

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Dé Céadaoin, 25 Samhain 2015

Wednesday, 25 November 2015

The Joint Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Senator Ivana Bacik,
Deputy Alan Farrell,	Senator Martin Conway,
Deputy Seán Kenny,	Senator Tony Mulcahy.
Deputy Pádraig Mac Lochlainn,	
Deputy Gabrielle McFadden,	
Deputy Finian McGrath,	

DEPUTY DAVID STANTON IN THE CHAIR.

Management and Administration of the Courts: Courts Service of Ireland

Chairman: Apologies have been received from Senators Martin Conway, Denis O'Donovan and Katherine Zappone.

The purpose of the first part of the meeting is to engage with the Courts Service of Ireland on a number of related matters. On behalf of the joint committee, I welcome Mr. Brendan Ryan and his colleagues. We will meet Mr. John Coyle, Mr. Seán Quigley and Ms Marie Ryan later and hear what they do in the Courts Service of Ireland. We are delighted that they were able to make it this morning. We understand there are 33 agencies within the remit of the Department of Justice and Equality and that the Courts Service of Ireland is one of the more important. We have not had a chance to engage with it during the past four and a half years; therefore, nearing the end of this Dáil, we are delighted that its representatives are able to come and tell us what it is doing, about the challenges it faces and the progress it has made in the past while because it is probably one of the most important services within the remit of the Department. We look forward to positive engagement with it. As we must be out of this committee room by 11.30 a.m., we will keep questions short and sweet.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members should be aware that under the salient rulings of the Chair, they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. I remind those present to leave their mobile phones in silent or airplane mode in order that they will not interfere with the sound system and the broadcasting of proceedings.

I invite Mr. Ryan to make his opening statement.

Mr. Brendan Ryan: I thank the Chairman for the invitation to appear before the joint committee. I look forward to discussing any issue of interest to him and members and dealing with any query they may have. I am accompanied by Mr. John Coyle, head of Circuit Court and District Court operations throughout the country; Mr Seán Quigley, head of resource management and accountant for the courts of justice; and Ms. Marie Ryan who is a principal officer in the Courts Service of Ireland and heads up my office.

The Courts Service of Ireland is responsible for the management and administration of the courts. As members are aware, the administration of justice is a matter for the Judiciary which, in accordance with its constitutional independence and the provisions of the Courts Service Act, is outside the scope of the functions of the Courts Service of Ireland. Members will appreciate, therefore, that in my discussions with them I am precluded from commenting on any matter relating to the exercise by a judge of his or her judicial functions or to the exercise of quasi-judicial functions by an officer of the court. I am also, of course, precluded from commenting on matters of Government policy.

Since its establishment, the Courts Service of Ireland has worked to ensure the courts oper-

ate effectively and efficiently, that the use of available resources is optimised, that value for money is achieved and that the best possible service is provided for court users. In the past six years, in common with all Departments and agencies, it experienced very severe reductions in funding and staff numbers. To address this and ensure the courts continued to sit and be supported, it has worked with the Judiciary to introduce a broad range of changes and reforms which have yielded significant savings for the Exchequer, while maintaining access to justice and services for the public. The service has diligently cut expenditure and, through proactive management, increased court fees, resulting in a significant contribution to the Government's recovery programme. We have robust financial control measures in place across the organisation to ensure expenditure is kept to an absolute minimum and incurred only where it is absolutely necessary and unavoidable and that value for money is achieved.

In the past six years the Courts Service of Ireland has engaged in a comprehensive range of operational and structural reform measures to achieve greater value for money, improved efficiency in processes and optimisation of the available funding and staffing resources. This has resulted in significant increased productivity and efficiency in the delivery of services. It also supported and facilitated a reduction of up to 41% in the net cost to the Exchequer of running the courts since 2008.

Given the severity of the funding and staffing reductions in the Courts Service, which gave rise to a 16% reduction in staff numbers - double the Civil Service average and significantly greater than the public service average of 10% - it would not have been possible to maintain court services and sittings without introducing a range of efficiency and productivity measures across all aspects of court structures, administration and operation. The measures implemented included reform of the court regional structures and court office structures, with the introduction of cross-jurisdiction combined court offices, the closure of smaller court offices and the ongoing rationalisation of court venues. These measures have maximised the use of resources and successfully freed up both judicial and staff time to support the hearing of cases. We have also worked to introduce a substantial programme of legislative and process reform with the ongoing streamlining of court office business procedures to enable improved operation of the courts and efficiency in deployment of court resources.

The implementation of our ICT programme has resulted in the optimisation of courtroom and court support technology, including: the rolling out of digital audio recording to all court jurisdictions and venues; extended use of video link and video conferencing, which has resulted in significant cross-justice sector efficiency; and the development of case management and e-filing projects, including the case management systems for the personal insolvency service, the Court of Appeal and Supreme Court and ICT support for the new fines legislation and e-filing projects, such as the debt claims online project and e-licensing, which are still under way.

There has been increased staff flexibility in a number of areas, such as logging of digital audio recording by court registrars, increased in-house ICT support and legal support, all of which have yielded significant savings. The Courts Service also continues to support the mediation initiative in Dolphin House, resulting in minimum savings of 315 days in court since inception to the end of 2014 and other cost-reduction measures.

The Courts Service fully accepts and supports the Government's ongoing requirement for savings to be achieved and is very conscious that although there has been an easing of the financial crisis, the need for reform in the delivery of public services remains. We are, therefore, continuing our ongoing review of the operation of the courts and the implementation of our modernisation programme.

The improved financial situation has been reflected in the Government Estimates for 2016, and the Courts Service has received a very welcome increase in additional funding of €1.75 million, or 1.6%. This will allow us to begin to address the key challenge for the service in recent years, namely, the lack of sufficient staff, which, despite the reforms introduced, has had an impact on the support we can provide for the Judiciary and court sittings and on the provision of core court services to the public. The reduction of up to 16% in full-time staff numbers coincided with an increase in workloads in a number of areas of our operations, most noticeably possession cases, in respect of which the number of civil bills increased by 883% in 2014 and the number of court orders increased by 105%. There has also been an increase generally in the complexity and length of court hearings, an increase of 10% in the number of court sitting days and an increase in the number of judges, which has resulted in the ratio of staff to judges falling from 7.3:1 in 2009 to 5.8:1 in 2015, a reduction of 22%.

That the Courts Service is providing a skilled front-line service to court users from geographically dispersed court offices and that a significant number of senior staff have retired, with the consequent loss to the organisation of technical expertise and knowledge, increased the adverse impact of the severe reduction in staff numbers. This, in fact, placed considerable and unsustainable pressure on court staff in a number of offices, which has been a cause of ongoing concern. The reduced staff numbers also meant that the Courts Service was no longer able to support the additional court sittings required by the presidents of the different court jurisdictions to meet the needs of court users. Unfortunately, this has led to increasing and unacceptable delays in the hearing of cases, particularly serious criminal trials and domestic violence order applications in Dublin.

There is no doubt that the Courts Service had reached a tipping point and that additional staff were required if the service was to continue to support court sittings adequately, maintain court services in offices around the country and adequately support Government initiatives such as the restructuring of the family law courts, which is under consideration at present. The additional funding to be allocated to the Courts Service in 2016, while it was not all that was sought, will allow for the appointment of roughly 30 additional staff. This process is already under way and priority is being given to supporting the additional court sittings required to address delays and providing additional resources to those offices most severely impacted by staff losses in recent years.

In common with many other organisations, investment in staff training in the Courts Service also suffered over the past six years. This coincided with the substantial loss of corporate knowledge and expertise. This represents a significant risk for the organisation, which relies heavily on the technical knowledge of its staff to ensure that it can effectively support the courts. Therefore, in the context of the major changes implemented in recent years and the challenges facing the organisation, it was decided to reassess our learning and development requirements fundamentally so as to ensure that any new arrangements put in place will be focused on those steps that will have the biggest impact, help realise the potential of all our staff and ultimately ensure the Courts Service is achieving high levels of performance. A learning and development strategy is now being finalised and it will ensure all staff and managers have the requisite skills to perform their roles at a high level of competence; enhance and maintain the legal and technical skills and knowledge; and support and develop our managers and staff in dealing with the wide range of challenges and issues that they face on a daily basis.

Progress is also being made on the Courts Service capital building programme. We very much welcome the inclusion of a number of Courts Service projects in the Government's capi-

tal infrastructure and investment plan for the period 2016 to 2021. Funding has been provided for the provision of a new family law and children court complex at Hammond Lane by way of a PPP project. This will provide a dedicated and integrated family law and children court building and new court accommodation for the Supreme Court. It will also house a number of Courts Service offices. This is a major development that is long overdue. It will replace the current inadequate facilities at a number of locations with a single site development with custom-built facilities. Discussions have already commenced on the provision of this project.

The plan also confirmed funding for the provision of seven state-of-the-art courthouses at seven locations around the country by way of PPP projects. The contracts for these projects are due to be signed in December and the construction will commence immediately thereafter. The projects will be completed within a two-year timeframe and will provide 31 fully fitted courtrooms with all the relevant support facilities across the seven projects.

On completion of the Hammond Lane project and the seven provincial venues, there will remain only five provincial city and county town venues in need of significant improvement: Galway, Tralee, Roscommon, Portlaoise and Wicklow. The Courts Service will continue to press for funding for the development of these remaining venues to bring them into line with other county towns, whether through the PPP process or as traditional capital building projects.

Perhaps the most significant challenge facing the Courts Service at present is that there has been no additional funding provided for ICT investment. Investment in ICT was another of the casualties of cuts since 2009 and ICT has been consistently under-funded year on year since then. Significant and ongoing investment is required if ICT is to achieve its potential in bringing about a transformation in the way the courts operate and achieve significant further savings. In the context of reduced resources and growing workloads, technology offers the best solution to enhancing customer service and delivering improved value for money. Additional investment is required to extend the civil case management system across all jurisdictions, develop e-filing capabilities and extend courtroom technology to additional courtrooms around the country. This would be a major advance in the delivery of the e-government agenda in the courts system and would deliver efficiencies in the handling of both civil and criminal business to the benefit of court users, the Courts Service and a number of other justice agencies. The Courts Service will continue to press for additional funding to progress the development of ICT in the courts system.

The Courts Service priority will continue to be the provision of front-line core court services to support the Judiciary and court users. This can be achieved only through the ongoing review of the organisation and the delivery of services and the continued implementation of our change modernisation programme. The Courts Service Strategic Plan 2014–2017 sets out the key priorities for the Courts Service over the next three years. Over the lifetime of the plan, we propose to build on the progress already made in the review and reform of our structures and service delivery and to focus on maximising the use of technology, developing our staff and rationalising process to enable us continue to improve services to court users, to make the courts as accessible as possible and achieve real value for money in the provision of these services.

Chairman: I thank Mr. Ryan for his presentation; what comes across is the Courts Service has been through a fairly tough time with cutbacks and I congratulate everybody for managing to get through that and still deliver a good service. Members appreciate the pressures under which the Courts Service operated. Members have questions and Senator Bacik, who indicated first, has three questions. She will be followed by Deputies Niall Collins and Mac Lochlainn.

Senator Ivana Bacik: I thank Mr. Ryan and his colleagues for the presentation. I agree absolutely with the Chairman's comments and commend the Courts Service on the reforms and efficiencies it has introduced in the face of such cuts. I have three questions and the issue that jumps out from the presentation is Mr. Ryan's concern regarding the increasing and unacceptable delays in the hearing of cases, particularly serious criminal trials and domestic violence applications, which he stated were directly due to the reduced staff numbers and lack of availability of support for the Judiciary. While Mr. Ryan stated the Courts Service had reached a tipping point, will the appointment of 30 additional staff members, for which the Courts Service has received funding, resolve the issue or are delays still continuing for the same reason?

Mr. Brendan Ryan: This will resolve those issues, albeit obviously not overnight. On the 30 staff members, for instance, I have agreed to appoint six or seven additional staff members into the family law area in Dublin. Our proposal is that Dolphin House will revert to being a family law centre only in the interim, pending the building of the Hammond Lane site, while the Chancery courts in the Bridewell, with which the Senator may be familiar, will become the child care courts. We need seven staff to support the splitting of that business and of the 30-odd staff members for whom I have received funding I have allocated seven to Mr. Coyle, who is in charge of that area, to set up this business. The waiting times in respect of domestic violence in Dublin, which probably are the worst nationwide, are approximately 14 weeks and we hope to reduce that significantly once we start. The difficulty is we must now undertake some building work in the Chancery courts because the child care courts will go there and it is not really a suitable venue for child care but we will do our best in the intervening period. We must do some remedial work there and must transfer some of the present sittings up to the Criminal Courts of Justice, CCJ, and probably out to Blanchardstown. There is some work to be done in this regard, which will take a few months.

As for the Central Criminal Court, where the waiting time went out to 17 months, the President of the High Court decides on the allocation of judges for various business and he has indicated his immediate assignment of a fifth judge to Central Criminal Court work. The difficulty for me is I did not have a registrar to support this unless the President was willing to allow a civil court registrar move up from the Four Courts. Again in respect of additional staff, I have appointed a new registrar to the Central Criminal Court in order that it will be supported. The additional judge started in October and the President already has indicated the additional judge will remain in respect of the Central Criminal Court, where there will be five judges during 2016. This should really eat into the waiting times in the Central Criminal Court. The waiting time for the Special Criminal Court at present is approximately 19 months but as the Senator is aware, the Oireachtas has approved a second Special Criminal Court. A meeting was held in this regard last Friday and we anticipate the second Special Criminal Court will start sitting early in the new year. I anticipate this also will have a positive impact on the waiting times there.

Senator Ivana Bacik: I am conscious that the Court of Appeal has cut waiting times and delays for the Supreme Court.

Mr. Brendan Ryan: Very much so. The Court of Appeal has done some excellent and welcome work and waiting times on the criminal side have been reduced to between four months and six months whereas, as the Senator is aware, waiting times were well in excess of that. Some extraordinary work has been done by the court since its establishment last November.

Senator Ivana Bacik: On another matter, Mr. Ryan referred a lot to information and communications technology, ICT, its importance and in particular, to digital audio recording. It is some years since I was in practice but does Mr. Ryan mean digital audio recording now has

been rolled out for all court proceedings at all levels? Has it reached that stage?

Mr. Brendan Ryan: Every court venue, that is everywhere a court sits in Ireland, has digital audio recording. All venues in Dublin have permanent settings and each major provincial court venue has a permanent digital audio recording, DAR, computer system in the courtroom. In the case of court venues in which sittings only take place once per month over 11 months of the year, we have a portable unit. Consequently, all court sittings are now subject to digital audio recording. I might add that for indictable criminal matters, we have a backup recorder. There is a computer in every courthouse but for indictable trials, we have a secondary computer backup system just in case the first system fails because as members are aware, one must have a transcript for indictable trials for any appeals. It is all working very well, albeit at a huge cost to the Courts Service, but it is much required. In addition, it is appropriate that on the hoped-for establishment of the judicial council next year, if issues are raised in respect of conduct and ethics with regard to the Judiciary, the Judiciary will have an access to a recording of what went on in the court.

Senator Ivana Bacik: Does that mean no more stenographers?

Mr. Brendan Ryan: Stenographers still exist in civil matters if the civil parties so wish. However, we produce our own transcripts as part of the DAR recording contract.

Senator Ivana Bacik: Finally, in a brief point, there always has been difficulty in regional and district courts in respect of support for the Judiciary and a lack of Courts Service staff. Can Mr. Ryan indicate whether this has improved or is improving?

Mr. Brendan Ryan: Yes, it is improving. When the Courts Service was established in 1999, courts were sitting in 230 venues outside Dublin. This now has been reduced to 83 or 85 venues, which has allowed us to optimise the use of our resources. It also has allowed us to put what limited funding we have, I assure the joint committee it has been extremely limited since 2008, into those court venues that still exist. The process is not finished and we still are considering further venues. Funding always is an issue but the combining of court offices and the optimisation of new processes within court offices definitely has resulted in a better service to the Judiciary in those remote locations.

Deputy Niall Collins: I welcome the witnesses. I recently received correspondence regarding wards of court and the moneys the Courts Service manages on their behalf. Can Mr. Ryan provide the joint committee with an overview of how the moneys the Courts Service is managing for these people are performing? Concerns were raised at the height of the recession that the values of the various funds took a dip, which is understandable given the turmoil in the world markets. I seek an overview in this regard first.

Mr. Brendan Ryan: By way of background, if the Deputy does not mind, I will introduce the subject and then Mr. Quigley, who is on the investment committee of the Office of the Accountant of the Courts of Justice, can provide further details. When a person is taken into wardship, the President of the High Court appoints a committee, usually one person, to deal with the ward's property and in certain cases to make recommendations for the ward's personal welfare. In approximately 75% of cases, the ward's committee is a family member. If there is no suitable or willing private person, the President can appoint a general solicitor for minors and wards of court to act as the committee.

As for the investment, if the Chairman will bear with me, it is important to appreciate the

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 judges. It is in this capacity that the Courts Service has a role in the management and investments of court funds. The Courts Service operates a prudent investment policy and this has ensured 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 really well over the past 12 years, where good returns have been generated while protecting court funds from the worst effects of the credit crisis. A significant element, approximately 65%, of funds are held in cash-based assets and bonds and then there is approximately 35% exposure to equities and corporate bonds. In making a decision to invest court funds on behalf of a ward or a minor, a key factor in deciding in which funds to invest is the time period during which the funds will be held by the courts. Shorter funds are invested in cash-based assets while funds that are held for longer periods are invested in the most appropriate funds. The performance of longer-term funds cannot be assessed properly by taking one year in isolation. One must look at the cumulative investment performance over a longer period.

Mr. Seán Quigley: A total of €1.5 billion in funds is managed by the accountant's office on behalf of 19,500 beneficiaries. Of those 19,500 beneficiaries, 2,700 are wards of court and that is the area that has attracted most attention. We have six investment strategies in place. The main strategy for wards of court is the growth fund, which is a long-term investment fund. Anything over five years for a ward of court would go into the growth fund and we retain a cash holding as well.

When the Courts Service was established 16 years ago, we looked at this area and completely revamped the governance and management structures. We put in place investment strategies, independent investment advisers and a fund manager and applied external audit for the first time. As this committee or perhaps the Committee of Public Accounts will know, the Comptroller and Auditor General is precluded by legislation from looking at this area but we have our own independent auditors in place and we publish annual financial statements relating to these funds.

Specifically on the issue of investment performance, in one period, namely, the year ending September 2008, a number of funds showed a negative performance, but that was consistent with what was happening across the industry at that time. In the past two years, we tweaked our strategies for our growth fund and have seen a return of 19.4%. That is despite the fact the most recent year was quite volatile. If one looks at the funds over the period from December 2003, when we put all the arrangements in place, the growth fund has generated a total yield of 72%, which is an average of 6% per annum. I know the issue has been raised about people who claimed that their funds took a hit in 2008, and while that is true, it was on paper only. Unless people were exiting and selling their assets at that point, they were not realising a loss. All those funds have recovered way beyond any of the paper loss that was triggered in 2008. Indeed, we know from our own independent advisers that major pension funds in Ireland suffered considerably bigger hits. This is testament to the prudent approach we take. We only have exposure to equities where it is necessary and even then, it is less than 50%. Our exposure is in the region of 50%, even in the growth fund, which is not by any means an aggressive approach.

We are aware of the difficulties and concerns around funds that may run out over the period of a person's life. That issue is being examined for the future in terms of periodic payments. However, in the context of the environment in which we operate, we can say that the funds are

managed to good effect in the best interests of the beneficiaries. Where funds may ultimately run out, it is not as a result of poor investment performance.

Deputy Niall Collins: Which investment advisers and fund managers does the service use? Is it Irish Life or Mercer?

Mr. Seán Quigley: Our investment advisers are Aon Hewitt at the moment and the fund manager is State Street.

Deputy Niall Collins: In terms of the reorganisation of the courts throughout the country, is the process of closing District Courts finished now or is that still a work in progress? Does the service envisage any further upheavals in this regard?

Mr. Brendan Ryan: That process is finished in Limerick-----

Deputy Niall Collins: I can go so.

Mr. Brendan Ryan: -----but it is not finished generally. We had a review in 2012 and 2013 which identified 41 venues for further consideration. We are going through them slowly, as I indicated to Senator Bacik. There is a resource issue at play here. It is a very intensive project to bring a report to the board on any venue because wide consultation takes place. Since 2012 we have brought 18 proposals to the building committee and on to the board. The board agreed to the closure of 12 venues but determined that a further six should not close. Based on that, there are approximately 15 further venues to be decided on, but there is nothing going on in that area at the moment because we simply do not have the time.

Chairman: On that point and before Deputy Mac Lochlainn comes in, this is an issue of people having access to justice and not having to travel long distances. We must consider people who do not have access to private transport or who lack financial resources, particularly those in receipt of social welfare payments. If we keep shutting venues throughout the country, that will impede such people's access to justice.

Mr. Brendan Ryan: The courts cannot be so far removed from the reaches of people as to make them prohibitive and inaccessible. This applies in terms of costs as well as physical and geographic location. This is one of the key cornerstones of any decision we make. We always take such issues into account and apply very strict criteria in our analysis of venues. We always take cognisance of issues like the availability of local public transport, for example. We also try to ensure there is a court venue within 40 km or 24 miles of an area. That said, it must be recognised that appearing before a court is for many people a once in a lifetime experience. Indeed, most people never appear before the courts. I know the courts are very busy but a lot would have what one could call regular customers. Most people do not appear before the courts in Ireland. If they do, it is often a once in a lifetime experience as a witness or some such. We are very conscious of the issue of accessibility.

On the other hand, we must accept that we have limited funds and must achieve value for money. By and large, the venues we closed would have sat for only an average of 11 times a year. They were stand-alone court buildings. During those 11 sittings, in many cases they would have finished their business well before lunch time. In some instances, we had buildings which were used for only 22 or 24 hours per year and we had to question whether public funds should be expended on them when there were other areas within the Courts Service and the wider public service that needed funding. These are the issues that arise. That said, we do bear in mind the issues of accessibility and access to justice.

Deputy Pádraig Mac Lochlainn: My first question relates to digital audio recordings. I welcome the confirmation in the opening statement that this service has been extended to every single court in the country, as I understand it.

Mr. Brendan Ryan: Yes, to every single venue where a court sits.

Deputy Pádraig Mac Lochlainn: That is very welcome. Will Mr. Ryan clarify an issue for me? I am aware of a number of cases where digital audio recordings had to be reverted to because there was a conflict around the ruling by the judge. The recordings were very important and had they not been available, justice would not have been served. Is it the practice of registrars to revert to the digital audio recording system before they register a decision?

Mr. Brendan Ryan: It is critical that court decisions are recorded accurately to ensure orders, warrants and so forth drafted by the court registrar are correct. The court registrar normally makes a record in court of the judge's decision. Since 2008, all registrars have had access to digital audio recordings. Most of our more senior, competent and experienced registrars are used to drafting orders, warrants and so forth, but if they have any doubt at all, they can go back to their office and listen back to the court proceedings. Indeed, they can listen back in the courtroom itself. They can access the sound files from a court sitting at a particular time and listen back to what the judge said. In that way, they can avoid any issues arising with regard to the accuracy of a warrant or court order.

Deputy Pádraig Mac Lochlainn: With the Chairman's permission, I will ask a supplementary question. If the registrar has a digital audio recording, which is unquestionably the account of what actually happened and what the judge ruled on, why would a registrar, rather than relying on the digital audio recording, rely on the opinion of the solicitors acting on behalf of the parties? Is it Mr. Ryan's opinion that a registrar should rely on the digital audio recording before recording a decision or should he or she rely on the opinion of the solicitors? It strikes me, as an ordinary person with a degree of intelligence, that the digital audio recording is what one should revert to before recording a decision.

Mr. Brendan Ryan: Yes, that is my view. If there is any issue in doubt, the digital audio recording is the factual recording of what was said in the court.

Deputy Pádraig Mac Lochlainn: My second question is on oversight. Our committee produced a report on the issue of policing and touched on the administration of justice. One of the practices in the North of Ireland is a criminal justice inspectorate that oversees a range of aspects of the criminal justice system and has a big picture or a helicopter view of the system as it works. The opinion of our committee is that is what is required in this State. Such a body would oversee the Courts Service in addition to policing and other criminal justice services. In the absence of that, what are the oversight mechanisms of the Courts Service? Who is it accountable to for the provision of its services, apart from this committee?

Mr. Brendan Ryan: The management of the Courts Service is accountable to the Courts Service board under the 1998 Act and, through that, to the Committee of Public Accounts. The Comptroller and Auditor General also has oversight of the courts. We also report to the Minister for Justice and Equality on critical matters. We would have no problem with an overview of the criminal justice agencies because the Courts Service would prove to be a very efficient and effective organisation. There is significant oversight in place throughout the organisation. We have an audit committee chaired by an outside prominent individual who takes very keen interest in everything we do. There is significant oversight. The Comptroller and Auditor General

has access to us all of the time. We would have no fear of anybody else coming in and having oversight. As I keep saying, I think it is a very successful organisation. I am not saying that is because of me. The Chairman mentioned earlier how successful the Courts Service has been. That is because of the staff of the Courts Service and their commitment, enthusiasm and professionalism. I sit on the top floor of Phoenix House making decisions every now and then but they do all the work.

Deputy Pádraig Mac Lochlainn: Would Mr. Ryan be resistant in any way to the introduction of a criminal justice inspectorate?

Mr. Brendan Ryan: No.

Deputy Pádraig Mac Lochlainn: My final question is on the family courts. The development in Dublin is very welcome. The Government confirmed yesterday that there is no constitutional bar to rolling out a family court system and it was reported in the media today. Hopefully, in the next Government term, there will be a roll-out of dedicated family courts. I am sure Mr. Ryan is concerned, as all of us are, about the fact family cases are listed along with civil cases. Mr. Ryan cannot comment on Government policy but practically, in terms of the impact on families, what is his analysis of the current experience of families in the State in our court system that have to engage in family law sittings? What is Mr. Ryan's opinion of how that operates and what needs to change?

Mr. Brendan Ryan: We support the Government's commitment on family law courts. My concern about any additional services provided is that they are appropriately resourced. If there are dedicated family law courts, they cannot be tacked onto existing structures. If it is to be taken seriously and to be professional, a new structure must be put in place. At present in Dublin, there is no issue of family law matters being dealt with at the same time as other cases, either criminal or civil. In the High Court, the courtrooms are on the fourth floor of Áras Uí Dhálaigh and in the Circuit Court, they are heard in Phoenix House, where my office is. In the District Court, they are heard in Dolphin House. Around the country, there are 35 Circuit Court offices and 33 District Court areas where family law cases are held. In the District Court, every district has a separate family law day. During those family law days, particularly when the court sits in the smaller venues in which there is only one courtroom, only family law is dealt with. If it is in a provincial town where there are two or three courtrooms, the scheduled sitting of the District Court on family law might tag into a Circuit Court dealing with civil or criminal matters. Similarly, the Circuit Court has scheduled family law sittings but every now and then, particularly when it sits in the bigger venues with three or four courtrooms, the District Court might sit there on the same day and might deal with other matters. This issue will always exist with regard to family law courts sitting at the same time as other courts. It does not happen that often around the country and it does not happen in Dublin. The only way around that is to build separate venues with a huge cost to the Exchequer. It is a matter of management, the Judiciary and practitioners getting together to ensure that where it happens, they are kept apart. We spent about €250 million up to 2008-2009 on our building programme. Those 52 venues and the seven new court buildings all have excellent family law facilities. As we roll out our building programme, we will ensure that these facilities are enhanced. We do our best to ensure that family law is kept separate from other court business. At times, we cannot do that but we will continue to try to do so.

To return to the Deputy's point, the Government needs to fund the family law structure. Not everything should end up in the courts. To fund this properly, money should be made available to the Legal Aid Board, the Probation Service and family mediation services. The more people

out of the courtroom environment, the better. There is a view that a mediated settlement is a much more sustainable settlement compared to one decided by a judge. By and large, judges would prefer if settlements were mediated. That requires investment and support of those bodies and extra funding for bodies, such as the Probation Service, to provide reports on child care issues. That is funding the Courts Service does not have.

Chairman: Is Deputy Mac Lochlainn finished?

Deputy Pádraig Mac Lochlainn: I agree 100% with Mr. Ryan about the family mediation issue. In terms of the court buildings, Mr. Ryan mentioned buildings from a certain period and moving forward. What are his criteria in terms of client-solicitor spaces? Is there a basic design that has been agreed in co-operation with consumer or legal organisations?

Mr. Brendan Ryan: We have a design brief which we have developed since 1998. It is a work in progress because issues come up on a regular basis. It was designed by the architects in the Office of Public Works in consultation with legal practitioners and various groups. When we go out to build courtrooms at court venues, the design brief specifies segregation, including segregated walkways around the courthouse. It is really well thought out and designed but it is not fixed in stone. If an issue arises at any stage that we believe requires further adjustments, we will make those. It is not a family law venue but the Criminal Courts of Justice was opened in 2009 and is one of the best court venues in the world in terms of segregation. The Judiciary comes in its own entrance. The juries are automatically segregated. They have their own circulation path. Those in custody come into the basement, where there is accommodation for up to 100. There are lifts and staircases to all 22 courts. Outside the courtroom there is a holding area. Those in custody appear in the courtroom whereas in the old days they were marched along the corridors in handcuffs. Everybody appears in the court room at the last minute. The judge comes from his direction, the jury from another, those in custody from another and the public and practitioners come in the main door. That is the concept we use for all court venues and is part of our building brief.

Chairman: We had planned to visit that building but did not get around to it as our work programme is almost as busy as the Courts Service's.

Senator Ivana Bacik: I think the committee visited it when it first opened.

Senator Tony Mulcahy: The Courts Service effectively manages the courts and all the cases that come through the courts. I know it is not involved directly in the cases. If the Director of Public Prosecutions, DPP, says someone must go to court and the Courts Service structures the court day for that hearing, is there a central database recording that process, from when the case is initiated to its result? How is that process recorded? Could anomalies appear in the system, for example, if a dangerous criminal did not get a custodial sentence and was back on the streets a couple of weeks later?

Mr. John Coyle: Most, up to 90%, of criminal business is conducted in the District Court. Since 2000 we have used an internally designed and developed computer system, which records all details of criminal cases, including road traffic offences, from initiation. A criminal case is generally initiated in the District Court by way of summons or charge sheet. The charge sheet comes in from the Garda. The details of the charges etc. are entered in the system, scheduled for court, each order made by the court is recorded there as well as the final order, dismissed or prison sentence.

Most summons applications received from the Garda are received electronically on an interface between the Garda police using leading systems effectively, PULSE, system and the criminal case tracking system, CCTS. Applications for summonses come in electronically. We do not have to enter the data within the courts system. It is automatically updated to our CCTS. The summonses are printed, issued and scheduled for court. The process is then basically the same as for charge sheets. The cases come before the court. The order is recorded. It may be adjourned or dealt with on the first day. There is a deficiency in that we would like to receive the charge sheets electronically from the Garda because that would save our staff inputting them. An enhancement to the system for summonses is on the agenda.

A separate system manages crime in the Circuit Court. It operates on the same principle, recording it from the time it comes into the Circuit, Central or Special Criminal Courts until it is disposed of in the courts.

On the civil side, we have a plethora of systems. There is a system for each office around the country. This is one of the casualties of the reduction in funding for the development of new systems. We have commenced the development of a cross-jurisdictional information system to cater for civil and family law business and components of that system are up and running, for example, in the Court of Appeal and in the Supreme Court. The challenge for us is to further enhance and develop that system to incorporate the transaction of ordinary civil business across all court jurisdictions. We require funding and additional resources for that. We are working on two further components of that system. One is debt collection online, DCOL. A solicitor or lay litigant who wants to issue a civil summons can do it online. It is scheduled. That is approximately 75% developed and we await legislation to give legal effect to electronic filing and to replace the requirement for swearing affidavits by a statement of truth. We are looking forward to that legislation coming in because then we can proceed with the first component of our cross civil system.

We are also working on a new licensing system for the District and Circuit Courts. That is well advanced. It does not have the same legislative problems and we aim to implement it on a pilot basis with effect from next April.

Senator Tony Mulcahy: Determination is made by the judge and jury. Is that put back on the system for the Garda to access it?

Mr. John Coyle: In the District Court once the judge has made an order, whatever it might be and that is updated to the CCTS we have a back interface so that the results of all those cases, the charge sheet and summons are sent back. The results of the charge sheet cases are also sent to the Garda even though we do not receive them electronically. The Garda get the results of all the cases in court on any particular day. We have a service level agreement with the Garda that this must happen within five working days of the order being made by the judge.

Senator Tony Mulcahy: Do they go back electronically?

Mr. John Coyle: Yes.

Senator Tony Mulcahy: The Chairman and committee wrote a substantial report on domestic violence and there is a Bill due probably early next year. Does any communication take place between the Department of Justice and Equality and the Courts Service? Mr. Coyle has already flagged up shortfalls. If there is this volume of change coming through how will the Courts Service staff that and how will we fund it? Have the Courts Service and the Department

done any work on projected legislation, particularly in respect of family law?

Mr. Brendan Ryan: There is a reform and development directorate in the Courts Service which looks after court rules and proposed legislation. It would have significant liaison with the Department of Justice and Equality in respect of all legislation, no matter what stage it is at and how far it has progressed. I had dealings on our views on this with the Secretary General of the Department of Justice and Equality. There would be constant communication on all proposed legislation that would impact on the courts. The level of interaction between us and the Department of Justice and Equality is excellent in this regard. I am not saying we get our way. Normally, we do not. However, we have a significant interaction. As we have gone through seven torrid years of cuts, we have indicated to the Department that any proposal for a new court, such as a family law court, will require significant investment and will not come cheaply to the Exchequer.

Senator Tony Mulcahy: We cannot bring legislation through the Oireachtas if we do not support those whom we expect to implement it. Mr. Ryan gave us the figures for upgrading the Courts Service IT systems. Public representatives need to know those figures.

Mr. Brendan Ryan: Back in 2008, the Courts Service had a budget of €9.7 million for IT. It is now €4.8 million and has been so for the past five years. That figure does not keep our systems ticking over. We need a minimum of €6.7 million to maintain our existing system. That is not even to enhance our system. While I am pleased we got moneys for staff in the 2016 budget, we also applied for an extra €2 million for IT to bring it up to the minimum level of €6.7 million. Unfortunately, we have not got a single penny of additional funding for IT.

This is a significant area of concern to me and I will be reporting on it to the board at its December meeting. To bridge the gap between the allocated €4.6 million and the minimum level required of €6.7 million, we have to take moneys from the capital building programme, which was reduced significantly as well. We have €4 million a year for capital projects, which does not allow us undertake any major projects. For the past several years, we have been using that money to support the IT system. This cannot continue.

We have not maintained our court venues for the past six years, which is another concern. During the week, to my disquiet, I was informed the roof in the Naas courthouse will have to be replaced next year. This is an urgent matter but it involves €300,000 for which we have not budgeted. These are the issues affecting courthouse maintenance. We cannot continue taking money from a capital building project to support our IT. While we will have staffing to support all court sittings, I am concerned there will be some problems with pre-court or post-court work. Mr. John Coyle has referred to systems in the District and Circuit Courts. I am not saying they will crash but they are not being kept up to date.

We are still working off Windows XP because we cannot afford to upgrade. Windows has progressed with five different versions since then and Windows XP is not supported anymore. Mr. Quigley, the accountant of the courts of justice, is working off an Agresso system which is three generations behind and is not supported anymore. Although we only looked for €2 million, unfortunately, under the capital investment programme, that money was not available. It will be 2017 again before that is reviewed. We have two years of scraping around looking for money to make sure the system does not collapse. As chief executive of the Courts Service, my main concern is the lack of investment in ICT and, not because of our commitment, something will go wrong with our infrastructure which will impede the courts.

Chairman: I thank Mr. Ryan for bringing that to the committee's attention because part of its role is to oversee the Department of Justice and Equality and its Estimates. We are looking at a whole new Estimates process for the Oireachtas which it is hoped will kick in whereby committees will have far more input at an earlier stage in how moneys are allocated by the Department and the Exchequer. This is why we are anxious to engage with agencies such as the Courts Service. It does amazing work, which we have learned today. Perhaps the service has been a bit invisible up until now. That is something we need to change.

Deputy Seán Kenny: I apologise for not being present earlier. I am also a member of the Joint Committee on Transport and Communications which meets at the same time. I had to attend it because it was-----

Chairman: This committee is more important.

Deputy Seán Kenny: The Garda was attending it to discuss low conviction rates for drink-driving.

I get many representations about accessibility to Swords courthouse. Will Mr. Ryan bring me up to date on that? Legislation was passed to allowed people to pay their fines through instalments, even through their social welfare payments, rather than having to go to court, which is more expensive for the State. The last I heard was we were waiting for an IT system to put that into operation. Has that IT system been put in place? It would save the State money.

Chairman: That question has kicking around for a long time. Is it working? Does it need more investment?

Mr. Brendan Ryan: As it was a Department of Justice and Equality priority, we found funds. The Department provided the Courts Service with €2 million in 2011, but this has been going on for some time. Our IT system will be ready in January to implement the Fines Act. There is no instalments payment system yet but that is part of the Fines Act. That will be at the discretion of the judge.

Deputy Seán Kenny: Will there be a system in place from January 2016?

Mr. Brendan Ryan: From the most recent report I received yesterday, we have told the Department it will be ready in January. Again, that has taken significant resources from everywhere else within the system. We got funding of €2 million in one year, around four budgets ago. The legislation was amended when the new Government came in and we have been putting money, resources, time and effort into this.

Swords courthouse is not fit for purpose. It is one of the poorest courthouses we have. We have been borrowing from Peter to pay Paul. Any money we have in the capital programme is not being used in it but to deal with IT infrastructure such as implementing the Fines Act. We need to do something about Swords courthouse as it is a priority matter and accessibility is an issue. Aside from that, the building is not fit for purpose

Chairman: The Fines Act will bring money into the Exchequer and will prevent people from being sent to prison for a day or two, taking up the resources of the Prison Service, and being sent home again. It makes sense and I am delighted it is up and running. The committee takes Mr. Ryan's point that the Courts Service has worked hard to get there and it has impacted on other areas.

The committee did a report on the community court system, similar to the one in New York. While we are not saying one can import another system from another jurisdiction and hope it will work, it must be amended. Accordingly, some work has been done on this. Will Mr Ryan update the committee on this?

Mr. Brendan Ryan: The Courts Service is represented on a working group chaired by the Department of Justice and Equality tasked with developing a proposal for a pilot community court for Dublin city centre. The work of the group is well advanced and it is likely that specific proposals will be brought to the Minister for Justice and Equality in the next couple of weeks.

Chairman: Excellent.

Mr. Brendan Ryan: The Courts Service will support the development of some form of early intervention model to deal with low-level adult offenders in Dublin city centre. This would cover those committing relatively minor offences in specific offence categories, including theft, public order, minor assault, obstruction and so forth. However, our view is that while the court might be at the centre of this initiative, the success of any community court, as has been proved worldwide, is highly dependent on the level of resources assigned to it from outside the criminal justice system. I am sorry to keep coming back to resources. Those community court systems deemed successful in addressing quality-of-life issues associated with offending are characterised by a high level of dedicated resources available across several supporting departments and agencies.

I would also mention that while noting the Oireachtas joint committee's suggestion that the implementation group should be chaired by a nominee of the Courts Service, we would respectfully suggest that the Courts Service may not be the best place to fulfil this role. The reason being is that a cross-departmental agency approach is required. We are unlikely to have the influence or muscle to ensure the level of commitment required from other Departments or agencies to bring this proposal to implementation stage. A feature of many community courts which have been deemed successful, for example, in Melbourne and Vancouver, has been the fact the initiative has been sponsored, led and promoted by a central government department. We have some experience of this in the drug treatment court and the commitment of other agencies is needed. The Courts Service and the court will provide a judge and a court registrar, but for this to be successful it requires the involvement of the other support services such as the Garda, the health service, the local authority and the local community as business will have to have an input in this. A very wide spectrum of people has to get involved in this. We only provide a judge who will make a decision and a registrar who will draw up that order, but the work is really done by other people, not by the Courts Service. However, we are supportive of it and there should be a report on this in a few weeks.

Chairman: Excellent.

Deputy Alan Farrell: I would like to touch on a point that was already raised by my colleague from the northside. Unfortunately, I was unavoidably delayed in getting here and I did not hear the response to it. I would appreciate if the Chairman would indulge me in allowing me to ask a question that has already been answered. My question relates to the bricks and mortar of the Courts Service, most especially Swords and Balbriggan District Courts, which are in my constituency. There was a time when there were questions over their viability and whether they would be sustained by the Courts Service. I understand that has now been reviewed. Mr. Ryan might comment on their sustainability and also the suitability of the buildings.

Chairman: We have covered this already.

Deputy Alan Farrell: I am aware of that Chairman.

Chairman: I ask Mr. Ryan to respond briefly to this question.

Mr. Brendan Ryan: As I indicated to Deputy Kenny, I would agree with him wholeheartedly that Swords District Court is not fit for purpose. If we had the funding, we would provide an alternative court venue in north Dublin, probably in the Swords area, but we do not have the required funding. In regard to Balbriggan District Court, it was on our venue review list to consider further, but we have not approached that subject because there is no alternative. If a decision were made to close Balbriggan District Court, there is not an alternative venue anywhere else. I am a northsider, I live in Portmarnock, although I am originally from Cork.

Deputy Alan Farrell: I was aware of that.

Mr. Brendan Ryan: We have to do something. Most of the building programmes we have on hand are being delivered by public private partnerships and they are very much welcome. We have the Criminal Courts of Justice, which has been a great project. We will have seven new courthouses, and Deputy Stanton will be aware that one of those will be in Cork. The contract for them will be signed in the next two weeks and they will be completed within two years. They will provide 31 extra appropriate courtrooms. The Hammond Lane site to provide for the family and child care courts in Dublin will be delivered by public private partnership. Smaller venues like Swords District Court and other venues throughout the country require public investment of €1 million, €2 million or €3 million. They are capital projects. They do not come into the public private partnership model.

At one stage back in 2008 we had a capital building programme of €29 million. For the past four years it has been about €4.5 million and most of that goes to support our ICT. We have to vire it across to support our IT which is totally underfunded. If we could ring-fence money for IT and allow the €4-€5 million or even an increased €6 million on the capital side, we could undertake projects such as the Swords District Court which are much needed, but in the short term I do not see any solution and that venue is not really fit for purpose.

As the Deputy will be aware, there was a proposal last year to move the business back into the city centre, which was vigorously opposed by various groups. We did not pursue that, but our difficulty is that our hands are tied. We have no money to improve the facilities. Our proposal to move it into appropriate facilities in the city centre is not acceptable, so I do not know what we are going to do in the short term.

Deputy Alan Farrell: I accept Mr. Ryan's point. The building is Victorian and clearly not fit for purpose. I would draw Mr. Ryan's attention to a proposal by Fingal County Council for the provision of a civic centre for Swords which is currently at public consultation stage. The proposal would involve developing the car park located behind the court building, which might offer an opportunity to address the issues involved in conjunction with the council. A civic arts facility might lend itself to some facilities being provided to the Courts Service in conjunction with the council. I would encourage Mr. Ryan to investigate that with Mr. Reid, the council's chief executive officer. In terms of the longevity of that building, clearly, in its current condition it has a finite existence. Balbriggan District Court is most likely the same. It is of similar vintage. The two facilities are only 20 years apart in their construction dates, but Balbriggan is in a bit better condition than Swords. I have been in both not that long ago. I would have

been one of the people who vigorously opposed the proposal to close Swords District Court in particular because of the issue of discommoding people, particularly families, and their having to go into the city centre.

That brings me on to my next question in regard Dolphin House. I understand it comes within Mr. Ryan's remit.

Chairman: We had quite an exchange on that and it was given a fair degree of coverage in the presentation.

Deputy Alan Farrell: I will ask a brief question on it.

Chairman: I ask the Deputy to be very brief.

Deputy Alan Farrell: My question relates to the viability and suitability of that building on an ongoing basis. I have no specific personal knowledge of the building as I have never set foot in it, but a number of individuals in the legal profession and in other areas-----

Chairman: Let us get a response to that question.

Deputy Alan Farrell: -----of advocacy have made representations to me about it over the years.

Mr. Brendan Ryan: Dolphin House is a former hotel. It is more fit for purpose than the Swords venue. However, it is not the solution. I indicated that part of the Government investment strategy for the next seven years lies in the public private partnership funding which has been allocated to us to provide a purpose-built family law child care court venue with 22 courts in Hammond Lane, which is between the Four Courts and Phoenix House and is on the Luas line. It is a big empty site in State ownership. Funding has been provided for that. In the meantime, as I mentioned, we intend to transfer business over the next several months to the Bridewell courts, which are located behind the Four Courts and next to Bridewell Garda station. All the child care courts sitting in Dolphin House, which can be two or three depending on the week, will transfer over to the Bridewell. I have allocated staffing for that and funding to develop it. Dolphin House will then revert to being a family law centre. This will allow us to enhance the facilities. It will never be ideal but it will solve a problem for the next several years until the Hammond Lane site is developed. We are making progress in this area. What we propose will resolve the family law issues. As I mentioned to the Chairman and the members, it is not an ideal solution for the child care courts to move there but it is the best stopgap measure we can come up with in the short term.

Deputy Alan Farrell: Many areas in the justice portfolio have received a great deal of attention and funding of late, which is welcome. For the purposes of this meeting and with respect to our guests, it is warranted that this committee would inform the Minister that this is an area that most definitely requires attention in the short term with respect to the Courts Service's capital expenditure.

Mr. Brendan Ryan: I thank the Deputy for his comments. As I mentioned previously, the capital expenditure is not only related to buildings but is divided between buildings and ICT. We are totally underfunded in our ICT and that is the biggest risk we have on our register.

Deputy Gabrielle McFadden: I apologise for being so late in arriving to the meeting. It is a sign of the good times that the traffic is so bad. I was 35 minutes later than I thought I would

be and I am sorry about that. I was anxious to get here in time to ask Mr. Ryan a question. I also welcome the Government's capital infrastructure investment and the plan for the Courts Service. What process is used by the Courts Service when it undertakes a reconfiguration of courthouses or arrangements? Mr. Ryan might have dealt with this already. I wanted to ask the question but had not intended to be parochial. However, given that everybody else has been, so will I.

Is there any consultation with service users, namely, barristers and solicitors? I ask because in County Westmeath which forms part of my constituency there is a temporary courthouse in use in St. Loman's in Mullingar and we will, I hope soon, see work being done on the courthouse. Although we have a perfectly fine courthouse in Athlone, it has been decided that family law cases will be moved to Mullingar, while the court in Athlone will concentrate only on repossession cases. Anybody who uses the service in Mullingar for family law cases would regard it as not fit for purpose. There is an adequate courtroom, a hallway and a very small waiting room, but no consultation rooms. Family law is very sensitive and delicate and it is inappropriate to have people discuss their cases in a hallway, beside a football pitch or in the solicitor's car. The Courts Service of Ireland is moving family law cases to Mullingar from Athlone where there are five good, well used consultation rooms, yet there was no consultation with service users.

Mr. Brendan Ryan: I will begin and then hand over to Mr. Coyle, head of operations in the Circuit Courts and the District Courts, who is better placed to answer.

We have a building brief that has been developed since 2002 with the Office of Public Works. It is a work in progress. There has been much consultation on the design of courthouses and courtrooms regarding segregation, where people sit and accessibility and this consultation is ongoing. We hope the contract for the excellent project in Mullingar will be signed within two weeks. The project will follow our brief and which the legal practitioners were involved in designing. The Courts Service of Ireland has a standing building committee and it is its remit to ensure the views of the Bar Council of Ireland and the Law Society of Ireland, which are represented on the committee on the design of court buildings, are taken into account as much as possible. Sometimes their views cannot be taken on board, given that we must take the overall view on board.

Mr. John Coyle: I do not have an answer. I only heard about the proposal to move family law cases from Athlone to Mullingar yesterday evening. This afternoon there will be a meeting of legal practitioners about it and, perhaps, other proposals for the transaction of court business in County Westmeath generally. I raised the same concerns as the Deputy about the proposal. While there is an excellent facility in Mullingar to deal with ordinary, day-to-day business, there are issues about the availability of consultation rooms. My deputy is to attend the meeting and I have asked her to ask why it is necessary to move family law cases, which have been heard in Athlone for some time, to Mullingar. It may be due to pressure on space in Athlone District Court. As the Deputy said, repossession cases are being moved to Athlone District Court, given that we are providing additional support services for distressed borrowers such as having the Money Advice and Budgeting Service, MABS, and the Insolvency Service of Ireland on site to provide advice. The same issues arose in using the service in Mullingar. The issue is being examined. I share the Deputy's concerns.

Deputy Gabrielle McFadden: Is it a *fait accompli*? Has the decision been made?

Mr. John Coyle: No.

Deputy Gabrielle McFadden: I urge Mr. Coyle to fight on behalf of the people who use the service to ensure it will be maintained in Athlone.

Mr. John Coyle: I understand the Deputy's position, but I do not have the full facts. Somebody wrote to Mr. Ryan's office about the matter; it was sent to me for attention and I received it only yesterday evening. Without the full facts, I cannot make any promise.

Deputy Gabrielle McFadden: I thank Mr. Coyle. I am sorry I was late.

Chairman: We are more or less finished. I could ask about the position in places such as Youghal, but I will not. Perhaps I might receive a note from the delegates.

Mr. Brendan Ryan: Thank you, Chairman, but I do not want to give you bad news.

Chairman: I thank the delegates for coming. It was a most interesting, professional, comprehensive overview and interaction. They can see the level of interest in what they do. Their good work is done, perhaps, below the radar. I support Deputy Alan Farrell's call that we write to the Minister to seek more resources for the Courts Service of Ireland as soon as possible. It would represent a saving.

Many agencies with which we interact have a dedicated Oireachtas information line or an e-mail address in order that Members with a query such as Deputy Gabrielle McFadden's can e-mail somebody directly and receive a comprehensive response. The Courts Service of Ireland might consider establishing such an information line, if it would not be too expensive, and communicating the address to Oireachtas Members. Establishing an e-mail contact should not be too expensive and would be helpful to everybody.

Earlier it was noted that many people appeared in court only once in their lives, if at all. However, the rule of law and the administration of justice are vitally important to our democracy, civilisation and way of living. We have discussed this issue with the Bar Council of Ireland, the Law Society of Ireland and others. It is crucial that information be disseminated among the population on how the courts work and what the procedures and people's rights are. We could have a module taught to transition year students in order that people would understand how the system worked.

I again thank the delegates for coming and wish them well. They will probably not come before this particular group of members again. However, I suggest future justice committees have a similar engagement more often, given that it is very valuable and impressive. I ask the delegates to pass on our thanks to their staff who have obviously gone above and beyond the call of duty in recent years. I hope things will ease from now on.

Mr. Brendan Ryan: I thank the Chairman and members.

The joint committee went into private session at 11 a.m.

Sitting suspended at 11.10 a.m. and resumed at 4 p.m.

Social Change in Ireland: Discussion

Chairman: The joint committee will now hear a presentation on a research project entitled, Changing Ireland, Changing Law, by Senator Ivana Bacik, Dr. Mary Rogan and Ms Rachel

Power from FLAC who are most welcome. I draw their attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members should be aware that under the salient rulings of the Chair, they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

Senator Ivana Bacik: It feels strange to be sitting on the other side of the table. I will not say very much as I will leave most of the talking to my colleagues, Dr. Mary Rogan and Ms Mary Power from FLAC and the PILA. I am very grateful to have the opportunity to address fellow committee members in a different capacity on the research project in which Dr. Rogan, Ms Power and I have been involved in the past year. Dr. Rogan will describe the project in detail. It is entitled, Changing Ireland, Changing Law, and looks at public interest litigation and the way in which legal cases have achieved social change in Ireland. This is the final stage of the process.

We were very privileged to have a range of speakers at the seminars we ran. We heard from litigants who had taken cases and from lawyers and academic experts. One of the litigants from whom we heard was Dr. Micheline Sheehy-Skeffington, who is in the Visitors Gallery. She spoke to us earlier this year about her experience in suing NUI Galway over gender discrimination in promotion. Professor Mark Bell from Trinity College Dublin is also in the Visitors Gallery. He spoke to us about the use of public interest litigation in furthering LGBT rights. I also acknowledge Ms Noeline Blackwell, director of FLAC, who is also present. The PILA, the public interest law alliance of FLAC, was our lead partner in the research project which we considered would be of particular interest to Oireachtas Members, particularly to members of the Joint Committee on Justice, Defence and Equality, because we were looking at the question of access to justice and how we could support and strengthen public interest litigation to ensure litigants in cases who were seeking to achieve social change would be supported.

Dr. Rogan is head of law at the Dublin Institute of Technology and will speak in a little more detail about the project.

Dr. Mary Rogan: I thank the Chairman, Deputies and Senators for giving me the opportunity to make a presentation on the findings of the research project, Changing Ireland, Changing Law. We had three key objectives, the first of which was to explore the connections between the law and social change and to examine the ways in which the law had not kept up with the pace of social change in Ireland and where it had been used as a tool of social reform. In that spirit, our second key objective was to examine a number of key public interest cases, cases which had been taken in the public interest or which were of major social importance, and to explore the stories behind them. We wanted to hear the personal stories behind them from the litigants involved and the lawyers and academic commentators who gave us a broader perspective on the relationship between the law and social change. As Senator Ivana Bacik said, access to justice was our key theme. By exploring these stories we wanted to examine the barriers which people faced when trying to vindicate their rights by engaging with public bodies and decision-making processes and the barriers and hurdles they faced when they had to take legal action. Our third

key objective concerned NGOs, which have contributed so much to social and legal reform in Ireland. We wanted to hear from them about the strategies and tactics they had employed to create and support legal reform and advocacy for change in Ireland and abroad. We partnered with them to hear about their experiences of engaging in social and legal reform in Ireland.

I will say a little about the structure of the project. We were funded primarily by the Irish Research Council, with additional contributions from Trinity College Dublin. I commend the Irish Research Council for providing this funding stream, called “engaging civic society”, which allows academics to partner with non-governmental organisations to carry out a piece of research or engage in public awareness work. It is a valuable mechanism whereby academics, practitioners and policy makers can bring their work together to bring research to a policy-making audience. It is in that spirit that we are before the committee. We also partnered with the Gay and Lesbian Equality Network, GLEN, and the Immigrant Council of Ireland, as well as the National Women’s Council of Ireland.

We held four seminars which addressed the connections between the law and social change in these key areas. A number of findings and themes have emerged from our work and we have provided a briefing paper which has been circulated. I draw members’ attention to a number of the key themes that have emerged thus far. The first is the importance of NGOs to Irish society and our democracy. This is a particularly pressing issue in the light of the ever-challenging funding environment for NGOs and the particularly challenging funding environment in which non-governmental and voluntary organisations find themselves with the planned and well flagged winding down of many philanthropic bodies. The importance of the activity of NGOs in raising awareness of issues which require legal reform and social change cannot be underestimated. Litigation may be a part of their activity, but they engage in many other strategies to support social reform and a well-functioning society. This focuses attention on the importance of adequate funding for the NGO and voluntary sector.

The second key theme to emerge from our discussions is the question of how individuals navigate State bodies. When an individual is faced with a decision of a public body or an administrative organisation, a lot of barriers can be placed in his or her way as he or she tries to challenge or address that decision. I am sure all of those present are very familiar with these types of instances.

A key factor identified throughout the seminars was the lack of reasons given by public decision-making bodies for their decisions. This can be very challenging for the individuals affected by the decision. They do not know what must be amended in their behaviour to reapply. They may not be aware of the precise basis of the difficulty which had been put forward. They may be unsure of the way forward and unable to rectify the matters which gave rise to the negative decision. Delay is often a difficulty in these administrative decision-making processes.

A strong theme in all of the seminars was the intimidating hurdles faced by people who choose to litigate or who are forced to litigate to vindicate their rights. They are often vulnerable individuals because of the circumstances giving rise to the need to litigate, and they have very limited provision for civil legal aid. Added to this is the very real prospect of being sued for costs. The financial indications of a case can have a significant effect on preventing people from taking litigation to vindicate their rights. Delay is often a factor, with many cases taking a very long time. Other issues which can be a significant barrier to people seeking to vindicate their rights are the publicity which may be attracted by the case, the fact the process can be difficult to understand and the cumbersome nature of our legal process. We felt it was important to recognise the courage of the litigants who told their stories at our seminars.

Another theme that emerged was the question of whether alternatives to litigation can be developed to vindicate rights. The legal process is a high-stakes business, and the implications for the individual are severe. The question of costs can be a huge factor influencing a person not to pursue something which is very important to him or her. This means the legal process may not be the most appropriate mechanism for the vindication of rights in many instances. We feel that rights-proofing policy and regulatory impact assessments are critical mechanisms at the preventative level for supporting the vindication of rights. We also feel the country's appearances before international human rights bodies have an important role to play in learning and promoting best practice. Other mechanisms, such as mediation and alternative legal processes, should be examined, particularly in the areas of administrative decision-making where bringing a matter to the High Court may not be the most efficient form of recourse or the most effective.

A further key issue we identified was the lack of a class action procedure in Ireland, which gives rise to the difficulty of not having a legal process by which one can create systemic or systematic change. Ms Power from FLAC's public interest law alliance, PILA, has a number of particular and precise recommendations we wish to bring to the committee.

Ms Rachel Power: I thank the committee for having us before it today. Public interest law is not something that necessarily gets much attention in public discourse, but it is at the core of our work as we promote a healthy environment for public interest law to develop in Ireland. When we speak about public interest law we are not specifically speaking about going to the courts as for us it is much broader than this; it is about allowing vulnerable groups input to various processes which affect their lives, such as the legislative process. Sometimes litigation is the only way possible and the only course of action. This is what happened for many of the litigants who spoke at the Changing Ireland, Changing Law seminar. It was the last and only way to vindicate their rights. Speaking to us at the seminar were seven litigants from six cases over 40 years, and the people who spoke were all very different types of litigants. Some very much wished to highlight an issue and some were at crisis point, but none of them took the decision lightly. For all of them it was last course of action upon which they wanted to embark.

For FLAC and PILA, the starkest reality was the delay in most of the cases. One might think this is nothing new for the justice system, but the delays involved in these cases are quite striking. Dr. Lydia Foy pursued her case for a new birth certificate for more than 20 years. It took Senator David Norris 14 years to see the decriminalisation of homosexuality. It took almost ten years for Gandhi Mallak to get his citizenship, and he has still not been given the reason he was refused naturalisation. This is a very long and painful process for people who must put their lives on hold.

We have delays in our justice system but we also have new processes and new ways to dealing with these delays, such as the commercial court system, which has proved very effective and efficient in speeding up the determination of cases. Why is this fast-track litigation only available when it comes to business? The most resources are put into the commercial law list. Why are similar resources not put into other lists, particularly lists that can contribute so much to the public interest jurisprudence of the State?

We spoke much of the Legal Services Regulation Bill, which was up for discussion this week and last week. Nothing in the Bill deals with the latent inefficiencies of our system, and something which FLAC has raised over again is that the system across the board must put money and energy into coping with this day in day out. FLAC has advocated on this issue, and at this point we suggest the review period in the Bill should be used to assess whether the new legislation actually assists and facilitates access to justice through the timely and efficient

administration of justice. If it does not, it is time that resources are put into making improvements in the system.

The court system itself is part of the delay. Another part is the efficient and effective implementation of judgments. The case of Dr. Lydia Foy was taken by FLAC and although Dr. Foy won her High Court case in 2007 it was not until this year, eight years later, that the relevant legislation was introduced in the country. During these eight years Dr. Foy had to continue to campaign and use her energy to fight for her rights, FLAC had to resource the fight to bring the legislation into being and the rights of the trans community in Ireland continued to be undermined. The European Convention on Human Rights Act, under which the case was brought, was also seriously undermined. This is the mechanism which protects those rights not protected under the Constitution. These are not acceptable delays when comes to the vindication of rights and they are not acceptable frustrations to change.

As Dr. Rogan mentioned, costs are unquestionably the single biggest barrier to public interest litigation. When we speak about costs in terms of public interest law we are not speaking about the costs of our litigant taking the case, because quite often these cases are taken *pro bono* or on a no foal no fee basis. We are speaking about the financial roulette that arises should a case be lost and an adverse costs order is made against the client. This can quite legitimately bankrupt somebody if it is of sufficient size. The very nature of public interest litigation is that it is unpredictable because it occurs in areas where the law is uncertain and needs clarification. This means we can be certain a case will win in very few circumstances, therefore, the chance and risk a public interest litigant takes in deciding to take a case is very huge. When it comes to public interest litigation, the Government is usually on the other side as it is usually the defendant. When one weighs the significant resources of the State with the resources of many of our public interest litigants it is frightening how easy it is to chill an individual out of taking a case.

There are various ways in which certainty as to costs is possible. One of them is a protective costs order, which can be seen in other jurisdictions. This is where an order as to costs is made at the outset of the litigation, providing certainty at the beginning so a plaintiff knows exactly what the risk is. There is no provision for this so far in the State. FLAC advocated for its inclusion in the Legal Services Regulation Bill, but unfortunately this was another missed opportunity. I will close on some thoughts that came from practitioners on taking public interest litigation cases. Test cases and public interest litigation are specifically excluded from civil legal aid in this country, so a vast majority of cases are taken by very small firms and some are taken by independent law centres, such as FLAC. What came across during the Changing Ireland, Changing Law series was the very real pressures in taking those cases because they are large cases that can be all-consuming for some small practices. It is a very real issue that lawyers do not take cases simply because they have to earn a living elsewhere. There are cases that lawyers want to take, as they want to challenge injustices that are present, but the cases are not being taken. Much work must be done in civil legal aid across the board but if the ban on civil legal aid taking test cases was removed and the Legal Aid Board was allowed perhaps to contract out this kind of work to NGOs and to other firms, it would create a much more welcoming environment for those cases.

Deputy Gabrielle McFadden: I thank both witnesses for coming in. I am disappointed Senator Bacik is not here as it would be nice to pick on her from the opposite side for a change.

Chairman: Now, now. The Deputy should be nice.

Deputy Gabrielle McFadden: I would not do so. I am only joking.

I thank the witnesses for the presentation. For the most part, I support everything that has been said. Mediation and other such approaches are a very good idea. Reference was made to new ways of dealing with cases. Mention was made of Dr. Lydia Foy, who happens to come from my home town originally. My family know her well. What other way could her case have been dealt with in terms of the new approaches? I understand the point made about access to justice and a last course of action for many. If someone takes a case, then he or she really feels very strongly that there has been an injustice against him or her. He or she would not take such an approach lightly. I agree that most money is pumped into commercial law, which is not right. What other way could Dr. Foy's case have been dealt with to have avoided it taking eight years?

Chairman: Who wants to take that question?

Ms Rachel Power: Initially, the delay arose because the State appealed her High Court case. That continued for about two years or more while the State was pursuing an appeal because it did not take responsibility for the breach of the European Convention of Human Rights. It took much lobbying and campaigning on behalf of FLAC for the State to drop the case.

I refer to the High Court judgment itself. Judge McKechnie expressed much frustration in the 2007 judgment that nothing had been done by the State in the previous five years because there had been a European Court of Human Rights decision against the UK on the very same point, with almost identical legislation. The State had five years to do something and it chose not to. Again, Judge McKechnie was emphatic in his judgment in saying that he hoped the State would follow the UK in implementing the change quickly but that did not happen. Successive Governments, right up to 2015, promised change but it did not happen. There are many opinions as to what the issues were, namely, various conservative legal or medical opinions on the issues, bureaucracy or the fact the issue was not urgent for the Government of the day. I do not know if that is a question we can necessarily answer because that was the decision of the State over those eight years.

Deputy Gabrielle McFadden: Fair dues to Dr. Foy for persevering.

Chairman: Does the Deputy have another question?

Deputy Gabrielle McFadden: Could the witnesses explain to me as a lay person about rights proofing policy and regulatory impact assessments?

Dr. Mary Rogan: I thank Deputy McFadden for her question, which I think feeds into the response Ms Power has given as well, namely, the idea that one would take a preventive approach to human rights. The Deputy asked what the alternative might have been in the Foy case. Perhaps when a case such as that one comes onto somebody's desk, it could be viewed as an opportunity for learning and looking at what other places are doing and seeing whether we could respond to it in a different way rather than throwing defensive legal resources at it.

In the case of rights proofing and regulatory impact analysis, that is really about when legislation is being proposed, that allied to that there would be some sort of analysis or assessment done where human rights might be impacted. One can think of a whole variety of areas in which this would be relevant. The Legal Services Bill might be one of them. Other obvious areas could include prison conditions or penal reform, which is my area of interest. If one makes a change to legislation, tied to that, one would have an assessment done, perhaps by the Department of Justice and Equality or elsewhere, which would set out the implications for human rights of the particular legislation. The analysis would be quite specific, not just a broad

based view of what human rights entails but now it would affect individual rights. It would be done as part of a pre-legislative scrutiny kind of process.

Deputy Gabrielle McFadden: I thank Ms Rogan.

Senator Martin Conway: I apologise as we had to go for a vote but I suppose that is democracy in action. Senator Bacik could have avoided being present because she is totally on top of her brief in this regard.

In the context of pre-legislative scrutiny of Bills in terms of human rights, I believe it should be proofed on a range of different angles. The more it is proofed, the better the legislation is. Could the witnesses point to international best practice in this area or does Parliament, as is the case in this country, end up proofing legislation from a human rights perspective or any other perspective?

Reference was made to the importance of NGOs. I agree they play a critical role. Is it the contention of the witnesses that the Government does not have the type of engagement with NGOs it should have in the pre-legislative scrutiny period or at any stage? Do they believe NGOs need to streamline in the way organisations under the ambit of the public service have done, for example, the Irish Human Rights and Equality Commission coming together? I think the two agencies were a perfect fit. I contend that there are probably too many NGOs. Should NGOs form synergies and come together in order to be much more influential and effective?

Dr. Mary Rogan: I thank Senator Conway. He has asked some really challenging questions. In respect of the issue of human rights proofing and who might do that, I would not advocate any new elaborate structure by which that would have to be carried out. It could very much be done at departmental level, with the assistance of academics, lawyers and NGO partners, to examine legislation rather than creating any new formalised structure. Something we mentioned previously is the notion of a human rights committee within the Oireachtas, which I accept has the critical role for proofing pieces of legislation. What is at issue is the capacity by which that can be done. Perhaps that relates to the second point about engagement with NGOs. The more there is engagement and consultation with the academic world and NGOs, the better as those are the kind of things which will provide the best approach to support human rights proofing of legislation. That could be done on an informal level rather than having a big elaborate structure around it.

I will not say whether I think there should be fewer NGOs because I am sure many people will have very strong views on the matter. As somebody who is involved in the NGO sector as well as in the academic world, it is critical the consultation processes are perhaps more formalised. There are some really good examples where NGOs are brought into discussions at the earliest stages and that is when one airs the issues and prevents problems at a later point.

Senator Conway asked whether there are perhaps too many NGOs. This is not quite the same point but what I would like to state is that the question of professionalised NGOs is really important, and that is about funding. This is becoming a really critical issue in this country with the departure of many of the philanthropic bodies or a reduction in the level of funding which they can provide. A professionalised NGO sector is essential. I am not sure whether that is about a multiplicity of NGOs but the critical issue is that it is professionalised with full-time, salaried people who are working in NGOs who can support Government and policy reform.

Senator Martin Conway: I would agree with Dr. Mary Rogan's analysis. In the disability

sector, there are 400 or 500 advocacy organisations. There was a value-for-money audit done on all of those by a gentleman whose name escapes me and it recommended a certain streamlining where organisations were doubling up. Dr. Rogan's approach, in terms of professionalising, would force amalgamation and synergies. Let us see what happens.

Chairman: If we are all done, I have just one or two questions. I am interested in this class action proposal. In some other jurisdictions, it is powerful. Would Ms Power elaborate on why it does not happen here, what would be needed for it to happen here and what would be the advantages?

Ms Rachel Power: Currently, we do not have a class action procedure. Over ten years ago the Law Reform Commission completed an extensive study on it, weighing up all of its various advantages and disadvantages and coming to the conclusion that it would be beneficial in Ireland and would very much benefit access to justice by permitting more people with fewer resources to vindicate their rights in various ways.

There is not an official line as to why we do not have class actions. It is just not something that is built into the court rules at present. FLAC advocated, in terms of the Legal Services Regulation Bill 2011, that there was potential to include this as a mechanism.

It is something that works in different ways around the world, be it as an opt-in or opt-out option. There has been little movement on it and little appetite for it.

It would not involve much change to introduce and implement. It would merely involve a change to the legislation. It is not something that we have had much luck with people wanting to see a change in because people believe that it will open the floodgates in some way. We say it would not open the floodgates in any way. It would merely allow people who have rights who cannot exercise them to be given a position.

Chairman: For the sake of those following proceedings, could Ms Power tell us what is meant by a class action?

Ms Rachel Power: A class action allows a number of persons to join in a particular piece of litigation where they all have a joint interest and the outcome or decision in that case will impact equally on those who are joined or perhaps, occasionally, a class of persons who are not joined to the litigation who are automatically impacted by the decision.

Chairman: What is needed to make it happen here? Has anybody produced a Bill to make a change?

Ms Rachel Power: No.

Chairman: It has not come across our desk to any significant extent that I can recall. Maybe it is in one of the submissions and we missed it.

I am taken with the NGOs and philanthropy and the fact that a number of philanthropic organisations are going out of business shortly and there will be a shortage. The committee produced 35 reports in the past four or five years and a lot of NGOs came in here. It was costly for quite a number of them to come to the Oireachtas to make presentations to us. I am aware that a lot of them are under pressure to do so but we are grateful for the fact that they did because we made lots of changes to law, we had very good debates and it fed into the system, in particular, in the pre-legislative scrutiny. The area of philanthropy in Ireland is one we need to look at as

SOCIAL CHANGE IN IRELAND: DISCUSSION

well and try to beef up a little.

Unless colleagues have further requests or final comments, I thank the witnesses for being here today and for bringing this to our attention. I wish them the best of success with it in the future as it rolls on.

The joint committee adjourned at 4.35 p.m. until 9.30 a.m. on Wednesday, 2 December 2015.