



An tSeirbhís Chúirteanna
Courts Service

Ms. Margaret Falsey
Committee Secretariat
Public Accounts Committee
Leinster House
Dublin 2

9th December, 2014

Dear Ms. Falsey

I refer to my recent appearance before the Public Accounts Committee on 20th November and to your letter of 27th November, 2014 requesting additional information in relation to

- the number of all civil Circuit courts sittings that have been postponed or disrupted due to vacancies of Circuit Court judges
- the cases of Wards of Court where the fund has run out and the costs are now borne by the State
- A copy of the Courts Service Strategic Plan 2014 - 2017.

The additional information requested is set out below:

Civil Circuit Court sittings postponed or cancelled or disrupted due to the vacancies of Circuit Court judges

The assignment and allocation of Judges is a matter for the President of the Circuit Court who is under the Constitution, independent in the exercise of his judicial functions. In accordance with the Courts Service Act, 1998 the Courts Service is precluded from interfering in any way with the conduct of a judge in the performance of his or her judicial functions.

The seven vacancies on the Circuit Court bench meant that the President did not have sufficient judges to preside over all scheduled sittings of the Circuit Court. He had to prioritise court sittings and the priority was given to criminal business, followed by family law business followed by civil business.

One of the judicial vacancies existed from the beginning of the Michaelmas term and this was taken into account when the assignments for Michaelmas term were prepared. The intention was to arrange sittings which could be held by the replacement Judge as soon as the appointment was made.

Judge Alan Mahon was appointed to the Court of Appeal with effect from 29th October and was unavailable to the Circuit Court from that date. Judges Carroll Moran, Mary Faherty, Tony Hunt, Ray Fullam and Carmel Stewart were appointed to the High Court with effect from 30th October and were unavailable to the Circuit Court from that date.

The result of these appointments was that Circuit Court sittings were affected for the first time in the last week in October. During that week sitting days were lost in Castlebar, Letterkenny, Limerick, Longford and Naas. However no courts were cancelled until the week beginning 3rd November. Details of the sittings affected are set out in the Table below:

| Week beginning | Venue where court cancelled | Type of business | Notes |
|---------------------------|-----------------------------|------------------|---|
| 3 rd November | Cork | Civil | Two other Judges in Cork dealing with criminal business may have dealt with urgent applications |
| | Naas | Civil | |
| | Portlaoise | Civil | Judge attended for 1 day to adjourn a criminal matter |
| 10 th November | Cork | Civil | Two other Judges in Cork dealing with criminal business may have dealt with urgent applications |
| | Galway | Civil | |
| | Limerick | Civil | |
| | Waterford | Civil | |
| 17 th November | Cork | Civil | Two other Judges in Cork dealing with criminal business may have dealt with urgent applications |
| | Ballina | Civil | |
| | Castlebar | Civil | |
| | Waterford | Civil | |
| | Limerick | Family law | |
| 24 th November | Cork | Family law | Two other Judges in Cork dealing with criminal business may have dealt with |

| | | | |
|--|-----------|------------|--|
| | | | urgent applications |
| | Dundalk | Civil & FL | |
| | Castlebar | Civil | A Judge attended on 1 day to deal with a childcare matter. Ennis lost one day's civil business as a result |
| | Galway | Civil | |
| | Limerick | Civil | |

The Dublin Circuit Criminal Court had one Judge less than usual during this period but no sittings were cancelled. .

Cases of Wards of Court where the fund has run out and the costs are now borne by the State

Based on representation received by the members of the Committee in relation to the management of wards of court funds, which was reflected in the questions raised by members of the Committee on 20th November 2014, there may be a perception that wards of court cases, which had received court awards as a result of personal injury actions, had their funds run out or depleted, possibly due to investment decisions made by the Courts Service. I would like to emphasise that the investment management of these funds has been very good and compares very favourably with national and international benchmarks

The circumstances in which persons who lack capacity are brought into wardship vary greatly. The majority of wards of court are brought into wardship because of age related deterioration in mental capacity. Others may have intellectual disability or suffer from a psychiatric illness. A relatively small number of wards of court arise from personal injury awards in the courts. While most wards will have funds in court, the amount will vary from case to case and often quite modest sums are received in relation to wards of court. The funds of all wards are managed diligently and professionally, with independent investment advice available to the Courts Service in this regard. A range of factors need to be taken into account in managing the ward's funds, including the ward's ongoing care and other needs. Even in cases where court awards are made, both the amount lodged and the financial needs vary greatly and neither the courts nor the Courts Service can ever guarantee that the funds will not run out or become depleted, especially over a very long period of time.

It is not possible to provide a comprehensive analysis of court awards for wards of court which have become depleted or run out. . As you will appreciate, such cases date back many years to a period when our records including financial records were kept manually. As you will appreciate, it would take a very considerable period of time and diversion of staff resources away from the management of wards' affairs to review all manual records.

I can say that in the last two years there has been no case in which a substantial award was made by the court where the funds have run out. In addition we are aware of one case where a substantial award was made almost 30 years ago and will almost certainly run out in the next two years at the current rate of expenditure. The sole reason for the funds running out is the increased cost of care over the years since the award was made. In endeavouring to provide further information for the Committee we have identified 6 current wards of court where the funds have fallen below €10,000 in recent years. One of these cases goes back to 1976 (38 years) and three go back to the 1980s. The original amount lodged in court ranged from €10,000 to €71,000. In every case that have been significant payments made over the years. In one such case, payments made over the years on behalf of the ward totalled more than 5.5 times the original lodgement in court. Two other cases date back to the mid-1990s - the amounts lodged were between €200,000 and €450,000 and the reason the funds have become depleted was the significant payments made on behalf the ward.

Of the 2,500 current wards of court, there is a small number in relation to whom court awards may not be able to sustain their future needs. There are approximately 15 cases in addition to those identified above where the amount invested may not prove sufficient in the coming years to provide for the lifetime needs of the ward. Some of the amounts invested date back over 25 years where the original amount invested was less than €50,000.

Within the limited resources and time available it is not possible to review all case files as this would require the expenditure of very considerable staff resources which are not available. However having examined a number of cases as set out above I confirm that in all cases identified where funds were depleted, in each case the reason for the funds this was the need to meet ongoing care and related costs over the years. In many cases those payments include purchase of house property from the funds in court. In some of these cases the value of the original award was relatively small. I can assure you that there was no mismanagement of wards' funds.

The funds in all cases are invested prudently on behalf of wards of court in line with investment strategies established. We will continue to ensure the funds are protected, in the best interests of the ward of court, while at the same time consulting with the committees and carers of the wards to ensure necessary payments continue to be made for the benefit of the ward.

I have set out below some general information which may be of interest to the Committee on the investment and management of court funds.

Investment and Management of Court Funds

Court funds are held in trust by the Courts. The Courts Service in accordance with the Courts Service Act 1998 is responsible for the management and administration of the Courts and provides support services for the judges. It is in this capacity that the Courts Service has a role in the management and investment of court funds. These funds are invested in line with the provisions of the Trustee (Authorised Investments) Act, 1958 and subsequent orders.

In late 2001 the Service commenced a review of how Court funds were managed and invested. This culminated in the establishment of a number of customised funds in

December 2003. Since then most Court funds have been invested to the new arrangements including District and Circuit Court funds as well as High Court funds.

The Service has approximately **€1.47 billion** of funds under management in a fiduciary capacity on behalf of more than 18,500 beneficiaries as at 30 September 2014. Of these funds, approximately **€1.36 billion** is invested in the SSgA Spectrum funds. 2,600 of these beneficiaries are persons who have been declared wards of court with a value of funds €950 million and 14,300 are minors with a value of funds €277 million. The remainder mostly consist of lodgements with defence cases, redress board cases, and cases pending further court orders. The total amount invested in the unitised funds can be further analysed between the High Court (€1.229 billion), Circuit Courts (€125 million) and District Courts (€4million).

The Courts Service operates a conservative investment policy and this has ensured that the capital sum is protected, especially in the case of minors, and where necessary an appropriate balance is struck between income generation and capital preservation. This approach has worked well over the past 11 years, whereby very good returns have been generated, while protecting court funds from the worst effects of the credit crisis. These funds are subject to external audit and the audited financial statements are published each year.

In making a decision to invest court funds on behalf of a ward of court or minor, a key factor in deciding which fund to invest in is the time period that the funds will be held by the courts. Shorter term funds are invested in cash and bond based assets, while funds that are held for the longer term investments are invested in the most appropriate fund. The performance of longer term funds cannot be assessed by taking one year in isolation from the cumulative investment performance over a longer period of time.

Investment Performance

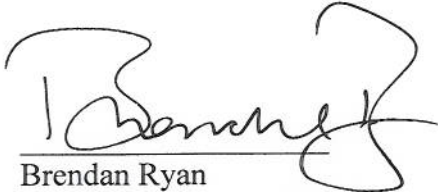
The strategies put in place in 2003 have been kept under regular review and have modified on a regular basis to take account of changing circumstances. A new set of strategies were put in place following the tender for fund management services, with effect from October 2013. The combined investment performance of the new Growth Fund and the previous Balance fund, both of which are used predominantly for wards of court funds, shows a cumulative performance is 67% over a period of 10.8 years, giving an average annual performance, net of fees of, 6.2%.

Investment decision-making takes account of prudent investment principles, as for many beneficiaries the overriding investment objective may be capital preservation while in other cases it may be necessary to pursue an income growth strategy. The investment of funds in an income growth strategy is communicated to the beneficiaries' representatives before the investment is made by the Wards of Court Office. All such cases are reviewed periodically by the Wards of Court Office, and if the beneficiary's circumstances change, the strategy may be varied accordingly. The Wards of Court Office is responsible for directing the Accountants Office which fund to invest the wards funds. For Wards of Court funds invested in the Growth Strategy, who also have ongoing cash needs, it was deemed prudent to have a separate cash holding in the GRU Cash Fund, the lowest risk strategy available. The amount is equivalent to 3 years worth of projected cash flow, which is reviewed annually. This

is to avoid situations where units may be liquidated at an inopportune time (i.e. following a fall in value).

I trust this information is of assistance to you and if you require any further information or clarification in these or in any matters please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brendan Ryan', written over a horizontal line.

Brendan Ryan
Chief Executive Officer