



**Association for Criminal Justice Research and Development
(ACJRD)**

Submission to the Judicial Planning Working Group (2021)

ACJRD seeks to inform the collaborative development of effective
evidence-based policy and practice in criminal justice.

CONTENTS

Table of Contents

1. <i>Introduction</i>	2
2. <i>Executive Summary</i>	3
3. <i>The Number and Type of Judges Required</i>	4
4. <i>The impact of the COVID-19 pandemic</i>	6
5. <i>The development of judicial skills</i>	8
6. <i>Increased Efficiency in the Judicial System</i>	10
7. <i>Conclusion</i>	13
BIBLIOGRAPHY	16

1. Introduction

- 1.1 The Association for Criminal Justice Research and Development (ACJRD) is a nongovernmental, voluntary organisation which seeks to inform the collaborative development of effective evidence-based policy and practice in criminal justice. It does so mainly by providing a forum where experienced personnel can discuss ways of working in an informal setting, by promoting study and research in the field of criminal justice and by promoting the highest standards of practice by professionals associated with criminal justice.
- 1.2 The ACJRD's membership is varied but is largely comprised of organisations which, and individuals who, have experience working within the criminal justice system with a strong interest in criminological matters. These include legal practitioners, academics, Criminal Justice Agencies and NGOs.
- 1.3 The ACJRD's approach and expertise is therefore informed by the 'hands on' expertise of practitioners, academics and agencies who deal with various aspects of the criminal justice system enhanced by the contribution of people with diverse experiences, understandings and practices.
- 1.4 However, the views expressed in this submission are those of ACJRD in its independent capacity and are not those of individual ACJRD members or member organisations or agencies or their employees.
- 1.5 The ACJRD welcomes this opportunity to make a submission to the Department of Justice in relation to the newly established Judicial Planning Working Group (the '**Working Group**'). The purpose of this submission is to provide a summary of the ACJRD's views regarding the following themes:
- 1.5.1 The number and type of judges required in Ireland in the next five years, and longer term to ensure the efficient administration of justice.
 - 1.5.2 The impact of the COVID-19 pandemic, demographic changes, and implications of Brexit in regard to court caseloads and the subsequent resource requirements.
 - 1.5.3 The development of judicial skills.
 - 1.5.4 The extent to which efficiencies in case management and working practices, as well as enhanced digital technology, could help in meeting additional service demands, improving services, and access to justice.
- 1.6 The Department, in its Open Consultation document, identified these four "themes"¹. This submission will begin with an executive summary of the ACJRD's recommendations. It will then examine each of the four themes in turn.

¹ Department of Justice, 'Open Consultation – Judicial Planning Working Group' (Department of Justice, October 2021) <<https://www.justice.ie/en/JELR/Pages/Open-Consultation%E2%80%93Judicial-Planning-Working-Group>> accessed 1 November 2021.

2. Executive Summary

The ACJRD supports the establishment of the Judicial Planning Working Group and considers that their role in considering the number of, and type of, judges required to ensure the efficient administration of justice over the next five years will promote further efficiency within the Irish justice system.

The ACJRD submits that consideration should be given to further extending the number of judges at every level in the Irish judiciary. The ACJRD's recommendations are based on an awareness of the impact of COVID-19 on wait times for judicial hearings, as well as academic and judicial commentary on the same.

With regard to each of the four themes set out by the Department, the ACJRD responds as follows:

- *Theme 1 - The number and type of judges required in Ireland in the next five years, and longer term to ensure the efficient administration of justice:* The ACJRD supports an amendment to current legislation which would allow for an expansion of the number of judges in Irish Courts, in line with international best practice.
- *Theme 2 – The impact of the COVID-19 pandemic, demographic changes, and implications of Brexit in regard to court caseloads and the subsequent resource requirements:* The ACJRD submits that some of the COVID-19 emergency response measures taken by the Courts Services and the Judiciary should be developed to enhance the agility and sustainability of the Justice System beyond the current crisis, into the future.
- *Theme 3 – The development of judicial skills:* The ACJRD recommends that the Judicial Studies Committee ensure international best practice when establishing and introducing new courses for Irish judges.
- *Theme 4 – The extent to which efficiencies in case management and working practices, as well as enhanced digital technology, could help in meeting additional service demands, improving services, and access to justice:* The ACJRD recommends that prior to the broad introduction of any enhanced digital technologies, the Department of Justice conduct rigorous pilot testing, all well as researching international best practice in the area, to ensure the fairness of such a system

3. The Number and Type of Judges Required

3.1 In 2018, the European Commission for the Efficiency of Justice (the ‘CEPEJ’) published a report that found that Ireland spends just 0.1% of GDP on the judicial system, the lowest of the 46 jurisdictions examined. On average in the jurisdictions examined, there were 21 judges per 100,000 people. In Ireland, that number is just 3.3 per 100,000 people.²

3.2 In addition to the above, the CEPEJ uses a ‘clearance rate’ to measure how efficiently courts systems deal with their caseload and this is calculated by comparing the number of resolved cases with the number of incoming cases. A score lower than 100% indicates that a backlog is increasing. It was found that for civil cases, Ireland scored poorly, with a figure of 63.1% in courts of first instance. Only Iceland scored worse in this category, though the Irish figure rose to 90.3% in courts of highest instance.³ However, it was also noted in the report that in Ireland, ‘a substantial number of completed cases are not recorded as such because parties are generally not required to notify the court if cases have been settled or are not being pursued further’.⁴ Consequently, the reported clearance rate appears lower than the actual clearance rate.

3.3 The report did outline that European legal systems which had been influenced by ‘Germanic law’ (i.e. Austria, Bulgaria, Germany, Greece, etc) tended to have more judges per head of population than other states.⁵ It also stated that Eastern European countries ‘traditionally [have] a very high per inhabitant rate of judges and civil servants’.⁶ In contrast, it was found that countries with legal systems inspired by ‘Nordic law, Common law or Napoleonic law’, have a lower rate of professional judges per 100 000 inhabitants.⁷ This applies in particular to Belgium, Denmark, France, Ireland, Italy, Malta, the Netherlands, Norway, Spain, Sweden, UK - England and Wales, UK - Northern Ireland and UK - Scotland.⁸

3.4 Due to the increased backlog of cases caused during the COVID-19 pandemic, the Irish Government had committed itself to appointing the new High Court judges, to deal with anticipated pressure on the courts. The Civil Law (Miscellaneous Provisions) Act 2021 provided for the provision of an additional 5 High Court Judges (raising the total number of High Court Judges to 42).⁹

3.5 This figure was criticised by Ms Justice Mary Irvine, President of the High Court. In an interview in July 2021. She stated that the figure fell far short of the number of new High Court judges required, which was 17, and that the High Court was in a ‘desperate scenario’, and operating a ‘third-rate system’ due to this shortage.¹⁰ Minister for Justice Heather Humphreys defended the number of judges appointed, stating that it was ‘one of the largest increases in judges in living memory’.¹¹

² European Commission for the Efficiency of Justice, ‘European Judicial Systems: CEPEJ Evaluation Report’ (2020), 46.

³ Ibid, 115.

⁴ Ibid, 114.

⁵ Ibid, 47.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Civil Law (Miscellaneous Provisions) Act 2021, section 8.

¹⁰ Stuart Gilhooly, ‘The Pandemic President’ (2021) 88 The Parchment 6-8.

¹¹ Cormac McQuinn, ‘Pent-up demand’ in courts for debt cases as Covid protections end, Minister told’ (The Irish Times 19 July 2021) <<https://www.irishtimes.com/news/politics/pent-up-demand-in-courts-for-debt-cases-as-covid-protections-end-minister-told-1.4623906>> accessed 4 November 2021.

3.6 Following the appointment of the new judges, Ms Justice Irvine pointed out that none of the new judges would be able to sit until November, as they had not yet received their warrants of appointment.¹² She stated in court that she would have ‘no option’ but to cancel a ‘substantial amount’ of trials and hearings, including potentially rape and murder cases, due to the shortage of judges.¹³ Following Ms Justice Irvine’s announcement, the appointment of the new judges was moved up to October, to prevent cases being cancelled.¹⁴

3.7 The ACJRD submits that with the easing of COVID-19 restrictions, as well as long-term population growth, a predictable judicial retirement rate, and the increase in complex litigation, the backlog in the Courts Services and the scarcity of judges should have been foreseeable issues. To combat a growing backlog of cases, and a shortage of judges the ACJRD has several initial recommendations.

3.7.1 The ACJRD recommends a review of the current legislation which regulates the number of Irish judges, and would support an expansion of the number of judges in Irish Courts, at every level. Prior to the appointment of additional judges however, the ACJRD recommends a critical review of the impact of any initiatives previously introduced to reducing court backlogs and waiting lists. In particular, the ACJRD recommends a review of the effectiveness of the Court of Appeal in reducing waiting times and backlog for Supreme Court cases.

3.7.2 In conjunction with the appointment of any new judges, the ACJRD recommends a review of the duration of the sitting year of all courts, and in particular, the High Court (including the Central Criminal Court), where delays seem to be quite severe.

3.7.3 Prior to the appointment of any new judges, the ACJRD recommends an immediate review of every court in Ireland, across every level, which would include the estimated retirement age of judges, an examination of the waiting times for cases to be heard in each court, and an examination of how cases are being granted priority over others in each court. The ACJRD also recommends a review of the volume of cases heard in each court, including the types of cases. Once this review is concluded, one may then have a better idea of what judges are required, and for which courts they will be required.

3.7.4 The ACJRD recommends that the Working Group conduct extensive research and give consideration to international best practice on judicial appointment levels, and examine current backlogs, future population growth, future judicial retirement, and future developments in the use of technology in courts.

3.7.5 The ACJRD recommends that the Working Group conduct a consultation with currently sitting judges in Irish Courts, to consider their workloads over

¹² ‘The Irish Times view on court resources: running out of judges’ (The Irish Times 4 October 2021) <<https://www.irishtimes.com/opinion/editorial/the-irish-times-view-on-court-resources-running-out-of-judges-1.4690930>> accessed 4 November 2021.

¹³ Mary Carolan and Pat Leahy, ‘Judicial appointments to be rushed through after cases cancelled’ (The Irish Times, 1 October 2021) <<https://www.irishtimes.com/news/crime-and-law/courts/high-court/judicial-appointments-to-be-rushed-through-after-cases-cancelled-1.4688755>> accessed 4 November 2021.

¹⁴ Colm Keena, ‘Submissions invited on resourcing of courts’ (The Irish Times 18 October 2021) <<https://www.irishtimes.com/news/crime-and-law/submissions-invited-on-resourcing-of-courts-1.4703064>> accessed 4 November 2021.

the previous five years, waitlists, and recommendations for future appointments.

- 3.7.6** The ACJRD recommends an extensive review of the type of cases waiting to be heard in all courts, in order to ascertain whether there is a need to appoint 'specialised' judges to deal with specific types of cases. These judges would deal with specific cases within their specialty.
- 3.7.7** The ACJRD recommends that the Working Group conduct a specific examination on the length of time accused persons are being remanded in custody prior to trial, and consider international best practice in this area.
- 3.7.8** The ACJRD recommends that any proposal for the appointment or allocation of additional judges to the criminal courts should be preceded by 'an assessment of the impact which this would have on the court accommodation and facilities that are available, or that would be required, for victims and other persons participating in or attending sexual offence trials'.¹⁵ This is in conjunction with recommendation 8.4 laid down in the 'Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases' implementation plan.¹⁶

4. The impact of the COVID-19 pandemic

4.1 Prior to the current pandemic, the ACJRD had decided to recommend that Court lists be staggered so that cases are listed at different times throughout the day, as is the practice in other countries such as Germany.¹⁷ We had also decided to recommend that more of the work currently done in the Courtroom on remand dates, which require the presence of the accused, should be done administratively between court appearances, which should be less frequent. In fact, the COVID-19 pandemic has precipitated and hastened some of those changes and it is anticipated by some stakeholders that those changes will be maintained post-pandemic. Accused persons on bail are not currently required to appear at 10:30am on each remand date. Remands in absence for procedural Court hearings are commonplace and lists are staggered to improve efficiency and facilitate social distancing in many Courts nationwide. The ACJRD has previously suggested¹⁸, and continues to recommend, that some of the COVID-19 emergency response measures taken by the Courts Services and the Judiciary should be developed to enhance the agility and sustainability of the Justice System beyond the current crisis, into the future.

4.2 The ACJRD has previously submitted¹⁹ that the requirement to socially distance is the greatest immediate challenge facing the justice system generally and the

¹⁵ Department of Justice and Equality, 'Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases' (Department of Justice and Equality, October 2020) 58, available at:

<https://www.justice.ie/en/JELR/Supporting_a_Victims_Journey.pdf/Files/Supporting_a_Victims_Journey.pdf>.

¹⁶ Ibid.

¹⁷ Charles Kuhn and Oliver Kipper, 'UK Should Consider Germany's Model For Criminal Justice' (Law360, June 2020) <<https://www.law360.com/articles/1280859/uk-should-consider-germany-s-model-for-criminal-justice>> accessed 4 November 2021.

¹⁸ Association for Criminal Justice Research and Development, 'Submission to the Department of Justice and Equality: Criminal Justice Sector Strategy' (ACJRD August 2020), 6, available at: <https://www.acjrd.ie/images/PDFs/development/ACJRD_Submission_on_Criminal_Justice_System_Strategy_-_August_2020.pdf>.

¹⁹ Ibid.

criminal justice system in particular, to keep the numbers of people in Courthouses to a minimum while ensuring continued access to justice. Technology provides a solution, which is not without risk particularly for vulnerable accused persons and vulnerable victims. This is outlined further below.

- 4.3** The ACJRD has also previously submitted²⁰ that the standard practice of compelling all persons summonsed or bailed to appear in Court for the start of the Court list is inefficient, leading to overcrowding of courtrooms, excessive demand on the Court Sergeant, frustration of cases, and delays. The ACJRD continues to recommend that some of the practices developed to manage the pandemic in the Criminal Justice system should be maintained and developed; such as the listing of shorter matters at the beginning of the list, the adoption of the German practice of staggered times, to ensure that an accused must only be present at the time that his or her case is called, a reduction in the number of remand dates on which accused persons on bail are required to attend court and a greater emphasis on work which can be done administratively without the need for a Court appearance. Much of these developments have and could continue to improve stakeholder engagement (i.e. less time wasted waiting for cases for practitioners and clients with no effect on the actual administration of justice / court resources).
- 4.4** The Courts Service outlined the waiting times for the various courts in their 2020 Annual Report. It was found that in the District Court, the average waiting times were between 3 to 6 months, depending on whether the matter was criminal, civil, or family law related.²¹ Similarly, in the Circuit Court, waiting times depended on whether the matter was criminal, civil or family law related, and seemed to be between 3 to 36 months.²² The geographic location of the court influenced waiting times, with some courts having much shorter waiting lists than others.²³ For the superior courts, depending on the nature of the case and the location of the court, cases could be heard immediately, or could be waiting up to 36 months.²⁴
- 4.5** The ACJRD acknowledges that currently, the Irish Courts Service is under immense pressure. Ms Justice Mary Irvine outlined that the current waiting times for criminal proceedings in superior courts where an accused is in custody is now 'about 18 months, regardless of their being presumed innocent. Where the accused is on bail, the waiting time is about three years from the time the trial is ready to proceed'.²⁵ The backlog in Ireland is similar to that in other jurisdictions, such as England and Wales.²⁶ To combat this, the ACJRD recommends further judicial appointments, which is outlined above.
- 4.6** The ACJRD further submits that in order to decrease the backlog of cases, an expansion of the sitting dates of the Courts be considered over the traditional Court holidays, on an exceptional basis and not just for emergency hearings. This would

²⁰ Ibid n18, 24.

²¹ Courts Service, 'Courts Service Annual Report 2020' (Courts Service 28 July 2021) 108, available at: <https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH>.

²² Ibid, 111.

²³ Ibid, 108 and 111.

²⁴ Ibid, 112.

²⁵ Mary Carolan, 'Avalanche of litigation looms as High Court battles through delays' (The Irish Times, 20 September 2021) <<https://www.irishtimes.com/news/crime-and-law/courts/high-court/avalanche-of-litigation-looms-as-high-court-battles-through-delays-1.4678188>> accessed 4 November 2021.

²⁶ Irish Legal News, 'England: Backlog of criminal cases to last many years' (22 October 2021) <<https://www.irishlegal.com/articles/england-backlog-of-criminal-cases-to-last-many-years>> accessed 4 November 2021.

be in direct response to the backlog of cases created due to COVID-19, and would be recommended for a limited period only.

4.7 The ACJRD also recommends that consideration be given to increasing the length of time per day that judges hear cases. This would be in direct response to the backlog of cases created due to COVID-19, and would be recommended for a limited period only, and for a limited number of courts. The ACJRD notes that it would not be possible for some courts to extend their day, particularly courts that hear criminal cases. The ACJRD notes that the current system allows for prisoner transfers, and for practitioner-client conferences to occur.

5. The development of judicial skills

5.1 Currently in Ireland, there is no significant or well-established system of judicial education and training. Training for judges is mandatory since 1996, under Section 19 of the Court and Court Officers Act 1995 (the '1995 Act'), which requires that persons wishing to be considered for judicial office give an undertaking in writing to take "such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court".²⁷ Hence, there is a legal obligation on Irish judges to engage in further education once they join the Bench. What has been provided to date is relatively limited: judicial decision-making courses delivered by the Law Society and the Kings Inns, conferences and seminars, bench books, limited induction, shadowing, and funding for judges to attend courses abroad.

5.2 Section 48 of the 1995 Act provided that the Minister 'may, with the consent of the Minister for Finance, provide funds for the training and education of judges'. As a result, the former Chief Justice, Liam Hamilton, established the Judicial Studies Institute (JSI) to oversee expenditure and planning for judicial training. However, according to a number of judges participating in a 2007 study undertaken by the Irish Council for Civil Liberties, 'the concept of further education for the judiciary was not initially fully embraced by everyone'.²⁸ It was found that the '[r]eluctance to engage in further studies was attributed to the possibility of infringing on judicial independence and because of certain perceptions'.²⁹

5.3 From an international perspective, the lack of a formal education and training system for judges is very unusual. In a survey from 2016, it was noted that in all of the 10 European jurisdictions surveyed, there existed mandatory initial or induction training for all new judicial appointees.³⁰ This included England and Wales. However, no such comprehensive system yet exists in Ireland. A Council of Europe Report on efficiency of justice in European Judicial Systems from 2018 notes that Ireland is one of only three States that do not provide continuous training.³¹

5.4 The establishment of the Judicial Council is considered a significant development in the ongoing process of reform and modernisation of the Irish court system. The functions of the Judicial Council under the Judicial Council Act 2019 (the '2019 Act') include promoting and maintaining excellence in the exercise by judges of their judicial functions, high standards of conduct among judges, the effective and

²⁷ Court and Court Officers Act 1995, Section 19.

²⁸ Tanya Ward, 'Justice Matters: Independence, Accountability, and the Irish Judiciary' (Irish Council for Civil Liberties, 2007) 60.

²⁹ *Ibid.*

³⁰ Directorate General for Internal Policies of the European Union, 'The Training of Judges and Legal Practitioners' (2017).

³¹ European Commission for the Efficiency of Justice, 'European Judicial Systems: Efficiency and Quality of Justice' (2018).

efficient use of resources, continuing education of judges, respect for the independence of the judiciary, and public confidence in the judiciary and the administration of justice.³²

- 5.5** The Judicial Studies Committee was established on the 10th of February 2020, under the 2019 Act. Its function is to provide for the continuing education of judges. A key approach to judicial training is that judges (insofar as is possible) train judges. Mindful of this international best practice, the Judicial Council specified that the appointed Director must be a sitting judge who would devote at least 50% of her working time to judicial studies.³³ In July of 2020, the Board appointed Ms. Justice Mary Rose Gearty of the High Court following a competitive interview process.³⁴
- 5.6** Since July 2020, every new judge has undergone ethics induction training, while outside experts have given “Judgecraft” courses to more than half the judiciary. More are scheduled over the coming months.³⁵ Judges will also have to undergo a course to improve the courtroom experience of vulnerable witnesses, which is in line with the O’Malley report commissioned in the wake of the 2018 Belfast rape trial.³⁶ Judges are now also being offered courses on unconscious bias, developed with the help of the King’s Inns.³⁷ Judge O’Connor stressed that the judicial training courses will not infringe upon judicial independence, as the courses are ‘not about the law, it’s about how we treat people in court’.³⁸
- 5.7** The Irish Council for Civil Liberties along with the National University of Ireland Galway, Limerick University, and the Whittaker Institute and School of Law hosted a seminar on ‘Judicial Education and Training in Twenty-First Century Ireland: European and International Perspectives’ in September 2021. The seminar discussed topics such as Judicial Education and Training in Ireland, Judicial Skills and Judgecraft, and Developing Judicial Skills in Ireland. The ACJRD recommends that the report from this seminar be reviewed once available and that any recommendations from this seminar be considered.
- 5.8** The ACJRD recommends that further attention be given to the provision of courses to the judiciary on the treatment of vulnerable witnesses in courtrooms, in line with recommendation 9.1 of the ‘Supporting a Victim’s Journey: A plan to help victims and vulnerable witnesses in sexual violence cases’ implementation plan, and that all judges dealing with such cases should undertake this training.³⁹
- 5.9** In addition to the above, the ACJRD notes that that there is considerable research evidence which shows that levels of public confidence and compliance are closely

³² Judicial Council Act 2019.

³³ Judicial Council of Ireland, ‘Judicial Studies Committee’ (October 2021) <<https://judicialcouncil.ie/judicial-studies-committee/>> accessed 4 November 2021.

³⁴ Ibid.

³⁵ Mary Carolan, ‘New to the Bench: Judges to be trained for the first time’ (The Irish Times 17 September 2021) <<https://www.irishtimes.com/news/crime-and-law/new-to-the-bench-judges-to-be-trained-for-the-first-time-1.4676043>> accessed 4 November 2021.

³⁶ Tom O’Malley, ‘Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences (O’Malley)’ (Department of Justice and Equality, July 2020) available at: <https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf>.

³⁷ Ibid, n33.

³⁸ Mary Carolan, ‘New to the Bench: Judges to be trained for the first time’ (The Irish Times 17 September 2021) <<https://www.irishtimes.com/news/crime-and-law/new-to-the-bench-judges-to-be-trained-for-the-first-time-1.4676043>> accessed 4 November 2021.

³⁹ Ibid n15.

linked with how people perceive that they are treated. In a review commissioned by the Department of Justice and Equality, of public confidence in the criminal justice system, Professor Claire Hamilton and Dr Lynsey Black found that:

'Training in enhanced interpersonal communication may be particularly important here. One example is a one-day training programme developed by the Center for Court Innovation, the Bureau of Justice Assistance, and the National Judicial College in four US courts, aimed at helping judges and other staff improve their courtroom communication skills. The project's evaluation revealed that the one-day training resulted in improved communication in almost all of the targeted areas, evidenced by pre- and post-training observations conducted by researchers'.⁴⁰

5.10 Further to the above, the ACJRD notes that procedural justice principles regarding respect and fairness are also key in this regard and should form part of judicial training. The ACJRD recommends that research be conducted on judicial training and education institutions in other common-law jurisdictions, and that the Judicial Studies Committee ensure international best practice when establishing and introducing new courses for Irish judges. The ACJRD also recommends that as part of this research that the Working Group and the Judicial Studies Committee review the LSRA studies on education received by solicitors and barristers.

5.11 The ACJRD finally strongly recommends that all judges (and relevant Court Services staff) receive the necessary training to account for any new technologies introduced into the Irish Courts Service. All training must be completed prior to the introduction of any such systems.

6. Increased Efficiency in the Judicial System

6.1 The Civil and Criminal Law Miscellaneous Provisions Act 2020 has facilitated a greater use of technology within the justice system in Ireland to ensure that the system remains functional during the COVID-19 pandemic. The Act was commenced in August 2020.

6.2 Section 11 of the Act places remote civil hearings on the same legal footing as proceedings held in a physical courtroom, recognising the court's recent move towards facilitating remote hearings.

6.3 Section 23 of the Act lays out the instances where it is appropriate for criminal proceedings to be held remotely, however these circumstances are quite limited. Should it be deemed appropriate for proceedings to be held remotely, they are to be placed on the same legal footings as proceedings held in a physical courtroom.

6.4 The Act has also introduced the following provisions:

- the introduction of statements of truth instead of affidavits and statutory declarations for civil matters;
- the lodgement of documents with the courts by electronic means, or e-filing;
- provision for the wider use of video links between persons in custody and the courts;

⁴⁰ Claire Hamilton and Lynsey Black, 'An Evidence Review of Confidence in Criminal Justice Systems' (Department of Justice and Equality, December 2019) 91, available at: <[https://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf/Files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf](https://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf/Files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf)>.

- enhancing and widening the existing provisions on giving evidence through video link;
- providing for appeals (to the Court of Appeal and the Supreme Court) in criminal proceedings to take place via remote hearing;
- providing for the remote meetings of State bodies; and
- provisions making it easier to alter the operating hours and sitting locations of the District Court.⁴¹

6.5 The Act makes it an offence for a person who interferes with or obstructs the remote hearing to be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 2 months, or both, or on conviction on indictment, to a fine not exceeding €50,000, or to imprisonment for a term not exceeding 3 years, or both.

6.6 In a report to the Oireachtas, Dr Rónán Kennedy of NUI Galway warned that remote hearings ‘fall short of the full experience of a real courtroom’.⁴² According to the report, very little research has been conducted nationally on the sudden pivot to remote hearings.⁴³

6.7 Dr Kennedy’s report notes that introducing technology without considering the physical layout of courtrooms ‘may undermine perceptions of justice’.⁴⁴ Dr Kennedy’s report notes that while increasing access to justice and reducing the costs of judicial proceedings ‘may sound like a desirable outcome, but there is little value in increasing access to justice if the quality of justice is undermined in doing so’.⁴⁵

6.8 A survey in England and Wales by the Civil Justice Council found the majority of lawyer respondents ‘felt that remote hearings were worse than hearings in person overall’.⁴⁶

6.9 Mema Byrne BL, in a submission to the Joint Oireachtas Committee on Justice Courts and Courthouses noted that not all litigants possess the appropriate technology, have access to the appropriate facilities, or have the capability (due to vulnerability or otherwise) to participate in a remote hearing.⁴⁷

6.10 The ACJRD commends the swift pivot to remote hearings that protected individuals involved in litigation during the COVID-19 pandemic. To avoid some of the limitations outlined above, the ACJRD recommends that:

6.10.1 Further research be done on remote hearings in criminal and civil proceedings, to ensure access to justice is protected, and vulnerable individuals are not being denied such access;

6.10.2 Access to in-person hearings in local courts are facilitated in a manner which meets the reasonable needs of all citizens; and

⁴¹ Civil and Criminal Law Miscellaneous Provisions Act 2020.

⁴² Dr Rónán Kennedy, ‘Algorithms, Big Data and Artificial Intelligence in the Irish Legal Services Market’ (February 2021) 25.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Civil Justice Council, ‘Rapid Review: The Impact of COVID-19 on the Civil Justice System’ (June 2020)

⁴⁷ Bar of Ireland, ‘Opening Statement To The Joint Committee On Justice Courts and Courthouses 2021’ (September 2021) 2.

- 6.10.3** All courts should have adequate technological facilities to support remote hearings together with hearing meeting rooms so that participants with inadequate facilities of their own may use such a room to participate in their own hearing.
- 6.11** In addition to remote hearings, the ACJRD has previously recommended⁴⁸ and continues to support the introduction of an integrated digital development strategy, to be developed for the entire justice system with the objective of proportionally balancing the rights of individuals with the interest of society in the administration of justice and prosecution of crime. An integrated digital development strategy will help ensure the agility and sustainability of the justice system through the COVID-19 pandemic and beyond.
- 6.12** The ACJRD has previously recommended⁴⁹ the introduction of a robust data analytics structure, and centralised data hub which would provide reliable empirical evidence to support policy making. In the Department of Justice Action Plan for 2021, the development of a three-year plan for the ‘expansion of the Criminal Justice Operational Hub, facilitating greater automation of information exchange between criminal justice agencies, as well as access to data-informed insights to support policy development’ was outlined.⁵⁰ The ACJRD believes that this is essential to an effective and responsive criminal justice system. The collection of this data will inform future policy and highlight areas of inefficiency within the criminal justice system that require reform.
- 6.13** The ACJRD has noted the Department of Justice Data & Research Strategy 2018 – 2020 and welcomes the acknowledgment of the vital importance of data and commitment to improving access to and use of data, information and research leading to more effective policy making.⁵¹
- 6.14** In particular, the ACJRD commends the aim of said Strategy to ‘[e]stablish a Data Evaluation Research and Analytics Unit working in the Corporate area with partnerships around the Justice Sector, the Central Statistics Office and other stakeholders, e.g. Open Data, National Data Infrastructure (NDI).’⁵²
- 6.15** In addition to the above centralized data hub, the ACJRD supports a greater, but proportionate, use of technology to ensure that there is balance between the general interest of society in the prosecution of crime and the protection of the rights of individual citizens, particularly vulnerable victims and accused persons, to ensure that we maintain a fair and rational justice system during the pandemic and into the future.
- 6.16** In his 2021 report, Dr Kennedy warned that artificial intelligence (AI) software designed to introduce such efficiencies in the justice system could “learn” to discriminate in ways that are illegal, focusing on characteristics that are proxies for social class, race or gender.⁵³ The ACJRD notes that research is only beginning to

⁴⁸ Ibid n18.

⁴⁹ Ibid n18, 22.

⁵⁰ Department of Justice and Equality, ‘Justice Plan 2021’ (Department of Justice and Equality, February 2021) 46, available at: <https://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf>.

⁵¹ Department of Justice and Equality, ‘Data & Research Strategy 2018 – 2020: Supporting delivery of “A safe, fair and inclusive Ireland” (July 2018).

⁵² Ibid, 3.

⁵³ Ibid n42, 53.

uncover the implications of algorithmic justice and recommends that any implementation of such systems should proceed cautiously.

6.17 The Council of Bars and Law Societies of Europe has considered the use of AI in detail, and has found that:

*‘Much debate is still needed critically to assess what role, if any, AI tools should play in our justice systems. Change should be embraced where it improves or at least does not worsen the quality of our justice systems. However, fundamental rights and adherence to ethical standards that underpin institutions based on the rule of law, cannot be subordinated to mere efficiency gains or cost saving benefits, whether for court users or judicial authorities’.*⁵⁴

6.18 In order to avoid inadvertently increasing inequalities in the Irish justice system, the ACJRD recommends that prior to the broad introduction of any such technologies, the Department of Justice conducts rigorous pilot testing, all well as researching international best practice in the area, to ensure the fairness of such a system.

6.19 As recommended above, the ACJRD strongly recommends that all judges and relevant Court Services staff receive rigorous training in any new technologies, prior to the introduction of same.

7. Conclusion

7.1 The ACJRD considers that the terms of reference and scope of the Working Group is sufficiently broad enough to provide for necessary additional judicial appointments over the next five years.

7.2 The ACJRD recognizes the importance of each of the four themes identified by the Department of Justice. The ACJRD recommendations are set out in-brief below:

Theme 1

- The ACJRD recommends a review of the current legislation which regulates the number of Irish judges, and would support an expansion of the number of judges in Irish Courts, at every level.
- The ACJRD recommends an immediate review of every court in Ireland, across every level, which would include the estimated retirement age of judges, an examination of the waiting times for cases to be heard in each court, and an examination of how cases are being granted priority over others in each court. The ACJRD also recommends a review of the volume of cases heard in each court, including the types of cases. Once this review is concluded, one may then have a better idea of what judges are required, and for which courts they will be required.
- The ACJRD recommends that the Working Group conduct extensive research and give consideration to international best practice on judicial appointment levels, and examine current backlogs, future population growth, future judicial retirement, and future developments in the use of technology in courts.
- The ACJRD recommends that the Working Group conduct a consultation with currently sitting judges in Irish Courts, to consider their workloads, waitlists, and

⁵⁴ Council of Bars and Law Societies of Europe, ‘CCBE Considerations On The Legal Aspects Of Artificial Intelligence’ (March 2020) 20.

recommendations for future appointments.

- The ACJRD recommends that the Working Group conduct a specific examination on the length of time accused persons are being remanded in custody prior to trial, and consider international best practice in this area.

Theme 2

- The ACJRD continues to recommend that some of the practices developed to manage the pandemic in the Criminal Justice system should be maintained and developed; such as the listing of shorter matters at the beginning of the list, the adoption of the German practice of staggered times, to ensure that an accused must only be present at the time that his or her case is called, a reduction in the number of remand dates on which accused persons on bail are required to attend court and a greater emphasis on work which can be done administratively without the need for a Court appearance.
- The ACJRD recommends that in order to decrease the backlog of cases, an expansion of the sitting dates of the Courts be considered over the traditional Court holidays, on an exceptional basis and not just for emergency hearings. This would be in direct response to the backlog of cases created due to COVID-19, and would be recommended for a limited period only.

Theme 3

- The ACJRD recommends that further attention be given to the provision of courses to the judiciary on the treatment of vulnerable witnesses in courtrooms, and that all judges are encouraged to undertake this training.
- The ACJRD further recommends that research be conducted on judicial training and education institutions in other common-law jurisdictions, and that the Judicial Studies Committee ensure international best practice when establishing and introducing new courses for Irish judges.
- The ACJRD finally strongly recommends that all judges (and relevant Court Services staff) receive the necessary training to account for any new technologies introduced into the Irish Courts Service. All training must be completed prior to the introduction of any such systems.

Theme 4

- The ACJRD commends the swift pivot to remote hearings that protected individuals involved in litigation during the COVID-19 pandemic. To avoid some of the limitations outlined above, the ACJRD recommends that:
 - Further research be done on remote hearings in criminal and civil proceedings, to ensure access to justice is protected, and vulnerable individuals are not being denied such access. This research could also include the quality of justice being delivered by the remote hearings, compared to physical attendance;
 - Access to in-person hearings in local courts are facilitated in a manner which meets the reasonable needs of all citizens; and
 - All courts should have adequate technological facilities to support remote hearings together with hearing meeting rooms so that participants with inadequate facilities of their own may use such a room to participate in their own hearing.

- In addition to remote hearings, the ACJRD has previously recommended⁵⁵ and continues to support the introduction of an integrated digital development strategy and centralised data hub, to be developed for the entire justice system with the objective of proportionally balancing the rights of individuals with the interest of society in the administration of justice and prosecution of crime. An integrated digital development strategy will help ensure the agility and sustainability of the justice system through the COVID-19 pandemic and beyond.
- In order to avoid inadvertently increasing inequalities in the Irish justice system, the ACJRD recommends that prior to the broad introduction of any such technologies, the Department of Justice conduct rigorous pilot testing, all well as researching international best practice in the area, to ensure the fairness of such a system.

7.3 The ACJRD considers the establishment of the Working Group to be an excellent step forward in addressing the shortage of judges in the Irish judiciary, and believes that over the next five years, real change can be implemented.

⁵⁵ Ibid n18.

BIBLIOGRAPHY

ACJRD Members

Books and Texts

- Association for Criminal Justice Research and Development, 'Submission to the Department of Justice and Equality: Criminal Justice Sector Strategy' (ACJRD August 2020)
- Bar of Ireland, 'Opening Statement To The Joint Committee On Justice Courts and Courthouses 2021' (September 2021)
- Carolan, M., 'Avalanche of litigation looms as High Court battles through delays' (The Irish Times, 20 September 2021) available at <<https://www.irishtimes.com/news/crime-and-law/courts/high-court/avalanche-of-litigation-looms-as-high-court-battles-through-delays-1.4678188>>
- Carolan, M., 'New to the Bench: Judges to be trained for the first time' (The Irish Times 17 September 2021) available at <<https://www.irishtimes.com/news/crime-and-law/new-to-the-bench-judges-to-be-trained-for-the-first-time-1.4676043>>
- Carolan, M. and Leahy, P., 'Judicial appointments to be rushed through after cases cancelled' (The Irish Times, 1 October 2021) available at <<https://www.irishtimes.com/news/crime-and-law/courts/high-court/judicial-appointments-to-be-rushed-through-after-cases-cancelled-1.4688755>>
- Civil Justice Council, 'Rapid Review: The Impact of COVID-19 on the Civil Justice System' (June 2020)
- Council of Bars and Law Societies of Europe, 'CCBE Considerations On The Legal Aspects Of Artificial Intelligence' (March 2020)
- Courts Service, 'Courts Service Annual Report 2020' (Courts Service 28 July 2021) available at: <https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH>.
- Department of Justice and Equality, 'Data & Research Strategy 2018 – 2020: Supporting delivery of "A safe, fair and inclusive Ireland"' (July 2018)
- Department of Justice and Equality, 'Justice Plan 2021' (Department of Justice and Equality, February 2021) available at: <https://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf>.
- Department of Justice and Equality, 'Open Consultation – Judicial Planning Working Group' (Department of Justice, October 2021) available at <<https://www.justice.ie/en/JELR/Pages/Open-Consultation%E2%80%93Judicial-Planning-Working-Group>> accessed 1 November 2021
- Department of Justice and Equality, 'Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases' (Department of Justice and Equality, October 2020) available at: <https://www.justice.ie/en/JELR/Supporting_a_Victims_Journey.pdf/Files/Supporting_a_Victims_Journey.pdf>.
- Directorate General for Internal Policies of the European Union, 'The Training of Judges and Legal Practitioners' (2017).

- European Commission for the Efficiency of Justice, 'European Judicial Systems: CEPEJ Evaluation Report' (2020)
- European Commission for the Efficiency of Justice, 'European Judicial Systems: Efficiency and Quality of Justice' (2018)
- Gilhooly, S., 'The Pandemic President' (2021) 88 *The Parchment*
- Hamilton, C., and Black, L., 'An Evidence Review of Confidence in Criminal Justice Systems' (Department of Justice and Equality, December 2019)
- Irish Legal News, 'England: Backlog of criminal cases to last many years' (22 October 2021) available at <<https://www.irishlegal.com/articles/england-backlog-of-criminal-cases-to-last-many-years>>
- Irish Times View, 'The Irish Times view on court resources: running out of judges' (*The Irish Times* 4 October 2021) available at <<https://www.irishtimes.com/opinion/editorial/the-irish-times-view-on-court-resources-running-out-of-judges-1.4690930>>
- Judicial Council of Ireland, 'Judicial Studies Committee' (October 2021) available at <<https://judicialcouncil.ie/judicial-studies-committee/>>
- Keena, C., 'Submissions invited on resourcing of courts' (*The Irish Times* 18 October 2021) available at <<https://www.irishtimes.com/news/crime-and-law/submissions-invited-on-resourcing-of-courts-1.4703064>>
- Kennedy, R., 'Algorithms, Big Data and Artificial Intelligence in the Irish Legal Services Market' (February 2021)
- Kuhn, C. and Kipper, O., 'UK Should Consider Germany's Model For Criminal Justice' (*Law360*, June 2020) available at <<https://www.law360.com/articles/1280859/uk-should-consider-germany-s-model-for-criminal-justice>>
- McQuinn, C., 'Pent-up demand' in courts for debt cases as Covid protections end, Minister told' (*The Irish Times* 19 July 2021) available at <<https://www.irishtimes.com/news/politics/pent-up-demand-in-courts-for-debt-cases-as-covid-protections-end-minister-told-1.4623906>>
- O'Malley, T., 'Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences (O'Malley)' (Department of Justice and Equality, July 2020) available at: <https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf>.
- Ward, T., 'Justice Matters: Independence, Accountability, and the Irish Judiciary' (Irish Council for Civil Liberties, 2007)

Legislation

Ireland

Civil and Criminal Law (Miscellaneous Provisions) Act 2020

Civil Law (Miscellaneous Provisions) Act 2021

Court and Court Officers Act 1995
Judicial Council Act 2019