

effective administration of civil justice. For example, procedural reforms, which have been recommended in the Report of the Review Group include:

- a. *The use of pre action protocols which include requirements that must be complied with by parties before actions are brought;*
- b. *Pleading reforms, which require parties to plead their case with more precision with a view to ensuring that the key issues in a dispute can be identified prior to trial. The Review Group recommends that where the parties do not do this, a judge should be expressly empowered to strike out the pleading. However, from the perspective of fairness, the form of order to be made should be that unless the offending party files a pleading that complies with the relevant requirement within a time fixed by the Court, the pleading should stand struck out.*
- c. *the harmonisation of the forms and proofs necessary for the commencement of proceedings across the first instance jurisdictions and the standardising and simplification of terms and language used in civil procedure.*

It is noted that progress is being made in implementing the recommendations of the Review Group, responsibility for most of which rests with Department of Justice and the Courts Service. The Working Group would like to see these recommendations implemented as soon as possible.

In this regard, it is also noted that the Implementation Plan for the Report of the Review Group, *Civil Justice Efficiencies and Reform Measures (A Civil Justice System for the 21st Century)* which was published in May 2022, identifies the actions required to deliver the Kelly Report's recommendations. In the area of *civil procedures and case management*, for example, legislation is being prepared in the Department of Justice to support various procedural changes in the Courts including the use of pre action protocols. In the area of case management, action is also proposed in the Implementation Plan, for example, to confer powers on an additional cadre of Deputy Masters by rule of court to enable judicial resources to be concentrated

on hearing pre-trial applications and conducting trials.

Consideration is also being given to the development of early Court rule changes and directions in advance of legislative changes resulting from the Report on the Review of the Administration of Civil Justice (2020) as well as standardising operations by the County Registrar and Courts Service staff across different locations.

### **6.5 Case management functions carried out by office holders undertaking quasi-judicial functions**

The Working Group supports the greater use of other officers who can carry out quasi-judicial functions, such as High Court Masters, to support more effective case management. In this regard, it is important that there is clarity in relation to the type of work, which should be undertaken by a judge, and the functions of officers carrying out quasi-judicial functions.

Examples of case management functions, which should be undertaken by a judge, include case management in relation to the conduct of trials. The making of decisions in relation to the conduct of trials requires significant practical experience in the running of trials and it could be counterproductive to have such decisions made by anyone other than a judge. There are also certain areas of work where the overall supervision of a Court list requires case management of the list by a judge such as in the Commercial Court.

In addition, as the Report on the Review of the Administration of Justice noted, there are certain categories of decision, which require the exercise of judicial powers and which could not, within the bounds of the Constitution, be assigned to a non-judicial office holder. By way of example, an application under the inherent jurisdiction of the High Court to dismiss proceedings on the grounds of unreasonable and inexcusable delay requires a decision as to where the balance of justice lies and, accordingly, it would be open to question whether such a jurisdiction could appropriately be exercised by officers carrying out quasi-judicial functions.<sup>25</sup>

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<sup>25</sup> However, if the recommendation in the Report of the Review of the Administration of Civil Justice (2020) to introduce "automatic discontinuance" is adopted, the necessity to invoke this jurisdiction should be significantly reduced.

It may be appropriate that in cases where a complex issue arises in an application within the jurisdiction of an officer carrying out quasi-judicial functions, the officer should be encouraged to transfer the matter to a judge for determination. For example, while many applications to compel a party to provide further particulars of the claim or defence (as the case may be) will be straightforward, there are occasions when more difficult issues of principle arise and where the matter could be decided more authoritatively by a judge. In this context, the Working Group considers that the exercise of case management functions and powers by these officers should be undertaken in a manner that promotes efficiency and saves time. It would undermine this objective if case management decisions lead to appeals.

In relation to appeals, while complexity is one reason for bringing an appeal, appeals are also brought for a range of different reasons including that an officer carrying out quasi-judicial functions made an incorrect decision or where there is a mismatch in resources and/or power and the lodging of an appeal – thereby creating a delay in proceedings – is a specific aim of one side.

The Working Group would also support the creation, as resources allow, of well-trained online dispute resolution experts, supported by a dedicated case management judge or senior legal staff. Consideration could also be given to pilot testing specific case management techniques (also led by case management teams overseen by a judge) following a review of priority areas and implementation requirements, including adjustments to staffing and training.

## **6.6 Appointment of and Transfer of work responsibilities to other Court related office holders including case management functions**

As outlined in the previous section, there is significant scope for Masters (or in the Circuit Court, County Registrars), to take on additional case management functions including in relation to routine applications such as many of the Monday motions currently dealt with by judges in the High Court.

The appointment of additional officers carrying out quasi-judicial functions of this nature, should be accompanied by a number of supporting initiatives as follows:

- (i) The role of the High Court Master and County Registrar should be reviewed in order to assess how they could support more effective case management and other procedures under the direction of the Court Presidents.
- (ii) In the shorter run, the relationships between the Courts and Court officers carrying out quasi-judicial functions should be reviewed including governance and arrangements on issues such as role, performance and supervision.

In addition, in the same context, there is a need for the expansion of training and development for officers carrying out quasi-judicial functions (High Court Master(s) and County Registrars). Any new governance framework could also address issues such as human resource management arrangements including recruitment, terms and conditions of service and training (see also *Chapter 4*). As identified in the Report on the Review of the Administration of Civil Justice (2020), it would be important that non-judicial office holders should be appropriately qualified and experienced to undertake functions of this kind.

Rather than being overly prescriptive as to the individual functions that could be undertaken by officers carrying out quasi-judicial functions, it would be useful to allow some flexibility in the system. In particular, this approach might allow a Court President to add to - or subtract from - the list of functions that could be undertaken from time to time by officers carrying out quasi-judicial functions. A useful model for such a provision is to be found in section 25(1) of the Court and Court Officers Act 1995.

As already suggested in *section 3* on case management principles, case management by non-judicial office holders should be judge led and based on close cooperation within respective jurisdictions.

Subject to building such flexibility into the system, it would facilitate quicker access to justice if the number

of functions that could be undertaken by non-judicial office holders were increased. Such functions could include the following:

- a. Motions to compel a party to provide further particulars of a claim or a defence made in pleadings;
- b. Motions for discovery of documents;
- c. Motions for judgment in default of defence;
- d. Motions to add a party or a third party to proceedings;
- e. Motions to substitute a party or to reconstitute proceedings following the death of a party;
- f. Applications for payments out of Court;
- g. Applications for summary judgment in uncontested cases.

It should be noted that the *County Registrars Association* made a submission to the Working Group in which it listed a number of additional powers that could be conferred on County Registrars in the context of enhancing case management in the Courts. The County Registrars' submission is published with the other submissions made to the Working Group.

The use of officers carrying out quasi-judicial functions should not be seen as a parallel jurisdiction to the Courts. Instead, this should be integrated into the administration of a Court and be subject to the directions of the Court President in relation to the practice and procedures to be adopted and the allocation of work and sitting times. For this purpose, the Court President should be expressly empowered to issue practice directions on the work undertaken by officers carrying out quasi-judicial functions. The question of the oversight and governance of that work also needs to be clarified, as it is essential for the efficiency of the Courts system that there is consistency of decision-making. In practice, subject to the overall direction and control of the Court President, close-co-operation between the judiciary and the relevant officers carrying out quasi-judicial functions will be required in order to achieve maximum efficiency and to ensure the work is distributed in a timely and cost effective way.

## **6.7 Enhancing the Digitalisation Process and Information Technology solutions to support case management**

It is recognised that a key challenge facing the judicial process and Courts system over the years has been the need to secure additional resources in the area of information technology. The fact that this issue is now being addressed comprehensively by the Courts Service, within the context of that Service's ICT Strategy 2021-2024, is to be welcomed. Under the Courts Service Modernisation Programme, it is intended that the current IT systems within the Courts and Courts Service should be modernised. This includes actions in the areas of enhanced technology aimed at providing, for example, a standardised minimum set of technology in all areas, technology enabled courtrooms and the expansion of video installations in courtrooms countrywide. As outlined in *Chapter 5*, the Strategy also includes the development of a unified case management platform with the introduction of a single digital case management system the aim of which is to create "*a consistent user-friendly experience throughout case management and rationalise Courts Service processes and procedures*".

The Report of the OECD highlights the challenges facing the judicial process and Courts system in the area of IT and recommends the upgrading and connecting up of such systems and applications. This includes the ability to better support the inputting of case records, the scheduling of case events, the issue of various notifications, the control and storage of final records, supporting and managing expenditure accounting and budgeting as well as HR management functions. This will all enable enhanced decision making and support the judicial process and Courts system to better manage resources in line with changing caseloads and demands.

More specifically and at a broader level, a new consolidated and integrated Court Management Information System should, as also highlighted by the OECD, be designed to "*support the case management techniques implemented and the related organisational functions throughout the entire court process*". A new automated system should be able to perform a number of tasks including the following:

- i. Supporting a case management system which should
  - a. allow the monitoring of case processes and enable case management techniques to be supported.
  - b. offer the possibility to effectively track the status of cases and their location in the Courts system.
  - c. allow process bottlenecks and case delays to be identified both immediately and based on future forecasts. This will enable remedial action to be taken on a more timely and proactive - rather than a reactive - basis to address such challenges.
- ii. Support the development of caseload and other necessary workload statistics.
- iii. Support the generation of management information reports.
- iv. Support the scheduling of hearings. (A mechanism for recording the length of Court hearings (both interlocutory and substantive) should also be included.
- v. Support budgetary and workforce management and future planning in both areas.
- vi. Enable other technological applicants to be linked in an integrated manner such as electronic document management, electronic filing and judicial decision-making support functions. For example, there should be a user-friendly system put in place to allow for the electronic uploading and filing of books of authorities and other documents for the purpose both of interlocutory applications and substantive hearings. Such a system should, in time, minimise the need for extensive hard copy papers.
- vii. Provide an evidence base for policy and operational development,
- viii. Support the roll out of more virtual hearings.

All of which should enable the operation of the judicial process and the Courts system to be more effective and efficient. An integrated process performing all of the above functions should also enable the Courts to manage their business activities, including resources, according to case volume and demands.

It is recognised by the Working Group that enhanced

IT systems will not just benefit the judiciary and those working in the Courts systems. These systems should also be of benefit to Court users and reduce the administrative burdens which they face in the present highly paper based system. Features such as e-filing will greatly enhance the ability of Court users to engage with the Courts system, allowing the issuing of proceedings and the lodgment of documents on a year-round basis, as well as improving the ability of parties to track the progress of cases, without the need to visit Court offices. This will lower costs for Court users and allow the Courts Service to free up resources to focus on activities that support the operation of the Courts.

In summary, the use of information technology to underpin case management reforms is seen as vital and should cover a broad range of areas. Building on the Courts Service Modernisation Programme, the development of modern and integrated IT solutions should remain a priority for the Courts Service. This should include an automated Case and Court Management Information System supported by consistent and transparent data case definitions, which should be developed on a joined up basis, as part of an overall IT development process for the Courts, to support, inter alia, the enhancement of a modern data management strategy.

In addition to investment in a new case management system to replace current multiple and disjointed systems and current manual processes, digital reforms should, for example, also support the greater use of e-forms, e-documents and the streamlining of requirements and standards for full e-filing.

The development of digital supports for remote and hybrid hearings should also continue building on the work already done by the Courts Service including in the context of Covid-19.

The Working Group would also support the views of the OECD that the development of new IT systems should be well planned and managed, as lessons learned from unsuccessful IT solutions illustrate that *“effective court and case management processes must be built upon effective, streamlined processes to make a difference, and must be designed in close collaboration with court administrators and judges”*.

Accordingly, the development of this array of new IT systems and case management approaches generally, should be done in consultation with stakeholders including legal practitioners and other Court users. It should also be undertaken on the basis of a people-centred approach to ensure a user-friendly design, and integrated across Court levels and support the use of alternative dispute resolution methods, as appropriate. Assuming this approach is taken to the development of new IT systems, the Working Group would encourage all judges and court users to support the development of a “digital-first” approach to the modernisation of the Courts system.

## 6.8 Some Other Reform Proposals

### 6.8.1 Alternative Dispute Resolution Mechanisms

Various alternative options for the resolution of inter-party disputes currently exist which if utilised more comprehensively and on a voluntary basis, would reduce the burden on judicial time and take pressure off the Courts system. These include mediation, arbitration and conciliation. As pointed out in the Report of the Review of the Administration of Civil Justice (2020), the *“challenge facing practitioners and judges alike is to ensure that civil disputes which by their nature are open to resolution through ADR mechanisms are only resolved through litigation as a last resort”*.

Experience has shown in the Irish jurisdiction that mediation works well where the parties to the dispute must have future relations, such as in the family law arena, where access to children is at issue. In this regard, consideration could be given to a possible role for a Court appointed officer to act in the role of mediator to facilitate early conclusion of litigation and to provide appropriate training for this purpose.

Collaboration with the Courts Service could also be enhanced in order to test targeted online dispute resolution (ODR) and better small claims processing options.

### 6.8.2 Lay Litigants/Litigants in Person

All Courts are experiencing an increase in the number of litigants who, for various reasons, do not have legal representation. The Working Group is aware of the challenges faced by lay litigants who are involved in Court proceedings whether as applicants or defendants without the benefit of legal support. The proportion of lay litigants is significant. For example, while data is not available for all Courts, Civil Court of Appeal figures for 2019, 2020 and 2021 indicate lay litigants represented some 29%, 24% and 16% of all litigants respectively. In the Supreme Court, 37% of applications for leave to appeal in 2022 were filed by lay litigants. This represents an increase on the 30% figures for 2019, 2020 and 2021. The prevalence of unrepresented litigants gives rise to the need for more effective support structures to assist their participation in the Courts process.

In its Annual Report for 2021, the Free Legal Advice Centres (FLAC) note that their information line regularly receives calls from lay litigants who are endeavouring to represent themselves in complex Court proceedings and who are in need of assistance, advice and representation. Almost 850 calls to the Information line in 2021 were from lay litigants, which represented an increase of 23% on the number of lay litigant callers contacting the FLAC Telephone Information Line the 2020.<sup>26</sup>

It is recognised that some lay litigants, who do not act for themselves by choice, are forced to do so because they cannot afford legal representation and are not covered by the scope of current legal aid provisions. Unrepresented litigants can be placed in difficulty in pursuing or defending litigation effectively and can also reduce the efficiency of Court proceedings.

The Working Group notes the recommendations in the Report of the Review Group on the Administration of Justice (October 2020) on the provision of support, including, the simplification of procedures, for the assistance of lay litigants and suggests that these

<sup>26</sup> The FLAC Annual Report for 2021 points out that of these callers, over half (55%) had a family law issue (which was an increase of 24% on the previous year); 12% had a civil law issue; 9% had a criminal query (which was over double the number of lay litigants calling with a criminal query in 2020); 5% had an employment law query ( a 66% increase on the previous year); 4% had a housing related query, and 3% had a consumer law matter. Source: FLAC Annual Report 2021 “Towards Equal Access to Justice”. [https://www.flac.ie/assets/files/pdf/flac\\_annual\\_report\\_2021\\_final.pdf](https://www.flac.ie/assets/files/pdf/flac_annual_report_2021_final.pdf)

should be fully implemented as soon as possible.<sup>27</sup> These include

- i. the production of an information guide covering proceedings in all Court jurisdictions;
- ii. the creation of an on-line information hub through which dedicated legal and practical information is provided to those who are considering initiating litigation without the support of legal representation;
- iii. the provision of “drop in” facilities adjacent to Court buildings, such as in *Scotland and England*, to consult voluntary legal advice centres.

As part of its modernisation programme, the Courts Service has a workstream aimed at enhancing the information available to unrepresented litigants, which includes information on how the Court process works, how to find where to issue proceedings, how to complete basic applications and what to expect when someone comes to Court.

In other jurisdictions, different supports are provided to unrepresented litigants. For example, in *England and Wales*, legal and practical information material is available on line on various aspects of the law affecting the individual in plain language. Information is also available on conducting proceedings in the family Courts, civil Courts and before tribunals. A series of guides have also been developed including a comprehensive information booklet produced by the judiciary titled *Handbook for Litigants in Person*.<sup>28</sup> Information and supports for lay litigants are also provided in other jurisdictions.<sup>29</sup>

The provision of training for the judiciary and judicial support staff in relation to how best to address the needs of lay litigants is recommended in Chapter 7.

It is noted, from the Implementation Plan on the Kelly Review (Civil Justice Efficiencies and Reform

Measures (*A Civil Justice System for the 21st Century*)) published by the Minister for Justice in May 2022, that various actions are in progress to give effect to recommendations in the Review in relation to litigants in person, which are due for delivery between 2022 and 2025. These include the updating by the Courts Service of all current guides and information for litigants in person in a dedicated section of the Courts Service website utilising audio-visual as well as textual formats and the creation of a central online information hub.

The Working Group notes that the Minister for Justice announced a review of the Civil Legal Aid Scheme in June 2022.<sup>30</sup> The Working Group suggests that this review would provide an opportunity in its analysis and recommendations, to consider the impact on judicial time and resources of unrepresented litigants.

### 6.8.3 Review citizen’s access to justice pathways

On a broader level than the provision of enhanced support for lay litigants, the Working Group welcomes the recommendation of the OECD that citizen’s justice pathways be reviewed, including access to legal information and assistance, access to legal representation including legal aid, and to understand the existing legal mechanisms at their disposal such as the judicial process/Courts system and ADR mechanisms. Building on the OECD’s Report, and the Report of this Group, relevant options to address gaps in this area should be explored as well as any legislative changes and Court rules to streamline processes to (i) enable access to the judicial process for all litigants irrespective of their financial capacity or legal literacy; (ii) provide access to accurate and easy to understand information about Court processes and appropriate tools (e.g., self-help options) and, (iii) ensure that there is an appropriate Court/courtroom environment for those involved in legal proceedings.

<sup>27</sup> Report on the Review of the Administration of Civil Justice (October 2020) – pages 370/371.

<sup>28</sup> <https://www.judiciary.uk/publications/handbook-litigants-person-civil-221013/>

<sup>29</sup> See, for example, Kelly Report on the Review of the Administration of Civil Justice – pages 357/358.

<sup>30</sup> <https://www.gov.ie/en/press-release/68fab-minister-announces-review-of-civil-legal-aid-scheme/#>

### 6.8.4 Backlog Management

Another important element of the case management process is backlog management. In *Chapter 2*, the size of the existing backlog of cases in each Court jurisdiction was highlighted as one of the key challenges facing the administration of justice in the State at the present time. Backlogs are generally taken to refer to the number of cases pending before a Court for more than a prescribed period. Backlogs of cases in Ireland, like other jurisdictions, were exacerbated by the substantial challenges posed by the Covid-19 pandemic.

There is a need for backlogs to be defined. This work could be done, for example, by different case type, year in the system and by Court level. Cases could also be screened and triaged in order of priority for either hearing or pre-trial settlement.

To address backlogs more effectively, the Courts need accurate case processing data which illustrates by case type how many and which cases are waiting to be heard by Court and time of lodging of the original proceedings in order to have information on the age of proceedings. Similar information is required for adjournments, which also may be a significant contributor to case delay and the inefficient use of judicial/court resources. How best to respond to backlogs depends on the case types involved and the available processes and resources. In the High Court, for example, a high number of adjournments is a major factor contributing to delays and eventually to the development of Court backlogs. In civil and family law cases, High Court judges spend a significant amount of time on interlocutory hearings some of which lead to settlements and also to adjournments without moving a case forward. Detailed case data is not regularly available in this area. Personal injury cases have a serious impact on the judicial caseload and improving case processing in the field would make a difference to enhancing the efficiency of the Court.

Ensuring that a caseload is managed strategically so that backlogs can be planned for, and well managed, should be another critical objective in any adequately resourced Courts planning and management process. Such a process will also require access to up to date data and modern data management systems, which

can assist in tracking cases on hands at every Court level. This should also enable blockages and delays in the processing of caseloads on hands to be identified thus allowing for the adjustment (including internal reallocation) of resources by the Court Presidents, to areas of priority as required. Changes in Court practice will also be required including litigants advising the Court why adjournments are required.

In order to provide a framework for the management of backlogs, the Courts Service should develop a backlog management and reduction strategy involving back-up judges and/or consider the creation of backlog teams, including legal and Courts Service staff, as resources permit.

Other jurisdictions have taken a variety of measures to tackle backlogs of cases in the Courts process including the establishment of special backlog teams in the *United Kingdom, US, Canada* and other *EU* countries. The Irish system could consider a similar approach once it is allocated additional judicial and support staff as well as other facilities such as courtrooms if required.

In relation to caseload automated management systems, the system in *Finland* has been identified by the OECD as a best practice model to be considered. This enables the tracking of pending cases in order of priority and timeframe.

### 6.9 Case Management and Court Performance: establishment of a specialised Group

This chapter contains a large number of recommendations in relation to the enhancement of various aspects of case management in the judicial process and the Courts system. As recommended also by the OECD, the Working Group suggests that consideration be given to the establishment of a specialised committee or group within the Courts Service's internal structure, or on the Courts Service Board, to develop overall policies and drive changes in this area.

## Recommendations: Improving services to Court users

### Procedural simplifications

1. Work should continue in the Courts to simplify and streamline procedures with a view to reducing the administrative burdens on Court users. Options for streamlining and the automation of case processes should be identified, including e-forms, requirements and standards for full e-filing, as well as more detailed data tracking of case processes and timelines. Consideration should also be given to the development of early Court rule changes and directions in advance of legislative changes resulting from the Kelly Report as well as standardising operations by the County Registrar and Courts Service staff across different locations.

### Review of roles of Officers carrying out quasi-judicial functions

2. The role of the High Court Master and County Registrars should be reviewed in order to assess how they could support more effective case management and other procedures under the direction of the Court Presidents. In the shorter run, the relationships between the Courts and Court officers carrying out quasi-judicial functions should be reviewed including governance and arrangements on issues such as role, performance and supervision.

### Review of pre-hearing processes

3. Review and consider ways to streamline pre-hearing processes with a view to rebalancing tasks between judges and non-judicial officers. (e.g., to consider where, when and if a judge needs to be involved and what tasks could be administered by a registrar or someone with a similar function) at all Court levels.

### Development of comprehensive information technology systems

4. Building on the Courts Service Modernisation Programme, the development of modern and integrated IT solutions should remain a priority for the Courts Service. This should include an automated Case and Court Management Information System supported by consistent and

transparent data case definitions, which should be developed on a joined up basis, as part of an overall IT development process for the Courts, to support, inter alia, the enhancement of a modern data management strategy. The development of this Information System should be undertaken on the basis of a people-centred approach to ensure a user-friendly design, and integrated across Court levels and alternative dispute resolution methods.

### Investment in court and case management techniques

5. There should be enhanced investment in modernising Court and case management techniques and tools to drive efficiency including:
  - a) The provision of an effective case management system to replace the current manual processes particularly in the area of case scheduling as well as more detailed data tracking of case processes and timelines, in collaboration with Courts Service.
  - b) Putting a user-friendly system in place to allow for the electronic uploading of books of leadings, documents and authorities for the purposes both of interlocutory applications and substantive hearings should be implemented. Such a system should in time minimise the need for extensive hard copy papers.
  - c) Supporting more effective case management through legislative amendments and streamlining procedures.
  - d) Leveraging the opportunities for transformation prompted by the Covid-19 pandemic such as the use of remote Court technology for dealing with routine applications.
  - e) Strengthening the use of IT tools generally to enhance efficiency, including testing document and content management software, as well as artificial intelligence tools to facilitate documentary search and analysis.

### Enhanced use of digitalisation in courts including e-documents

6. There is a need to enhance the use of digital measures in all Courts, such as for e-forms, as part of a wider policy to promote electronic case management including continuing efforts to

develop and standardise the current guidelines for e-document submissions.

### **Automation of work processes: involvement of stakeholders**

7. Arrangements should be made to ensure the sustained involvement of relevant stakeholders, including the judiciary, to provide guidance for the planned phased automation of work processes so as to secure a system that facilitates the tracking of individual cases effectively, and supports regular data-driven processes, staffing and user needs assessments in the long run.

### **Remote and hybrid hearings**

8. Continue to build on the options for remote and hybrid hearings. The impact of virtual hearings on judicial workloads should be monitored.

### **Case management: Establishment of a Data Working Group**

9. A Data Working Group comprising members of the judiciary and Courts Service staff, should be established in order to identify the key data points to assess the state of Court lists and to feed into metrics on case management - with the ultimate aim of supporting judicial assignment decisions as well as providing up to date information on the status of Court lists and public data on the operation of the Courts. These metrics and data points will inform the prescription of the new case management system being developed by the Courts Service. To develop policy and to drive change in this area, consideration could also be given to reporting into the Courts Service Board.

### **Review and development of case management techniques including pilots**

10. Efforts should continue to review and develop case management solutions for different case types, ensuring that judges have access to relevant and timely information by case-type. Consider in each Court, the development of differentiated case management pilots, possibly starting with personal injury cases. Consider the creation of a lead-case management judge position to focus on Court performance.

### **Setting of goals for court and case management**

11. Goals for overall Court and case management should be set at each Court level, as well as developing advanced case management options in collaboration with relevant stakeholders. In collaboration with the Director of Judicial Studies, ensure advanced case management training for judges and any case management teams is provided.

### **Pilot testing of case management techniques**

12. Consider pilot testing specific case management techniques led by case management teams - possibly judge led following a review of priority areas and implementation requirements, including adjustments to staffing and training. Disseminate best international case management resources to Court staff, having regard to the Courts Service Modernisation Programme.

### **Creation of judge-led case management teams**

13. To support the growing focus on data-driven and more differentiated case processing (for simple and more complex cases), consideration should be given to the creation of
  - a. case management teams, supported by a dedicated case management judge or senior legal staff, and
  - b. an initial case management team possibly led by a dedicated judge, to ensure proper judicial guidance, especially as case management advances.

### **Enhanced utilisation of ADR mechanisms**

14. Recognising the right of persons to have recourse to the Courts, it is recommended that every opportunity be taken to utilise ADR mechanisms such as mediation, arbitration and conciliation in appropriate circumstances and on a voluntary basis, to resolve disputes in areas in which they are under-utilised which should alleviate the burden on judicial time.

### Utilisation of non-litigation routes: support and training

15. To ensure that litigants are offered early opportunities to choose a non-litigation route, consideration should be given to putting in place the necessary support (e.g., training, time and standing to be accepted by both parties) for those responsible for facilitating this decision (County Registrars, Court registrars and judges).

### Further supporting lay litigants: enhanced information availability

16. Continue to increase the availability and accessibility of information for lay litigants and the public generally across all Court jurisdictions, especially regarding assistance in deciding to seek an appeal. Building on existing structures and by engaging through the Service Access to Justice Civil Reform User Group, consideration should be given to providing more effective support for lay litigants.
17. As part of its modernisation programme, and building on the recommendations of the Kelly Review Group on the Administration of Civil Justice, the Courts Service should continue to provide more and better information and support for unrepresented litigants across all Court jurisdictions and case types.

### Adjournments and data tracking

18. Improved data tracking processes should be put in place to monitor adjournments with a view to informing case management decisions.

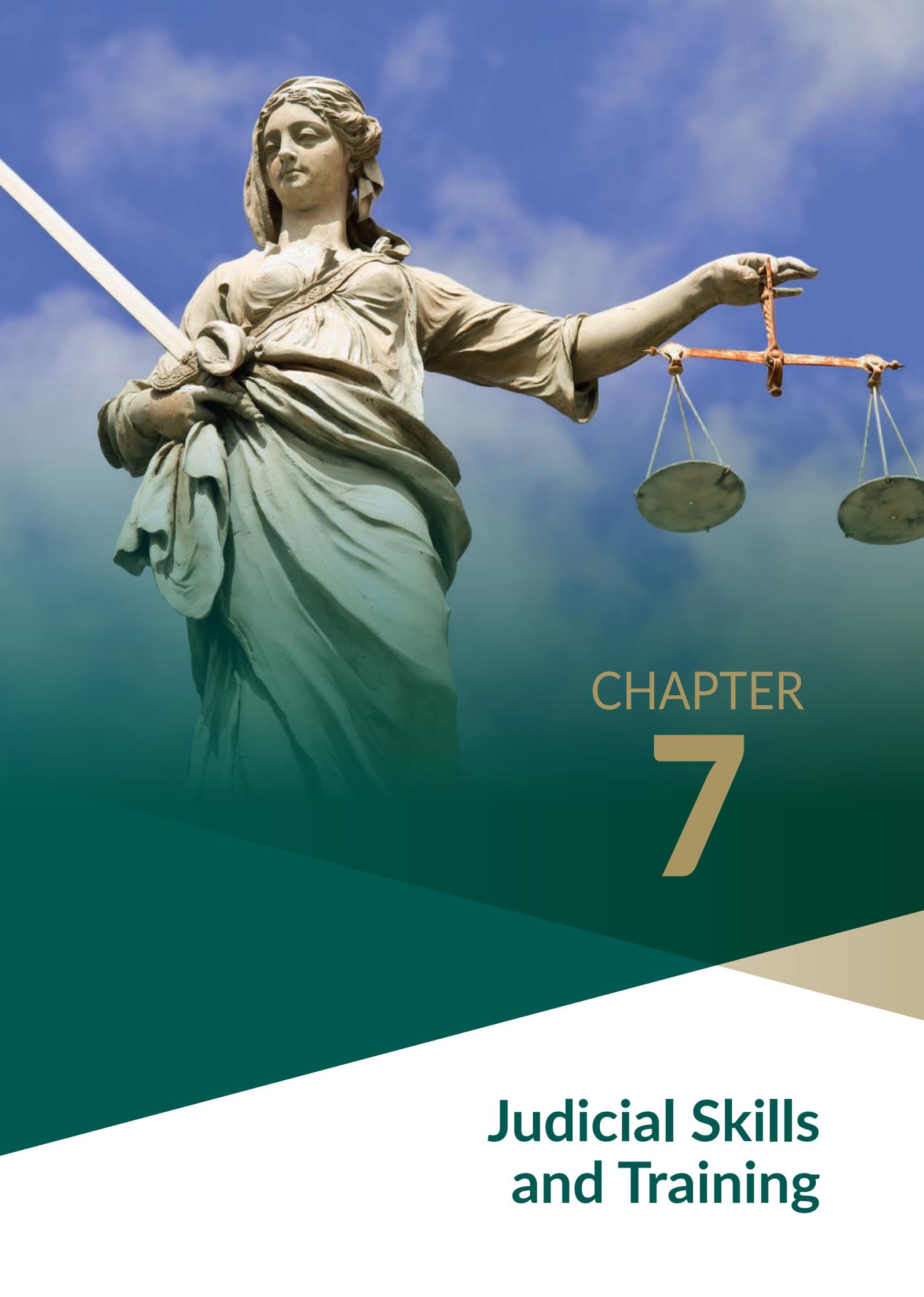
### Backlog Management Strategy

19. The Courts Service should develop a backlog management and reduction strategy involving back-up judges and/or consider the creation of backlog teams, including legal and Courts Service staff, as resources permit. This would involve for example, (i) compiling backlog cases, (ii) developing solid case management plans with the parties to resolve these cases, (iii) reviewing the operations of the High Court in provincial locations in order to identify enhancements in case scheduling, notifications and other issues,

and (iv) exploring opportunities for the increased use of written procedures and online tools to process interlocutory events and more options for virtual hearings, as resources permit.

### Backlog definition

20. A definition of backlog for each case type and Court level should be developed by the Courts Service, with the collaboration and input of the judiciary. This definition should enable the Courts Service to measure and report on backlogs.



CHAPTER

7

# Judicial Skills and Training

## 7.1 Introduction

This chapter considers the issue of professional development and training for judges and their support staff particularly the issues of judicial training and skills in the context of supporting the recommendations in this Report. A more broad analysis of training needs is not attempted as it is recognised that training for the judiciary is primarily a matter for the Judicial Studies Committee of the Judicial Council. In this regard, it is noted that section 7 of the Judicial Council Act 2019 refers, inter alia, to the importance of the continuing education of judges. The Working Group met with the Director of Judicial Studies of the Judicial Council as part of its work.

## 7.2 Judiciary and Training Needs

The provision of high quality training to people working in any organisation is important, to ensure that the body concerned can support its activities and deliver its services in the most efficient and effective manner. The same applies to the functioning of the judicial process and Courts system and to the area of judicial training, the delivery of which should support the promotion of excellence in the activities of judges as referred to in the Judicial Council Act 2019. This is recognised internationally and many jurisdictions have more developed judge-training systems than were available in Ireland prior to the Judicial Council Act 2019.

The importance of resourcing continued professional development and training as well as knowledge management for the judiciary and Court support staff is recognised given the increasing complexity and specialisation in all areas of law, which judges have to deal with, including the growing influence of *EU* law in Ireland. This is particularly important in areas with a large caseload and where case management could greatly support efficiencies. The provision of a quality-training programme for judges can assist in meeting their specialist needs. In this regard, the OECD Report identified a great need and desire for continued training across all levels, especially in the Circuit and District Courts.

At *EU* level, the European Commission published a Communication on Judicial Training in 2020 titled “*Ensuring justice in the EU - a European judicial training strategy for 2021 to 2024*”.<sup>31</sup> This emphasises, inter alia, the promotion of high quality and effective training activities for judges, Court staff and legal practitioners across the *EU*. A key element of training emphasised in that strategy, is in relation to the promotion of a common *EU* rule of law culture. Keeping pace with developing *EU* law is highlighted, as is, inter alia, the importance of embracing digitalisation. This means that training should ensure, inter alia, *the correct and uniform application of EU law and build a mutual trust in cross-border judicial proceedings, thus helping to develop the EU area of justice.*

Judicial training should include both initial training on appointment but also ongoing training during a judicial career. While the requirements in relation to judicial training at different judicial levels and at different stages in a judge’s career can vary, certain types of training such as those related to case management and people management, do not change greatly during this time.

The Working Group does not intend to be prescriptive in relation to the forms of training which the judiciary should receive or the duration of such training. As indicated, the judicial training programme is primarily a matter for the Judicial Studies Committee, which has been established as part of the Judicial Council and its Director of Judicial Studies. In this regard, the work of the Judicial Studies Committee is noted and the important input it will make to the enhancement of judicial training both at induction and on an ongoing basis during a judges career on the bench, is acknowledged.

The Working Group has been advised by the Judicial Council that a training needs assessment was carried out in 2021, which has set the direction for the period since then. This assessment incorporated a survey of all judges as to their training requirements. The analysis also incorporated other training decided upon as a

<sup>31</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM (2020) 713 final (2 December 2020).  
[https://ec.europa.eu/info/sites/default/files/2\\_en\\_act\\_part1\\_v4\\_0.pdf](https://ec.europa.eu/info/sites/default/files/2_en_act_part1_v4_0.pdf)

priority, for example, conduct and ethics, unconscious bias and the recommendations in the O'Malley Report (2020)<sup>32</sup> on the protections available for vulnerable witnesses in the investigation and prosecution of sexual offences.

The Working Group understands that training requirements for the judiciary are examined in the context of suggestions from judges, internal needs identified (including from the Presidents of Courts) and externally taking account of legislative requirements and recommendations from other bodies. By way of example, a recent course in "Personal Insolvency" was in response to requests from the Circuit Court; the O'Malley Report recommendations led directly to a course on "Avoiding Re-traumatisation" and the forthcoming Assisted Decision-Making (Capacity) Acts 2015-2022 led to a comprehensive offering in that area. The Judicial Council has several other recommendations on training topics, but in the absence of greater certainty that judges will be available to attend, it is understood that the delivery of those courses has been delayed.

The Working Group believes that in the context of the growing, complex and varied caseloads, which have to be dealt with by judges and their support staff, it would be helpful if a more comprehensive Training Needs Analysis is undertaken by the Judicial Council to support planning for judicial training in the future. This could, for example, define priority-training needs, reflect on the skills and competencies needed by judges and how training can become a lever for increased efficiency and effectiveness of the justice system as a whole.

### 7.3 Time available for training

A key challenge in the delivery of judicial training remains the unavailability of judges to attend as both trainers and trainees. International best practice dictates that judicial training should ideally be carried out by judges. The Working Group understands from the Judicial Council that there are now 30 judges currently trained for this purpose. Court jurisdictions

require sufficient judges to not just manage Court lists but also to have adequate backup available to release those judges to attend training courses and also to act as judge trainers.

The importance of prioritising Court sittings means that training requirements and obligations for judges can often take second place. There is also the added risk that a scheduled trainer will become unavailable leading to the course being postponed or cancelled. Indeed, the Working Group has been informed that it is increasingly likely that the team of judicial trainers currently in place may not be able to remain in practice as trainers, due to the need to prioritise Court hearings and substitute judges not being available to take Court lists while trainer judges provide training courses. It is understood that the Judicial Council has now categorised delivery of judicial training as a high risk in its risk register under "delivery of its statutory functions" by reason of resources inhibiting attendance at training.

The Working Group has also been advised that training for judges is now predominantly held during the Court vacation period and this period is emerging as the only time when such training can be scheduled. Almost all judicial training of a duration of more than two hours occurs during Court vacations whereas most training of less than that duration takes place during Court sitting days but after Court hours - typically between 16:15 and 18:00 and sometimes during lunch breaks. With the exception of induction training (where those attending are still judicial nominees and are not yet scheduled to sit in Court), the Working Group understands that only one urgent training course took place during the standard Court sitting day in 2022. The consequence of this is that until such time as judges are free from Court sittings with some level of certainty, it is probable that there will be few training courses arranged during Court sitting times - with the exception of any training that can be included in the national and jurisdictional judicial conferences, which are classed as "non-sitting days".

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<sup>32</sup> <https://www.gov.ie/en/publication/0964e-review-of-protections-for-vulnerable-witnesses-in-the-investigation-and-prosecution-of-sexual-offences-omalley/>

The Working Group recognises that as part of the annual judicial planning process, judges should be provided with adequate time during the working year to attend training and skills development programmes. In interviews with members of the Irish judiciary for a research report on training and education for judges, published by University College Galway in 2019, lack of time to attend training “emerged as an overarching issue”.

*“There do not seem to be enough judges to do the work that is there. This means that there is very little capacity to free them up to either attend or to give training. It also means the training often takes place outside normal working hours...”*<sup>33</sup>

In recommending that sufficient time be available for judges to attend training courses, “by appointing an adequate number of judges to the bench”, a more recent report came to a similar conclusion in relation to the training time available to Irish judges which was seen as an “extra to be done at evenings and weekends”.<sup>34</sup>

While the Working Group considers it desirable that non-sitting time continue to be used to the extent possible for training, the Group recognises that a structured approach to ensuring judges’ training needs do not constantly compete with Court sittings can best be addressed by jurisdictions being better resourced. Judges’ attendance also needs to be considered in the context of, for example, the requirements for judges to be trained in the context of the Judicial Appointments Commission Bill 2022, mandatory attendance envisaged under the Family Court Bill (General Scheme) 2020 and the undertaking given by judges upon appointment to attend training courses.

As indicated earlier in this Report the Judicial Council has estimated that the provision of judge training in Ireland and other Judicial Council work would require the availability in judicial time of the equivalent of 8 fulltime judges.

In other jurisdictions a specific number of days are set aside annually for judicial training. For example,

- ▶ judges in *Canada* are entitled to 10 to 15 days of training over a four-year period.
- ▶ judges in *Scotland* complete a minimum of 5 days training per year, all of which is delivered during work hours, with lists planned to accommodate the training.
- ▶ in *England and Wales*, at least one multi-day training per year should be attended by judges and new judges have a minimum of 5 induction days delivered by sitting judges.
- ▶ in *France*, magistrates and judges must participate in 5 days of mandatory training.<sup>35</sup>

The Director of Judicial Studies indicated to the Working Group that the ideal training regime would be one, which allowed judges at least 7 working days per annum for training with up to 3 additional days per annum for judge trainers.

It is very important that sufficient provision be made for training. While the Working Group is not suggesting that there should be specific figures for training days per annum as in some other jurisdictions, it is recommending that training should be included as part of the strategic HR and resource planning mechanisms recommended elsewhere in the Report.

## 7.4 Training for Effective Case Management

The nature and scope of judicial training programmes in the context of this Report’s recommendations are discussed in the recommendations section to this chapter. However, the Working Group would particularly like to highlight that providing case management training for judges, officers carrying out quasi-judicial functions such as County Registrars and support staff is one of the key elements of training

<sup>33</sup> “Review of Judicial Studies Committee and Recommendations for Future Action” (Final Report), Dr Ronan Kennedy BL, School of Law, University College Galway (October 2019) - page 24.

<sup>34</sup> “Towards Best Practice: A report on the new Judicial Council in Ireland”, Irish Council for Civil Liberties/Irish Research Council (2022) - pages 49/50. <https://www.iccl.ie/wp-content/uploads/2022/02/Towards-Best-Practice-Judicial-Council.pdf>

<sup>35</sup> “Review of Judicial Studies Committee and Recommendations for Future Action” (Final Report), Dr Ronan Kennedy BL, School of Law, University College Galway (October 2019) - page 15.

identified in order to underpin the implementation of its case management recommendations.

Collaboration between the judiciary and the Courts Service is needed to support effective case management. This should be supported by the availability of key data on backlogs and case processing timelines as well as case tracking to enable effective case management training to take place. While work is done by the Courts Service in monitoring arrears and issues around case clearance, formal training in case management techniques does not appear to be provided on a more comprehensive basis to judges, County Registrars and Court staff directly involved in this area.

It is noted that case management training is provided in other countries such as:

- ▶ the *Netherlands* (in the Judicial Training and Study Centre),
- ▶ the *United Kingdom* (by HM Courts and Tribunal Service),
- ▶ *France* (continuing education in case management for chief clerks and judicial clerks on civil and criminal procedures) and
- ▶ the *United States* where extensive Court and case management training is available to state Court administrators and other Court staff.

The installation of a modern case management system as part of the Courts Service Modernisation Programme will result in much better data being available to judges, Courts users and stakeholders. In specifying the system and data points to be monitored, strong collaboration between the Courts Service and the judiciary will be necessary to ensure the key data is generated. Given the scale of change, consideration may need to be given to how to support this engagement.

## **7.5 Feedback from the public consultation process**

Various submissions received by the Working Group support the introduction of more formal training and education programmes for the judiciary at both pre-appointment stage and during service (including,

for example, refresher courses). International judicial training principles are highlighted to support best practice in this regard.

The point is made in the submissions that judicial training should not just include programmes that are about legal factors and processes but also cover non-legal matters such as the avoidance of cognitive biases. Other topics highlighted for coverage in training and education programmes include, an understanding of forensic science, specialist family law issues and the rights of the child including conflict resolution, psychological and other non-legal factors, the impact of sexual violence and trauma, social context training (gender, race, age and disability discrimination within the legal process), inter-personal and communications skills including clear use of plain language, unconscious bias and diversity and issues raised by, and the treatment of, vulnerable witnesses.

It is also argued that informal sources of knowledge and development should be integrated into formal judicial training. These include experimental learning such as mock trials, informal peer learning, bench-books, sharing written materials, international training and networking as well as formal and informal mentoring. Training of judges in the use of the new digital technologies is also advocated.

A critical requirement emphasised is that judges be given sufficient time to attend training courses which gives rise to the need for an adequate number of judges to be appointed to the bench to enable training release during term time.

## Recommendations: Judicial Skills and Training

### Expansion of professional development/training for judges and resource planning

1. Training for judges should be expanded and, where possible, undertaken without impacting on Court sitting time. Training should be factored into judicial resourcing decisions. The Working Group recommends that in developing a model for assessing judicial resource needs, adequate allowance should be included to facilitate judicial training needs.

### Time for attendance at training programmes

2. The importance of judges being given adequate time to attend training courses including, where necessary, during term time is highlighted. In this regard, the requirements in relation to judicial training should form part of the annual judicial planning process - and should be scheduled for individual judges for the year ahead where possible.

### Comprehensive approach to training and Training Need Analysis

3. Building on current efforts, consideration should be given to how best to develop a systematic and comprehensive approach to training and development for judges. A full Training Needs Analysis should be undertaken by the Judicial Council to support planning for judicial training in to the future. This could, inter alia, define priority-training needs, reflect on the needed skills and competencies for judges and how training can become a lever for increased efficiency and effectiveness of the judicial system as a whole.

### Scope of judicial training programmes in context of the Report's other recommendations

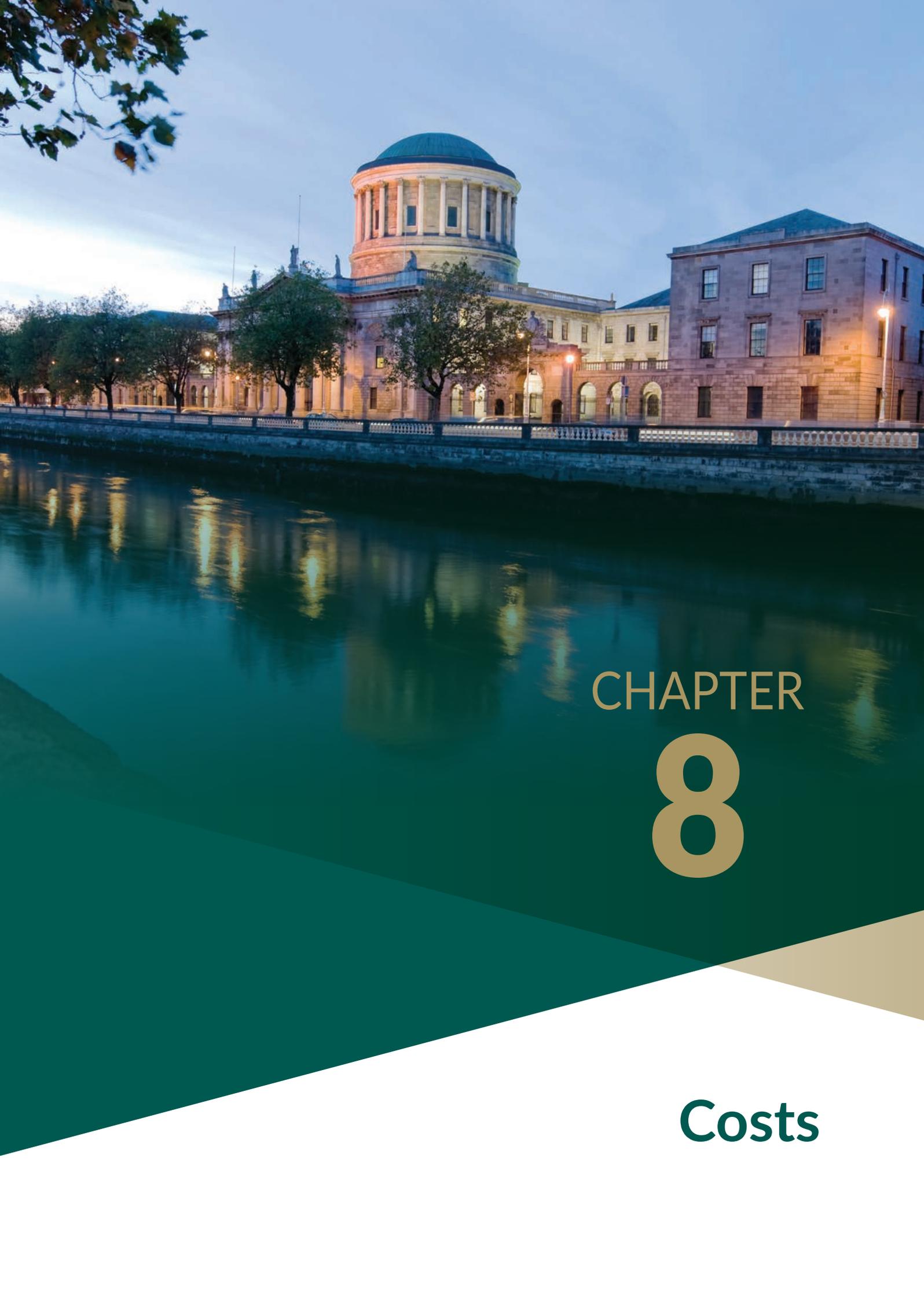
4. Recognising the overall responsibility of the Judicial Council for the provision of training to the judiciary, judicial training and skills development should be comprehensive and comprise both legal and non-legal aspects. In particular, judicial training should be provided in areas which support the Working Group's recommendations including having a module on business efficiency. Training in the

following areas, to support the recommendations in this Report, is particularly important:

- i. The use of information and digital technology.
- ii. Advanced case management techniques including in the area of case progression. This training should also be provided for any case management teams.
- iii. Management including people management skills.
- iv. Judicial leadership training: both to Court Presidents and across all Court levels - to support all judges in enhancing their roles as leaders and, in particular, those who may be aiming for higher positions on the bench and involved in case management functions such as list management, judicial trainers and those serving on various committees under the Judicial Council Act 2019.
- v. Dealing with lay litigants.
- vii. Specialism in areas such as family law, childcare and complex litigation - for example, white-collar crime and environmental law.
- viii. Training provided to judges to enable deep engagement with the Courts Services Modernisation Programme.

### Other training

5. Relevant training should also be provided for officers carrying out quasi-judicial functions, judicial support staff and Courts staff. Consideration should be given to whether certain elements of training in some areas, particularly those linked to case management, might usefully be undertaken in conjunction with judge training in these elements.



CHAPTER  
8

Costs

## 8.1 Introduction

The Working Group has undertaken an extensive exercise to map out the potential costs involved with implementing its recommendations. In doing so, the Working Group is conscious that it is for Government to decide whether to accept its recommendations, and to what extent it will do so. Invariably, as with any initiative across the public service, the costs arising will ultimately be determined by the scale and rate of implementation having regard also to competing demands elsewhere across the public service on Exchequer funds.

The Working Group is also conscious that costs may arise elsewhere across the justice system as a consequence of implementing or indeed not implementing some of these recommendations. It has not been possible for the Working Group to quantify or cost these impacts, though it understands that work is advanced within the Department of Justice and with the agencies involved in an effort to do so.

## 8.2 Costs composition

In terms of the Working Group's recommendations, the projected costs, which provide for additional judges and support staff, comprise several elements including pay, courtroom availability, ICT and judicial resources. A key factor too is the Courts Service Modernisation Programme now nearing the end of the second year of its implementation, which is already funded, and which in large part, can be expected to align with the implementation of our recommendations.

The Department of Justice's Research and Data Analytics team was asked to compile a robust dataset on the full cost of hiring additional judges, and related support staff, across each of the Court jurisdictions. This was an exercise that involved the Courts Service. In order to identify the total cost of each additional judge, all direct and indirect costs were identified. These include pay, PRSI, pension, allowances, and overheads. The cost of direct support staff (registrar and judicial assistant) were also costed.

## 8.3 Key costs arising

**Table 8A** provides a summary of the staff costs associated with the hiring of one additional judge at each Court level. These figures do not include any associated capital expenditure or accommodation costs.

In order to identify the total cost of each additional judge, all direct and indirect costs were identified. These include pay, PRSI, pension, allowances, and overheads. In addition, the cost of direct support staff (Registrar and Judicial Assistant) were also costed, alongside a corporate overhead that the Courts Service has quantified at 4.37 FTE per judge. In arriving at the 4.37 FTE figure a number of roles within the Courts Service were discounted and removed from the analysis as not being directly related to changes in judge numbers (such as Finance, Change Management, and the Courts Funds Office).

**Table 8A:** Summary costs of one judge per jurisdiction – staff costs only (no capital expenditure/accommodation)<sup>1</sup>

	Supreme Court	Court of Appeal	High Court	Circuit Court	District Court
<b>Judge<sup>1</sup></b>	€466,134	€453,396	€440,241	€325,538	€286,867
<b>Registrar<sup>2</sup></b>	€148,717	€114,628	€114,628	€81,803	€61,383
<b>Judicial Assistance<sup>3</sup></b>	€47,861	€47,861	€47,861	€47,861	-
<b>Other<sup>4</sup></b>	€290,565	€290,565	€290,565	€290,565	€290,565
<b>Total</b>	€953,277	€906,449	€893,294	€745,766	€638,814

<sup>1</sup> All costs are based on pay (midpoint of salary scale), PRSI (@11.05% of pay), Imputed Pension (@39% of pay for judges and @8% for all others) and overheads (@25% of pay) Judicial costs also include additional non-pay costs for Travel and Subsistence, Law Books and Periodicals, Judicial Training and Judicial Attire.

<sup>2</sup> PO grade for Supreme Court, AP for COA and Higher, HEO for Circuit Court and EO for District Court.

<sup>3</sup> Judicial Assistants are appointed on a 3-year contract and are assigned to the Judges of all jurisdictions bar the District Court.

<sup>4</sup> Based on estimates provided by the Courts Service. Includes costs for all other staff in the Courts Service (4.37 per judge) supporting the work of the judiciary and the operation of the Courts Service.

The total annual costs for Phase 1 are set out in the **Table 8B**.

**Table 8B:** *Costs of additional judges (indicative of costs based on Phase 1 numbers) (no capital expenditure or additional accommodation costs included)*

	Court of Appeal <sup>36</sup>	High Court	Circuit Court	District Court	Total
<b>Judge</b>	€906,792	€2,641,445	€2,604,301	€2,294,938	€8,447,476
<b>Registrar</b>	-	€687,767	€654,425	€491,061	€1,833,253
<b>Judicial Assistance</b>	€95,721	€287,164	€382,885	-	€765,770
<b>Other</b>	€581,129	€1,743,388	€2,324,517	€2,324,517	€6,973,551
<b>Total</b>	€1,583,642	€5,359,763	€5,966,127	€5,110,516	€18,020,050

The total annual costs for Phase 2 are set out in **Table 8C**.

**Table 8C:** *Costs of additional judges (indicative costs based on Phase 2 numbers) – (no capital expenditure or additional accommodation costs included)*

	Court of Appeal <sup>36</sup>	High Court	Circuit Court	District Court	Total
<b>Judge</b>	€906,792	€2,641,445	€1,953,225	€1,721,204	€7,222,666
<b>Registrar</b>	€114,628	€687,767	€490,819	€368,296	€1,661,510
<b>Judicial Assistance</b>	€95,721	€287,164	€287,164	-	€670,049
<b>Other</b>	€581,129	€1,743,388	€1,743,388	€1,743,388	€5,811,293
<b>Total</b>	€1,698,270	€5,359,763	€4,474,595	€3,832,887	€15,365,518

The Courts Service has indicated that while there is currently insufficient courtroom accommodation in Dublin, there is capacity at venues outside of Dublin, within the regional Court estate, for additional judges to sit. If additional judges are to be accommodated in Dublin, the Courts Service believes that it will be challenging to procure suitable office accommodation for more than five judges in the short-term. In addition, as all courtrooms are currently in use, greater use of remote Court technology will be essential if judges are to be based in Dublin when sitting. This is already envisaged for the proposed new Environment and Planning Court where the Court is focussed primarily on written submissions it receives.

The provision of additional courtrooms is a key consideration for Court productivity, and the Working Group is cognisant of the demands on the Courts Service in this regard. The Working Group is also aware of - and acknowledges - the efforts made by

the Courts Service and the judiciary to make the most of existing accommodation, and indeed to innovate and adapt to new ways of working including remote hearings where feasible.

#### **Resourcing new work by the Courts Service**

Section 5 of the Courts Service Act 1998 provides that the functions of the Service shall be to –

- (a) manage the courts,
- (b) provide support services for the judiciary,
- (c) provide information on the courts system to the public,
- (d) provide, manage and maintain court buildings, and
- (e) provide facilities for users of the courts.

In order to meet all of its statutory mandate, the Courts Service must be resourced to not only provide direct

<sup>36</sup> The Court of Appeal sits as a divisional court so one Registrar (AP) is required for every 3 judges.

support services to Courts, such as Court Registrars and Judicial Assistants, but also to fulfil the other aspects of its role. These include the staff providing direct services to the public as well as the managers and staff involved in governance, supervision, estate management, learning and development, ICT and HR as well as those driving forward the Courts Service Modernisation Programme.

This Report and the work of the OECD identify a range of recommendations to make the Courts system work more effectively. In order to play its part, the Courts Service will need to be adequately resourced to provide these new and expanded services.

## **8.4 Conclusion**

The Working Group recognises that the costs outlined in this chapter are very significant, and with it, the challenges for the Courts Service to accommodate and support the numbers involved. However, in evaluating the cost of additional judicial resources and supports, it is worth noting that the cost of not acting imposes a significant cost on society and the economy. Ireland has a low clearance rate for civil and criminal cases – this imposes additional costs that remain largely uncoded at this point. This suggests an area of research by the Department that could be investigated to support any future consideration of additional judicial resources.



CHAPTER  
9

**Conclusion**

- 9.1** This chapter contains some general comments and conclusions having regard to the Report's key findings and recommendations.
- 9.2** There is limited available data and empirical research on the type of judicial resources required to ensure the efficient administration of justice in Ireland. One of the main aims of this Report is to provide guidance in addressing this deficit over the next five years and to provide a roadmap for reform in accordance with international best practice.
- 9.3** Timely access to justice is a core public good, central to the welfare of individuals and an essential underpinning of society and economic activity. There is a right under the Constitution and the European Convention on Human Rights for a trial on any civil or criminal matter to be held within a reasonable time in order to provide access to justice to citizens and the effective vindication of citizen's legal and constitutional rights. The independent and efficient administration of justice is a key pillar of the separation of powers under the Constitution. Undue delays in the judicial process/courts system have a very real impact on the lives of individuals, on the provision of important services and on economic activity generally. Currently, there are significant delays and backlogs in the Courts system exacerbated by the Covid pandemic meaning that justice is not available to be determined in a timely manner in many cases.
- 9.4** The work of the Working Group, underpinned by the analysis of the OECD, shows the need for a very large-scale change in the number of judges and a requirement for significant investment over the next 5 years if this overall unsatisfactory position is to be addressed. The Report of the OECD provides a useful analysis of the current Irish judicial system with international comparators and suggestions for reform.
- 9.5** The effect of insufficient judicial resources is profound. The efficient allocation of judicial resources is key to overall Court performance. However, as the OECD Report emphasises, this is not just about resources. Effective performance also requires that processes and operations are designed with efficiency, cost effectiveness and user friendliness in mind. Working practices also need to be utilised efficiently.
- 9.6** It is clear that the Irish Courts system is underdeveloped relative to other jurisdictions. There are some significant green shoots such as the ten-year Courts Service Modernisation Programme, which is in its second year of implementation and the Report of the Review of the Administration of Civil Justice ("The Kelly Report" October 2020) which has provided 90 recommendations for civil law reform and Family Justice Reforms. These important initiatives are at a very early stage and it is important that they are driven forward as speedily as possible.
- 9.7** Many of the Working Group's recommendations are interlinked. For example, a core issue for the Working Group was the lack of key management and operational data that could be used to assess judicial resource requirements and that would also support the judiciary and the Courts Service in the efficient management of resources. This data would also have a critical role to play, along with the enhancement of information technology solutions, in supporting the development of case management practices. For all these reasons, it is essential that progress is made in developing a comprehensive data set. In the shorter term, a set of data measures should be put in place to assess and manage resources.
- 9.8** Another key issue is the need to develop both strategic and more general human resource management for the judiciary including investment in judicial training and professional development.

- 9.9** The recommendations set out in this report will require sustained investment. However, without all of these interlinked issues being addressed, adding more judicial resources to an already overburdened system will not address the more fundamental structural issues, which this Report highlights, and provide an effective judicial process and Courts system.
- 9.10** The necessary change agenda already underway and also recommended in this Report, makes for a very challenging change programme for the judiciary and the Courts Service in the years ahead. It is important that mechanisms are put in place to ensure strong collaborative oversight for the key elements of that change programme which will deliver better Court performance. The Working Group supports the OECD recommendation that there should be a long-term strategy developed for each Court jurisdiction that aligns with the Courts Services Modernisation Programme
- 9.11** Further work will also be required on how to ensure that court time is used sparingly and only for issues that require a judge to preside over. Full consideration of the impact on court operations needs to be part of relevant public policy decision-making.
- 9.12** There are undoubted challenges in implementing this major programme of change and the Working Group's recommendations generally. However, there are also very real opportunities, which all involved will want to grasp in order to deliver a better judicial process/Courts system. In this regard, the Working Group hopes that the recommendations in this Report, will guide future policy and legislative reform, best judicial practice and the development of judicial supports generally.

ANNEX

1

**Terms of Reference**

- 1.1** The Programme for Government contains a commitment to “Establish a working group to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years”.
- 1.2** A group will be convened, with an independent Chair, comprising representatives of the Department of Justice, Department of the Taoiseach, Department of Public Expenditure and Reform, Office of the Attorney General, and the Courts Service.
- 1.3** Consultations with the judiciary have commenced. The group is to consult with relevant experts and stakeholders in the course of its work as required and appropriate. The group will also have regard to new evidence commissioned from the OECD to inform the process.
- 1.4** The group is to provide a Report to the Minister within 12 months of its establishment.
- 1.5** In this context, the group will consider the following points:
  - 1.** To consider the number of and type of judges required to ensure the efficient administration of justice over the next five years in the first instance, but also with a view to the longer term.
  - 2.** To consider the impact of population growth on judicial resource requirements.
  - 3.** To consider, having regard to existing systems, the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice.
  - 4.** To evaluate the estimated impact of the Covid-19 pandemic on Court caseload in the short, medium and long term and strategies for reducing waiting times to significantly improve on pre-Covid levels.
  - 5.** To examine the experiences of other jurisdictions (particularly Common Law areas), and obtain accurate and up to date information on judicial practices and case management systems, together with caseload data in relation to Irish Courts.
  - 6.** To consider the costs associated with additional judge numbers, including salaries, allowances, judicial support staff and chambers.
- 7.** To review forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers including:
  - a.** Recommendations of the Civil Justice Review.
  - b.** The O'Malley Review on victims of crime.
  - c.** Family Justice Reform.
  - d.** Review of Legal Aid financial eligibility criteria.
  - e.** Courts Service Modernisation Programme.
  - f.** Commencement of relevant provisions of the Assisted Decision Making (Capacity) Act 2015.
  - g.** Judicial Appointments Commission Bill.
  - h.** PfG commitment to establish a new Planning and Environmental Law Court.
  - i.** Insolvency Review.
  - j.** Economic development.
- 8.** To make recommendations for developing judicial skills in areas such as white collar crime.
- 9.** To make recommendations on relevant issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice.
- 10.** To consider the implications of Brexit on the Courts in regard to judicial resources and potential increased workloads arising.

ANNEX

2

## Membership of the Working Group, Judicial Observers and Secretariat

Representative	Organisation
Ms Brigid McManus	Independent Chairperson
Ms Oonagh Buckley	Department of Justice
Ms Yvonne White*	Department of Justice
Dr Stjohn O'Connor**	Department of Justice
Mr Dermot Woods	Department of the Taoiseach
Ms Marianne Nolan	Department of Public Expenditure and Reform
Mr Feargal O'Dubhghaill	Office of the Attorney General
Mr Tom Ward	The Courts Service
Mr Jonathan Buttimore - Alternate	Office of the Attorney General
Mr Cillian McBride - Alternate	Department of Public Expenditure and Reform
* Until 16 June 2021; **From 16 February 2022	

### Judicial Observers

Name	Courts
Mr. Justice Denis McDonald	High Court
Judge John O'Connor	Circuit Court

### Secretary to the Group

Name	Organisation
Ms Róisín Friel	Department of Justice
Ms Nicola Kelly	Department of Justice (until November 2021)
Mr James Boyle	Department of Justice (until March 2022)

### Secretariat

Name	Organisation
Dr David Costello	Secretariat Support on the Report
Mr Gerry McDonagh	Department of Justice, Civil Justice Governance
Ms Orla Mullen	Department of Justice, Civil Justice Governance

ANNEX

3

**Written Submissions  
Received by the Working Group**

## Written Submissions Received by the Working Group

Submission Number	Submission Name
1	Action for Children and Families of Prisoners Network
2	Mr Adrian Flynn
3	Ms Annie Nugent
4	An Garda Síochána
5	Apartment Owners Network
6	The Association for Criminal Justice Research and Development
7	The Bar of Ireland
8	Senator Barry Ward
9	Dr. Brian Barry , Technological University Dublin
10	Chambers Ireland
11	The Chief Justice, the former Chief Justice and Court Presidents
12	Chief State Solicitor's Office
13	Child Law Reporting Project
14	Commercial Litigation Association of Ireland
15	Cork Chamber
16	County Registrars Association
17	Department of Enterprise, Trade and Employment
18	Department of Housing, Local Government and Heritage
19	Dublin Solicitors Bar Association
20	Dublin Rape Crisis Centre
21	Forensic Science Ireland
22	Irish Business and Employers Confederation (IBEC)
23	Irish Council for Civil Liberties
24	Industrial Development Agency (IDA Ireland)
25	Dr. Ian Marder, Maynooth University
26	Irish Prison Service
27	The Irish Women Lawyers Association
28	The Judicial Council
29	The Law Society of Ireland
30	The Legal Aid Board
31	Ms Mairead Cotter
32	Dr Mark Coen & Dr Niamh Howlin, University College Dublin
33	Ms Marce Lee Gorman
34	Ms Majella Rippington
35	The Office of the Director of Public Prosecutions
36	The Office of the Legal Costs Adjudicator
37	One Family
38	Open Justice Ireland

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Submission Number	Submission Name
39	Deputy Patrick Costello T.D.
40	Mr Patrick Keane S.C.
41	The Probation Service
42	The State Claims Agency
43	Safe Ireland
44	Tusla
45	Women's Aid

ANNEX

4

**Organisations who met  
with the Working Group  
(or Group Members)**

## Organisations who met with the Working Group (or Group Members)

Name
The Chief Justice, the former Chief Justice, the Court Presidents, and members of the Judiciary
Research Team, Organisation for Economic Cooperation and Development (OECD)
Officials from the Department of Justice
Officials from the Courts Service
Chief Executive Officer, Legal Services Regulatory Authority
Chairperson, The Bar of Ireland
Director General, Law Society of Ireland
Director of Judicial Studies, The Judicial Council
Irish Women Lawyers Association
County Registrars Association
Representatives, The UK Ministry of Justice and HM Courts & Tribunals Service
The Lady Chief Justice of Northern Ireland
Representatives, The Judicial Office for Scotland

ANNEX

5

# Waiting Times in the High Court by list

## 1. The Non-Jury List Dublin

- ▶ The current waiting time is 7 months. However, if the case is urgent, the court will endeavour to allocate an earlier hearing date.
- ▶ This waiting period does not include the period between the date of commencement of the proceedings and the date when the case is ready for hearing. That period can vary significantly.

## 2. The Non-Jury List Cork

- ▶ All cases will get a hearing date in the Court term following the date in which they are set down for trial. For example, if a case was set down for hearing in November 2022, it would be expected to obtain a hearing date at next sitting in Cork for these type of actions in March 2023.
- ▶ This waiting period does not include the period between the date of commencement of proceedings and the date when the case is ready for hearing. As noted above, that period can vary significantly.

## 3. The Judicial Review List

- ▶ The current waiting time is 7 months for cases that will take one day or more.
- ▶ Shorter cases can be given a hearing date in 6/8 weeks. Currently, Asylum cases can get dates in 3 weeks.
- ▶ None of those periods include the period between the date of commencement of proceedings and the date when the case is ready for hearing.

## 4. The Family Law List

- ▶ The average waiting time for a date is 3 months.
- ▶ The average time from commencing proceedings to hearing varies between 3 months and 2 to 3 years. Urgent matters are dealt with quickly.

## 5. Personal Injury actions – Dublin

- ▶ The current waiting times in the List are as follows:
  - ▶ ordinary cases (18 out of 20 cases per day) - 9 working weeks;
  - ▶ specially fixed cases (2 out of 20 per day) - 8 months;
  - ▶ urgent cases are dealt with without any delay.
- ▶ These periods run from the date the case is ready for trial. They do not include the period between the date of commencement of proceedings and the date when the case is first ready for trial.

## 6. Personal Injury Actions – Venues other than Dublin

- ▶ **Cork:** The waiting period is between 6-9 months. However, earlier hearing dates are occasionally available where cases higher up the list are not ready to proceed.
- ▶ **Limerick/Ennis:** The waiting period is approximately 2 years. However, earlier hearing dates are occasionally available where cases higher up the list are not ready to proceed.
- ▶ **Waterford:** While there are a small number of cases which have been in the list for several years without proceeding to a trial, the expectation is that any case which is ready for a hearing will be accommodated at the next sitting in this venue.
- ▶ **Galway:** Any case which is ready for a hearing will be given a hearing date at the next sitting in this venue.
- ▶ **Sligo:** Any case which is ready for a hearing will be given a hearing date at the next sitting in this venue.
- ▶ **Letterkenny:** Any case which is ready for a hearing will be given a hearing date at the next sitting in this venue.
- ▶ **Dundalk:** Any case which is ready for a hearing will be given a hearing date at the next sitting in this venue.

The above waiting times do not include the period between the date of commencement of proceedings and the date when the case is first ready for trial.

## 7. Strategic Infrastructure, Planning and Environmental List

- ▶ The current waiting times in the List are as follows:
  - ▶ If the matter is relatively urgent, a date can be found in 4-5 months from entry into the list (or sooner if necessary).
  - ▶ In other cases, if nothing delays matters, the hearing date will be about 8 months from entry.
  - ▶ If the parties raise interlocutory issues or fail to co-operate in progressing matters, or if the matter is held up by a point before an appellate court or the CJEU, then the case could take longer.

## 8. Professional Disciplinary List

- ▶ Waiting time for hearing dates is 3 weeks currently.
- ▶ Urgent applications are heard within 3 to 5 working days.

## 9. Wards of Court List

- ▶ Due to the nature of the cases in the Wardship List, there is little or no waiting time to get a hearing date. The Court is always in a position to facilitate urgent matters, which are heard at very short notice.
- ▶ Currently, return dates for Notices of Motion are 5 days from receipt of application, which is the minimum period to allow for service. Additionally, Declaration hearings are listed within two weeks of papers being in order.
- ▶ In respect of EPA matters they are given a Court date within 2 weeks of the application.
- ▶ Complex matters, which take time, are also facilitated with timely listings.

## 10. The Chancery List

- ▶ These are the average waiting times for hearing dates;
  - ▶ For a one or two hour motion, about 4 court weeks;
  - ▶ For a day or two-day long matter, about 12 court weeks.
  - ▶ For a 4 or 6 day hearing, about 16 court weeks.
  - ▶ For a very long hearing, about six months.
- ▶ These periods do not include the period between the date of commencement of the proceedings and the date when the case is first ready for trial.

## 11. The Commercial List

- ▶ Many actions in the Commercial List require hearings of 4 days or more.
- ▶ The current waiting time to obtain a hearing date for such an action is 7 months. That period does not include the period between entry of the case in the List and the date when the action is ready for trial.
- ▶ The latter period varies widely and, depending on the extent of the discovery to be made, and the number of procedural issues that arise in the course of case management, it can run from 4 months to 20 months or longer.

- ▶ The waiting period for a shorter hearing than 4 days is generally shorter. For a one or two day hearing, the waiting period runs from 3 weeks to 6 weeks but can be longer.
- ▶ For cases where the court is requested to sanction a company takeover or merger or a transfer of insurance business, the waiting period (subject to compliance with any statutory notice periods) is very short and these applications will usually be accommodated without any significant delay.
- ▶ In urgent cases, the court will always try to secure an early hearing date.







