



THE BAR OF IRELAND

The Law Library

Submission by Council of The Bar of Ireland to the Courts Service on the Courts Service Strategic Plan 2017-2020

28th September 2017

Introduction

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland. The independent referral bar are members of the Law Library and has a current membership of over 2,200 practising barristers. Council of The Bar of Ireland welcomes the opportunity to share and represent its members' views on the strategic issues the Courts Service should consider addressing in its Strategic Plan 2017-2020.

Acknowledging the context

In making this submission, The Bar of Ireland believes that it is important to firstly acknowledge the context of budget and resources provided to the Courts Service.

According to the European Commission for the Efficiency of Justice (CEPEJ), Ireland does not perform very well in terms of its budgetary allocation to the judicial system, which together comprises the Courts, Legal Aid, and Public Prosecution services. Ireland's budget for the judicial system has decreased by 20%, from €280m in 2010 to €222m in 2014.¹ The public budget allocated to the judicial system in 2014 came in at €48 per capita which is below the European average of €60 and well below the budgetary efforts of our neighbouring jurisdictions in Northern Ireland (€144 per capita) and in England and Wales (€92) despite both of those states having a lower GDP per capita.² Expenditure on the courts system alone has decreased by 30% in the period 2010 - 2014.³

In 2014, Ireland allocated 47% of its budget for the judicial system to the functioning of the courts – a moderate share in comparison to other European states (European average 66%)⁴ but representing only €23 per capita, which is well below the European average of €36 and approximately half that of England and Wales (€40) and Northern Ireland (€46). Ireland's per capita budget is lower than its common law counterparts despite a higher GDP and is in line with the per capita expenditure of Central European countries. Budget cuts have been increased or extended in recent years in Ireland and budgetary restraint measures continue to adversely affect the resources allocated to the judicial system.⁵

It is of utmost importance that the Courts Service works hard to petition the government for the allocation of more resources and funding in support of an efficient and effective judicial system while at the same time continuing to demonstrate its commitment to maximising the use of resources and embracing change as may be necessary to ensure value for money for the tax payer.

¹European Commission for the Efficiency of Justice. (2016). CEPEJ Studies No. 23. Edition 2016 (2014 data). [online] Council of Europe, p.31. Available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_1%20-%20CEPEJ%20Study%2023%20-%20General%20report%20-%20EN.pdf.

² Ibid. at p.24-25

³ Ibid. at p.49

⁴ Ibid. at 79

⁵ Ibid. at p.32-36

Focus of this submission

As stated on the Courts Service website, the mission of the Courts Service is:

‘to manage the courts, support the judiciary and provide a high quality and professional service to all users of the courts’.

The Bar of Ireland represents the 2,200 members of the Law Library who are practising barristers delivering their professional services on behalf of clients on a daily basis throughout the courts in Ireland. As such, members of the Law Library, as one of the most frequent users of the Courts are well placed to provide constructive feedback and input for the consideration of the Courts Service in developing its three-year Strategic Plan 2017-2020.

Feedback from members of the Law Library, gleaned through a series of member surveys and general feedback from members throughout the country, has focussed on two key areas:

- (1) Sustained need for investment in accommodation and facilities for users of the courts
- (2) Approach to court sittings and listings with the aim of further reducing waiting periods and ensuring the efficient use of all stakeholders involved in each case

Investment in accommodation and facilities

The development of seven new courthouses at key locations throughout the country is a very welcome development and will undoubtedly greatly improve the workplace for all professionals who conduct their business on a daily basis from the courts. It is our understanding that a further phase of infrastructure investment is due to get underway, namely in Tralee, Portlaoise, Wicklow, Roscommon and Galway and The Bar of Ireland urges continued allocation of funding to support these projects. The Bar of Ireland also welcomes the initiative to develop the new civic complex in Dublin for family law and children court cases, and the new Supreme Court facility.

Courthouse maintenance and refurbishment is equally as important as new developments, in order to ensure suitable accommodation for all court users in Courthouses inside and outside of Dublin. The Courthouse is the place of work for practising barristers and the facilities available can have a significant impact on the quality of professional services provided by a barrister to their client.

One of the primary challenges faced by barristers practising in Dublin (particularly in Bridewell, Dolphin House, Chancery Street and surrounding Dublin courthouses such as Swords), and on circuit, are in the following areas:

(1) Absence of wi-fi and/or inconsistent access

The Bar of Ireland, following discussions with the Courts Service, greatly welcomed the provision of wi-fi throughout all Bar Rooms in County Courthouses over the past three years. It is imperative that barristers are in a position to easily access on-line legal databases and other legal material in order to properly represent clients in Court and meet the expectations of the sitting Judge.

Feedback in relation to the quality of wi-fi throughout Bar Rooms has been mixed, with many users citing frequent interruptions in service and/or slow connections. These issues

have been raised with the Courts Service and a decision to review the data and assess service levels, with a view to putting a service level agreement in place, is a welcome development.

The ability to connect to on-line services in Bar Rooms throughout the County Courthouses is now a minimum requirement of a practising barrister and this requirement will continue to grow. However, there are a number of Courthouses where wi-fi access is not available.

The Courts Service Strategic Plan 2014-2017 recognised that there is significant untapped potential in harnessing technology that can create opportunities to enhance customer service and deliver improved value for money for the tax payer. The availability of high speed wi-fi is an essential basic requirement for the future.

While recognising the constraints of some of the court buildings and the limitations of budget, The Bar of Ireland nonetheless recommends that the provision of wi-fi should be extended beyond County Courthouses to those locations that have a sufficient level of sittings annually.

In addition, The Bar of Ireland recommends that an exercise in future proofing of the wi-fi network is undertaken and provision made for further investment to increase capacity as will inevitably be required.

(2) Access to printing and copying facilities

While facilities in the Four Courts and the CCJ in terms of access to printing and copying facilities are provided for barristers by The Bar of Ireland, access to these essential facilities is a challenge for barristers who practice in other Courthouses in Dublin and on circuit.

As stated earlier, practising barristers are one of the primary users of the Courts. Having regard to the mission of the Courts Service 'to provide a high quality and professional services to all users of the courts', a welcome service development would be the provision of printing and copying facilities in the Bar Room in each County Courthouse throughout the country. Such facilities should be managed and overseen by the Courts Service on a 'pay as you print' basis. While initial upfront investment may be required, it should be possible to recoup any investment made by introducing a 'pay as you print' facility, similar to what is available in other public buildings, such as libraries and universities.

The Bar of Ireland recommends that a feasibility study is undertaken to assess the viability of introducing printing and copying facilities that would greatly improve the user experience of both barristers and solicitors in Courthouses outside of the Four Courts and the CCJ.

(3) Availability of power points in Bar Rooms

As stated earlier, growth in technological development will only increase into the future thereby causing an increased reliance of legal professionals on portable electronic devices. An issue for barristers who practice on circuit is to be able to access a power point for the

purpose of charging a device, in particular as access to their materials and notes is now by and large always in digital format.

Feedback from members on circuit has identified that there is an absence of a sufficient number of power points in Bar Rooms. While this issue has been addressed in the newly developed or refurbished Courthouses, it is a challenge in other locations.

The Bar of Ireland recommends that an audit of each Bar Room is undertaken in order to assess the capacity to increase the number of power points available.

(4) Security

Members of the Law Library have raised a number of concerns about the security of Bar Rooms on circuit, with a number of reported instances of theft. Bar Rooms are for the use of legal professionals who need to have a safe location to leave their belongings while appearing in Court. It is essential that an appropriate level of security access is in place at the point of entry to the Bar Room.

The Bar of Ireland recommends that an audit of security of each Bar Room on circuit is undertaken with a view to having a minimum standard of security at each location that is appropriately overseen and managed by Courts Service staff.

Furthermore, there have been a number of serious incidents involving members of the Bar both in Court and during consultations. It is essential that the health, safety and welfare of members of the Bar is prioritised and that adequate security is in place throughout the Courts to ensure that such serious incidents that have occurred in the past are prevented.

(5) Access to drinking water

The lack of drinking water facilities in Bar Rooms has been raised by members.

(6) Car parking facilities

The lack of adequate car parking facilities adjacent to Courthouses is an issue affecting solicitors, barristers and litigants and ought to be taken into consideration when the Court Service is deciding where to locate new Courthouses.

(7) Consultation Rooms

Feedback from members has identified that there is an inadequate number of consultation rooms in many Courthouses. Access to consultation rooms is imperative to allow clients a modicum of privacy and dignity, and confidentiality, particularly for litigants who have sensitive and personal information to disclose.

(8) Provision of crèche facilities for users of the Courts

In any new developments undertaken by the Courts Service, consideration should be given to the provision of crèche facilities for users of the Courts.

While many of the items listed above may be viewed as relatively minor in the context of a strategic plan, it is important that the Courts Service Strategic Plan adequately captures the needs of users of the courts and that an appropriate level of investment in a programme of property and facilities maintenance is in place to support those needs.

Court Sittings/Listings/Case Management

Reducing the time for case processing and facilitating greater efficiency in the way trials are managed is welcome through initiatives such as e-filing, the e-courts system and other procedural and legislative reforms such as the recent amendments to the Rules of the Superior Courts in relation to the conduct of trials and pre-trial procedures. Despite these efforts, significant delays remain and The Bar of Ireland urges the introduction of measures to improve efficiencies of the listing system.

Recent data captured from our members indicated the frequency in which cases are adjourned, or in which there are delays in the resolution of proceedings, due to inefficiencies of the listing system. A survey conducted by The Bar of Ireland of legal practitioners in June 2016 revealed that inefficiencies with the civil listing system accounted for 11.5% of adjournments (based on the answers of 156 respondents). The same survey also revealed that 21.2% of delays in the resolution of civil proceedings was attributed to inefficiencies of the listing system (based on the answers of 188 respondents). Much of the data pointed towards lists being too long, resulting in their matters not being reached in the list, or partially heard due to insufficient time.

Feedback from members who practice primarily on circuit also revealed a range of criticisms. In terms of sittings, there was a consistent call for increased sittings across all practice areas, civil, criminal and family. The excessive amount of time between court sittings in some venues was noted as one of the primary reasons for delay. Another challenge identified was in relation to clashing of sittings within the same county and also between counties. The clashing of sittings very often results in adjournments as legal practitioners cannot be in two places at the same time. While extra permanently assigned Judges are urgently needed on some Circuits, The Bar of Ireland would appeal to the Courts Service to consider assigning more Special Sittings (which do not clash with normal Sittings) as an interim solution to deal with the backlog of cases in some provincial venues.

Feedback in relation to the management of lists varied throughout the country and a frequently cited complaint was the need to ensure that the lists on courts.ie are updated as quickly as possible and generally updated more frequently to ensure accuracy.

Additional sittings, staff and enhanced functions for County Registrars and other eligible court officers ought to be prioritised going forward and a re-organisation of business to ensure urgent matters are dealt with first in the list.

Figures published by CEPEJ on the number of incoming and resolved cases per 100 inhabitants offer a clear picture of the workload and productivity of the different European judicial systems. Ireland's clearance rate at 56% in relation to civil and commercial litigious cases is particularly low in

comparison to other European countries.⁶ Ireland's low clearance rate may not be directly related to the efficiency of the court system however and is possibly skewed due to the absence of procedural rules requiring the parties to notify the court when a case has been settled or is not being pursued further.⁷ As such, the development of such rules is perhaps something that ought to be considered by the Courts Service to obtain more accurate data and to facilitate a better understanding of the reasons behind low clearance rates.

The ability of courts to cope with caseload is closely related to the number of judges operating in the court system. In 2014, Ireland had the lowest number of judges of 47 countries examined by CEPEJ at 3 per 100,000 inhabitants, as opposed (for example) to 10 per 100,000 in France or 24 per 100,000 in Germany.⁸ This deficit ought to be confronted as a possible factor in delays and inefficiencies of the courts system.

The 2017 EU Justice Scoreboard revealed that where standards on timing are not complied with there is no follow-up in Ireland. This is in stark contrast with other EU countries who conduct special meetings; initiate a reorganisation of court management processes; allocate additional finances; or allocate additional human resources to address timing inefficiencies. Furthermore, some EU countries have established standards on the way parties are informed and the type of information they receive about the progress of their case. Certain Member States for example have a system with automatic notification by e-mail or SMS providing information about delays, timetables or general case progress. There is no such facility in Ireland and this is perhaps something for the Courts Service to consider the development of going forward.⁹

Interagency coordination in the Justice and Equality sector between all relevant stakeholders of the Courts e.g. legal practitioners, the Legal Aid Board etc. ought to be developed further and prioritised by the Courts Service to promote a more integrated approach across the justice system. For example: The Bar of Ireland recommends the establishment of a user group on each circuit, with representatives of all stakeholders included, to gather feedback and information that could helpfully be fed into reviewing the approach to sittings, listing and case management. Such a group should be compelled to meet at least once in advance of the commencement of each legal term and provide a report for distribution to stakeholders setting out the approach to the management of sittings, listings and case management on each circuit. Regular communication at local level between practitioners and the Court Service has particular value as distinct issues will arise on different Circuits which may not always be apparent from any national monitoring/reviews undertaken by the Courts Service itself. Furthermore, said issues could potentially be identified and resolved more

⁶ European Commission for the Efficiency of Justice. (2016). CEPEJ Studies No. 23. Edition 2016 (2014 data). [online] Council of Europe, p.193. Available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_1%20-%20CEPEJ%20Study%2023%20-%20General%20report%20-%20EN.pdf.

⁷ Ibid. at 194

⁸ Ibid. at 90

⁹ The 2017 EU Justice Scoreboard. (2017). Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions. [online] Luxembourg: Publications Office of the European Union, p.32-34. Available at: https://ec.europa.eu/commission/news/commission-publishes-2017-eu-justice-scoreboard-2017-apr-10_en

quickly and efficiently if a user group system is in place to promote effective communication and cooperation between the Courts Service and local practitioners.

Conclusion

The Council of The Bar of Ireland is available should the Courts Service wish to engage in further consultation on any of the issues raised in this submission as it works towards the development of its three-year Strategic Plan 2017-2020.



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