

**REPORT of the TASK FORCE on COST REDUCTIONS on
CRIMINAL LEGAL AID**

October 2011

TABLE of CONTENTS

SECTION 1	Page
1.1 Executive Summary	
1.1.1 Introduction	3
1.1.2 Short Term Initiatives/Measures	3
1.1.3 Medium/Long Term Initiatives/Measures	3
1.1.4 Future Planning	4
1.2 Background	6
1.3 Methodology	7
1.4 Format of the Proposals	7
 SECTION 2	
Table of Initiatives/Measures	8
 APPENDICES	
Appendix 1	14
Membership of Task Force	
Appendix II	15
Terms of Reference	
Appendix III	16
Figure 1: Implementation Process	

SECTION 1

1.1 Executive Summary

1.1.1 Introduction

The Minister for Justice and Equality established this Task Force on Cost Reductions on Criminal Legal Aid in April 2011 to identify areas of change related to the structures and systems of the courts which could potentially contribute to cost reductions on criminal legal aid (CLA) in the future and to report to him by October 2011. The full Terms of Reference of the Task Force are set out in Appendix II.

The Task Force assessed a range of issues in accordance with its Terms of Reference, identifying the procedural/structural limitations within the courts system which potentially add to the costs of CLA, the incentives within the system which might add to costs and the potential opportunities to simplify the delivery of CLA. The range of initiatives and measures identified by the Task Force are set out in detail in Section 2 of this Report.

1.1.2 Short Term Initiatives/Measures

In order to give a complete picture, the initiatives and measures identified in this Report include a number which were in the process of being introduced when the Task Force was established and which have, over the period of the Task Force's work, been implemented by the Department. These include:-

1. Reduction of 10% in fees and rates payable under criminal legal aid
2. Restructuring of Day 1 Fee in the District Court
3. Reduction of 50% in rates payable for travel and subsistence
4. Reduction of 50% in the fees payable for sentence fee adjournments
5. Reduction in rates payable for interpretation and translation services and revision of procedures
6. Reduction in rates payable in respect of expert witnesses and revision of procedures

It should be noted that the measures outlined above have been implemented in the third and fourth quarters and therefore it will not be possible to get the benefit of a full year of cost savings in 2011. However, the full benefit, circa €7.4m, should be realised in 2012.

1.1.3 Medium/Long Term Initiatives/Measures

Other initiatives identified by the Task Force require more significant changes, either to legislation and/or structures and systems, in order to achieve the potential cost reductions. Many of the initiatives are cross-sectoral and changes initiated in one area may have a contrary impact in other parts of the Justice system. Implementation of the different measures requires a co-operative approach to try to ensure a cost effective solution which delivers across the sector.

In some cases the initiatives that have been identified by the Task Force may not deliver significant savings directly for CLA but, importantly, may potentially deliver

savings in other areas of the justice sector including An Garda Síochána (AGS) and the Irish Prison Service (IPS).

The Task Force acknowledges that not all of the initiatives and measures identified in this Report will necessarily deliver on readily quantifiable cost reductions. For example, *No. 12, Extend Current Adult Caution to offences of simple cannabis/cannabis resin*, would reduce the number of such cases being processed through the courts and therefore potentially reduce costs for the Courts Service, AGS and CLA, but the extent of the savings is difficult to measure. The Task Force is also aware that there are potential issues attached to implementing this measure, in terms of the public perception of the attitude to particular types of offence.

Other measures have the potential to produce efficiencies not just within the courts system but also within other organisations in the Justice Sector. For example, *No. 10 Video links to courts*, has already worked well in some locations, such as Limerick, and has the potential to reduce the number of staff hours required to escort prisoners.

The Task Force is satisfied that, although not all of the initiatives identified will produce significant quantifiable savings in each case, they will produce an overall cost benefit to the Justice system which will be realised through efficiencies and/or the offsetting of costs.

A number of initiatives will require further scoping and/or a feasibility study in order to fully assess their cost benefit. For example, *No. 7 Single Fee in the District Court* may have the potential to reduce costs in the District Court. However, in order to estimate the level of cost savings, there are a number of aspects of the proposal that need to be examined, including the appropriate level at which to set a fee so as to properly remunerate lawyers for the work involved and the potential associated savings.

In parallel with the work of the Task Force a separate Group is examining delays in the courts system in the context of Article 13 of the European Convention on Human Rights. In September 2010, the European Court of Human Rights found Ireland in breach of Article 6.1 of the Convention ruling that the length of criminal proceedings against the applicant (*McFarlane*) was excessive and in violation of his right to trial within a reasonable time. The Court also found that Ireland had failed to demonstrate an effective domestic remedy in the event of a violation of the right to trial within a reasonable time and was thus in breach of Article 13 of the Convention. Implementation of any measures relating to court scheduling may be directly impacted by the recommendations emerging from this Group.

1.1.4 Future Planning

A. Implementation

The Task Force recognises that the changes necessary to ensure implementation of the initiatives identified as having the potential for cost reduction must be driven both within individual organisations and across the Justice Sector. The Task Force is also cognisant of the related work being done by other groups throughout the Sector, which is feeding in to the overall objective of cost reduction and greater efficiency and effectiveness.

The complexity of the processes associated with the implementation of justice can contribute significantly to the difficulties associated with cost control and cost

reduction. However, the challenges are easier to address when all of the agencies concerned with the Justice system as a whole are engaged with the process. The work undertaken by each of the agencies under the umbrella of the Task Force has contributed to identifying the initiatives and measures that can potentially contribute to cost reductions on CLA and indeed other parts of the Justice Sector. This model for addressing issues which are complicated by their cross-sectoral nature has potential for all of the criminal justice agencies and should, in the view of the Task Force, continue into the future.

In order to ensure that cost reduction and efficiency objectives are met for all parts of the Justice Sector the Task Force recommends:-

Establishment of a cross-sectoral Group concerned with the criminal justice system, including criminal legal aid, which is tasked with implementing the cost reduction measures identified by this Task Force and others and initiating cost saving changes to the system on an ongoing basis.

Membership of the Group should be at a senior decision making level and it should be tasked with delivering on the initiatives identified by this Task Force and other groups within twelve months. In order to give continuity and keep momentum in the process it is suggested that the Group be chaired, initially at least, by the Assistant Secretary with responsibility for Finance, HR and Corporate Affairs. This Group should be required to report on a regular basis to the Criminal Justice Liaison Group. Figure 1 at Appendix III refers. As this is a new initiative, it is suggested that there should be a review mid-2012 to see that the Group is functioning as envisaged and is meeting its objectives.

B. Engagement with the Judiciary

The Task Force recognises the critical importance of the separation of the executive and judicial functions in our democracy. However, arising out of the work of the Group it is clear that the role of the judiciary in facilitating changes which potentially benefit all of those concerned with the Justice system is a crucial element in the successful implementation of many of the measures outlined in this Report. A mechanism to facilitate dialogue around issues which contribute to the reform of the courts system but which does not impinge on the independence of the judiciary would be very useful. The Task Force recommends:-

The advice of the Chief Justice should be sought in relation to a suitable methodology for communicating and discussing with the judiciary change initiatives, within the criminal justice sector, while respecting and preserving judicial independence.

C. Management of Criminal Legal Aid

In 2009 an Internal Audit Report by the Department on the administration of CLA suggested that a manager with overarching responsibility for criminal legal aid should be appointed. The Report recommended that the manager should have responsibility for managing expenditure and have the authority to implement changes and build communication channels. The Task Force, on foot of its work in this area, would concur with this recommendation.

A manager, with sole and overarching responsibility for the operational aspects of criminal legal aid should be appointed.

1.2 Background

The right to criminal legal aid in Ireland does not stem from a statute but is a constitutional right. The Criminal Justice (Legal Aid) Act 1962 is the primary legislation governing the award of criminal legal aid and is a means of vindicating that right.

The Act provides that free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. Legal Aid is granted in all courts including the District, Circuit and Higher Courts. Under the Act, the grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, up to two counsel, in the preparation and conduct of their defence or appeal. It also includes, where appropriate, access to expert witnesses and reports as part of an accused person's defence.

The nature of Criminal Legal Aid is that it is demand led and is driven by the incidence of crime, detection rates and prosecution of cases through the courts system and it is therefore difficult to control costs in this area. It should be noted that a recent Supreme Court Judgment in *David Joyce v Judge Patrick Brady and the DPP* raises significant issues in relation to the operation of criminal legal aid under the 1962 Act and, in particular, the criteria for granting legal aid that may be applied by the judiciary. The judgment appears to considerably widen the range of offences which could potentially attract legal aid. The judgment is being considered in consultation with the Attorney General's office but it is probable that it will give rise to increased costs for criminal legal aid in the future.

A Criminal Justice (Legal Aid) Amendment Bill, which is currently being drafted and is due for publication in early 2012, will include, amongst other measures, the transfer of the administration of the criminal legal aid scheme and other ad-hoc schemes from the Department to the Legal Aid Board. The Bill also offers an opportunity to consider whether a legislative response to the judgment in *Joyce* may be appropriate.

Last year's National Recovery Plan 2011-2014 included a specific commitment to reduce expenditure on criminal legal aid to yield savings of €5m in 2011 and €10m in a full year. In order to try to achieve the targeted reduction of €5m in the current year, a number of cost reduction measures were implemented, including an overall reduction of 10% in the fees and rates paid under the criminal legal aid scheme. However, it was acknowledged that, in order to achieve more substantial reductions in the medium to longer term, changes would be required within the systems and structures of the courts.

The Minister established a Task Force on Cost Reductions on Criminal Legal Aid to specifically examine and identify the potential changes that could be made to the courts system to yield cost savings. The full Terms of Reference of the Task Force are at Appendix II. The Group was requested to report by the end of October 2011.

The Task Force was chaired by Deirdre O'Keeffe, Assistant Secretary, and was representative at a senior level of the justice agencies, the Department of Public Expenditure and Reform and the Office of the Director of Public Prosecutions. Details of the membership of the Task Force are set out at Appendix I.

1.3 Methodology

The Task Force met in formal session on six occasions between June and October 2011. In parallel, a number of sub-groups met separately to focus on particular issues, with a view to resolving blockages and agreeing methods for moving issues forward. The sub-groups then reported back to the full Task Force.

The Department had, in the early part of 2011, as part of its work in relation to identifying areas for cost reduction, invited submissions from the Bar Council of Ireland and the Law Society. Issues identified by those two groups were considered by the Task Force in the course of its work. Many of the issues were the same as or similar to those identified by the other stakeholders. Separately, members of the Task Force met representatives of the Law Society on foot of the Society's request for a meeting to articulate their concerns.

1.4 Format of the Proposals

All of the measures and initiatives put forward by the various stakeholders were considered and discussed by the Task Force and there was consensus amongst the members in relation to those measures which had the greatest potential to deliver cost reductions or efficiencies.

Section II of this Report sets out in tabular form the proposed areas for change identified by the Task Force and, for each:-

- identifies the lead agency in terms of the potential change;
- gives an estimate of the potential cost savings, where possible, which might accrue as a result of the change;
- indicates a time line for the change.

As mentioned earlier in this Report, the Task force acknowledges that although not all of the initiatives identified will produce significant quantifiable savings on CLA in each case, they will however, produce an overall cost benefit to the Justice system which will be realised through efficiencies and/or the offsetting of costs in one or more agencies. Some of the measures identified in the Report require further work and analysis and this is stated, where relevant.

SECTION 2

	Initiative/Measure	Agency Responsible for Action	Agencies/ Stakeholders to Action	Implementation Timeline	Potential Saving	Enablers/ Inhibitors	Comments
1	Reduction of 10% in fees and rates payable under criminal legal aid.	Courts Policy Division	Courts Service FSS	Implemented 13 July 2011 at District Court level	Potentially approx €5.6m (in a full year)	New Regulations which were required were approved and signed. Practitioners informed via professional bodies.	
				Implemented 1 October 2011 in Circuit and higher courts		The Office of the DPP implemented a cut of 10% in fee rates for prosecution counsel and, in accordance with the parity arrangements, the fees under CLA were reduced accordingly. Practitioners informed via professional bodies.	
						FSS implemented changes to financial system.	
2	Restructuring of Day 1 Fee in District Court (Reduced Fee after two appearances instead of four).	Courts Policy	Courts Service FSS	Implemented 13 July 2011	€530,000 approx. (in a full year)	The new Regulations which were required were approved and signed. FSS implemented changes to financial system.	
						Practitioners informed via professional bodies.	
3	Reduction of 50% in rate paid for travel & subsistence.	Courts Policy	Courts Service FSS	Implemented 13 July 2011	€300,000 approx. (in a full year)	The new Regulations which were required were approved and signed. FSS implemented changes to financial system.	
						Practitioners informed via professional bodies.	

4	Reduce the fee payable for sentence fee adjournments by 50%.	Courts Policy	Courts Service FSS	Implemented 1 October 2011	€1m approx. (in a full year)	The Office of the DPP implemented a cut of 50% in fee rates for prosecution counsel and, in accordance with the parity arrangements, the fee paid under CLA was reduced accordingly. Practitioners informed via professional bodies.	
5	Interpretation & translation costs – reduction in rates paid and revision of procedures.	Courts Policy	Courts Service LAB	Implemented 1 October 2011	Difficult to quantify the extent of the potential saving as cost is driven by number of cases involving defendants with language difficulties.	Guidance document for solicitors will give clearer and more specific details regarding rates and procedures. Practitioners informed via professional bodies.	
6	Expert Witnesses –	Courts Policy	Courts Service LAB	Implemented 1 October 2011	Difficult to quantify the extent of the savings as cost is driven by number of cases and, in some cases, the complexity and seriousness of the case.	Courts Policy will operate a pre-approval process supported by a database to record requests and authorisations etc. FSS will have viewing access to the database to cross check claims.	
	Pre-approval process, reduction of fee rates and revision of procedures.				New process eliminates the need for solicitors to send LA5 forms to courts and therefore there should be less administration for Courts Service.	Guidance document for solicitors will give clearer and more specific details regarding rates and procedures.	
7	Single Fee in District Court	Courts Policy	Courts Service FSS LAB	A provisional timeline of 6 months subject to the outcome of a scoping and feasibility exercise.	The proposal needs to be fully scoped to establish the feasibility of introducing a fee from an administrative and financial cost benefit perspective.	New Regulation will be required. This would be a significant change and observations should be sought from the professional bodies.	Work has commenced in Courts Policy Div. & the Legal Aid Board with assistance from FSS

8	Same day Community Service Reports	Probation Service	AGS Courts Service Judiciary	Currently happening in cases where probation officers are in attendance and AGS and Courts Service are able to provide information and interview facilities are available.	Minimum of approx. €17,000 in legal aid costs and €57,000* in Probation Service costs (based on 300 CSRs) per annum.	Dependant on courts using the new service model as predicted. Should referrals from the courts increase it would impact on the potential for savings.	Savings at * are not absolute – potential from 'doing more with less'.
9	Same day Probation/Pre-sanction Reports	Probation Service	AGS Courts Service Judiciary	Implementation of pilot first quarter 2012 in selected courts in co-operation with AGS and Courts Service.	Minimum of approx. €14,000 in legal aid costs and €157,000* in Probation Service Costs (based on 250 PSRs) per annum.	Dependent on the District Courts using the new service model as predicted, the impact on AGS and the success or otherwise of the pilot project. Should referrals from the courts increase it would impact on the potential for savings. AGS will make the information required by the Probation Service available.	Savings at * are not absolute – potential from 'doing more with less'.
10	Video links to Courts	Courts Service	IPS	Courts Service and IPS have agreed a number of measures designed specifically to reduce costs and increase efficiencies through the use of video conferencing at specific locations.	With approximately 600 prisoners attending court each week, it would be expected that 30-35% could be dealt with by videolink. This would result in staff savings to the IPS and improve management of courts.	Dependant on the availability of technology and, where it is available, courts using the technology to the fullest extent possible.	
11	Video links for consultations between prisoners and legal team	IPS	Courts Policy	Courts Policy and IPS to agree a framework by end 2011 which would facilitate greater use by practitioners of videolink.	There were approx. 9,000 claims in respect of prison visits in 2010. Based on this figure, if half of these visits were conducted by videolink, there could be an estimated saving of €164,000 per annum.	Dependent on facilities being available in the prisons and on the greater use of existing facilities in the Bar Council and Law Library by practitioners. Highly unlikely that legal firms will install facilities if there is a significant cost. However, the Law Society has indicated that it wishes to see greater use of	

						videolink.	
12	Extend current Garda Adult Caution to offences of simple cannabis/cannabis resin.	DPP	AGS	Estimated that approximately 6,000 first time offenders who could be dealt with by way of adult caution and would not therefore require processing through the courts system.	Savings difficult to quantify on CLA as statistics on numbers getting legal aid for type of offence envisaged by this are not available. However, reduced volume would result in savings on Court time and Garda staff hours in particular.		DPP will provide further advice .
13	Defer the preferring of a charge until the Garda file has been prepared and charges have been settled. This applies particularly in the Dublin area where the practice is generally to charge immediately. Legislation would be required to support this proposal so that a suspect could be released on police bail with conditions before being charged. Consideration should also be given to extending the period during which the accused can, after being charged, be released by Gardaí on station bail.	AGS	DJE DPP	AGS implemented a revised policy and procedure in October 2011 to address the issue of deferring the preferring of a charge until the Garda file has been prepared and charges have been settled. The Department will review the legislative proposals by end first quarter 2012 subject to receipt of required information.	Very difficult to quantify without detailed analysis. However, it is anticipated that the provision would avoid unnecessary court appearances and/or reduce the number of remands sought. Greater efficiencies in the courts system by earlier disposal of cases, reduction in caseload for court presenters or prosecution.	Legislation required to permit conditional police bail and to extend station bail period.	

14	Offender – Individual Case Management	AGS	Courts Service IPS Probation Service Other Agencies and NGOs	Implemented nationwide for Juveniles in 2010. Currently implemented for adults in Dublin's north inner city.	Potential cost savings to be calculated. Case Study being evaluated to determine this potential.	There are no legislative blockages to the implementation of this project.	
	The Garda Case Management system is a Garda Project which was developed with the assistance of the Children Act Advisory Board. The Project (which has been extended to address Adult Offending) is essentially a co-ordinated and consistent management process. This process includes the appointment of a named member of An Garda Síochána who acts as the individual Case Manager for each selected prolific offender and who is subsequently responsible for leading, co-ordinating and managing the prolific offender's interaction with the criminal justice system, the offender's family and all other relevant agencies working with the offender.			Potential for nationwide implementation within 12 months*	Unnecessary remand dates are avoided. Reduced Garda man hours in court.	Co-operation of Courts Service and the judiciary in scheduling lists and cases is essential. *Subject to the full engagement of all of the agencies at all stages of the process.	
15	Electronic feed from Courts Service to FSS	FSS	Courts Service LAB	Cannot be determined until further technical analysis is carried out in Courts Service and FSS. It must be established if the required data to facilitate payment is captured within CCTS.	It is likely that an upfront investment in IT infrastructure will be required and this will need to be quantified as a part of a cost benefit analysis.	Review of CCTS system in Courts Service to see can the information gaps previously identified be resolved.	A group with representatives from FSS, Courts Service and LAB will scope this project.
						Analysis of the scale of IT developments in both Courts Service and FSS.	

16	Application Fee for Criminal Legal Aid	LAB	Courts Policy Courts Service	A timeline for this proposal is difficult to commit until the proposal has been fully scoped.	The proposal needs to be fully scoped to establish its feasibility from a Constitutional, administrative and financial cost benefit perspective.	AG's advice suggests that there is no legal impediment to the introduction of a fee but the advice is predicated on no barriers being put in the way of an individual's access to justice.	
17	Court Lists – this is an issue for CLA in the context of the significant spend on trial day adjournments in particular. The same issues arise in the context of sentence adjournments.	Courts Service	Courts Policy ECHR Article 13 Group AGS IPS		The cost of trial - adjournments in 2010 was €1.2m while sentence - adjournments cost €1.4m in 2010.	Legislative change which would give responsibility for court lists and scheduling for the District and Circuit Courts to the Courts Service	It should be noted that on this issue there are potential savings for AGS and IPS in man hours spent attending courts and escorting prisoners.
18	Pre-trial procedure (including trial & witness management)	DPP	Courts Service ECHR Article 13 Group AGS DJE		Difficult to assess impact on legal aid but there are potential savings in relation to expert witnesses, defence witnesses and overall length of trials. Potential savings also for AGS		
19	Appointment of manager with responsibility for CLA	Courts Policy	LAB		An internal Department audit of CLA in 2009 recommended that a manager with overarching responsibility for CLA should be appointed.	Resource issue in context of Employment Control Framework and budgets.	

APPENDIX I

Membership of the Task Force

Chair	Deirdre O’Keeffe
The Courts Service	Margaret O’Neill
An Garda Síochána	John O’Mahoney Patrick Leahy
The Office of the Director of Public Prosecutions	Barry Donoghue
The Department of Public Expenditure and Reform	David Denny
The Legal Aid Board	Moling Ryan Pat Gilheaney
The Irish Prison Service	David Gilbride Martin Mullen
Financial Shared Services	Seamus Clifford
The Probation Service	Vivian Geiran
Criminal Law Division	Andrew Munro
Courts Policy Division	Oonagh McPhillips
Secretariat	Martina Colville

APPENDIX II

Terms of Reference

- Identify any procedural/structural limitations within the courts system which potentially add to the costs of CLA – the review will encompass all the agencies operating within the courts system (An Garda Síochána, Office of the Director of Public Prosecutions, Irish Prison Service, Probation Service etc.)
- Identify any incentives within the existing system which might have the effect of increasing the costs of Criminal Legal Aid
- Identify any potential opportunities to simplify the delivery of CLA
- Identify any additional measures which could be introduced to reduce costs or pressures on the system

Figure 1: Implementation Process

