



# Modernising Staffing and Court Management Practices in Ireland

TOWARDS A MORE RESPONSIVE AND RESILIENT  
JUSTICE SYSTEM





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# Foreword

The effectiveness and efficiency of the justice system are important factors for strengthening citizens' trust, ensuring the proper functioning of markets, and driving inclusive growth. The certainty of judicial decisions, the accessibility of judicial services, effective contract enforcement and secure property rights are demonstrated drivers of economic activity and foreign direct investment. Effective justice institutions are critical for protecting democratic values and strengthening the social contract between citizens and the state.

Acknowledging this, Ireland has launched an ambitious strategy to build a more inclusive, efficient and sustainable justice sector. Irish citizens recognise these efforts: Ireland is one of the OECD countries with a higher percentage of citizens trusting their government and courts, as highlighted in the recent OECD Survey on the Drivers of Trust in Public Institutions.

As part of the OECD work on accessible, effective and efficient justice institutions, this study seeks to support these efforts by analysing the judicial workforce and relevant support structures and processes currently employed by the Irish courts. In particular, the study aims to contribute to the deliberations of the Irish Judicial Planning Working Group, which was established to identify reform initiatives and evaluate staffing needs to enhance the efficient administration of justice over the next five years.

The study methodology calculated judicial full-time positions in Ireland using the number of filings and the average amount of time required to manage distinct case types (case weight), divided by a judge's working hours throughout a year. The case weights were obtained through a judicial time study and verified through Delphi vetting estimates across the Irish Court of Appeals, the High Court, the District Courts and Circuit Courts. The study also included stakeholder interviews helped identify options to enhance the efficiency of court procedures and infrastructure. It benefited from comparable data and peer reviews from OECD countries including Australia, Canada, the Netherlands, the United Kingdom, and the United States.

Ireland has the potential to shine as an international dispute-resolution hub. To do so, Ireland needs to continue investing in the court reforms that lie at the heart of its 2020 Programme for Government, while supporting stronger leadership in pursuing these reforms in a way that enhances trust and collaboration among justice sector stakeholders, as well as the broader public.

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- The Council of The Bar of Ireland
- The Association of Judges of Ireland

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# Executive summary

As part of its 2020 *Programme for Government: Our Shared Future*, the Irish Government prioritised reforming courts to make their processes more efficient, affordable and accessible. This led to the creation of a Judicial Planning Working Group to identify reform initiatives and evaluate staffing needs required to enhance the efficient administration of justice over the next five years. This Working Group was established in the context of broader justice sector reforms in Ireland that are being pursued in response to increasingly widespread calls from citizens for more accessible justice services that meet 21<sup>st</sup>-century needs. The comprehensive Review of the Administration of Civil Justice, led by the former President of the High Court, Mr. Justice Peter Kelly, and the ongoing criminal justice system review, highlight the ongoing efforts to modernise the court system in Ireland.

This study analyses the judicial workforce and relevant support structures and processes. A summary of the main findings and recommendations is presented below.

The Irish justice system is currently experiencing a shortage of judges, has limited case management capacity, and court operations are not as efficient as they could be. Furthermore, technological infrastructure needs to be upgraded to manage and collect data from court cases. To enable smooth court operations, there is scope to increase judicial positions at every court level in Ireland. The study suggests the notional need for an average minimum increase of 26.2% in full-time judgeships, although these results do not capture potential efficiency gains in required judicial time that could result from the improved, more streamlined court operations that this report also recommends. Additional temporary judicial positions are required to manage case backlogs generated by the COVID-19 pandemic, and judicial back-up teams are needed to cover for sick leave, holidays and targeted backlog reduction efforts. For this purpose, the study recommends introducing a more flexible judicial hiring options, provided that specific safeguards for judicial independence are in place. Creating teams of legal staff at the court to assist with compiling all backlogged cases, reviewing them to screen out cases that were settled but were not reported as such, compiling issues lists, and developing solid case-management plans with the parties to resolve these cases would address the imminent need to handle backlogged cases. At the same time, more support staff is needed for judges and operations at several court levels.

In addition, the study identifies other areas where reform action could be beneficial to Ireland:

- There is a need for a long-term strategy for the judiciary at each court level, framed by a broader joint strategic outlook for the Irish justice system as a whole, with a view to reaping the optimal benefits of Ireland's current reform agenda. It is important to establish effective mechanisms to sustain meaningful collaboration among the key justice stakeholders, and develop and implement change management plans that align with a common long-term vision for the future of the Irish justice system.
- Second, there is room to strengthen strategic human resources management through evidence-based planning, additional training, specialisation, and strategies to attract and retain a highly qualified and diverse pool of applicants to the judicial profession. Carrying out a review of staff support and training needs could support these efforts.

- Third, Ireland faces limitations in the collection and use of justice data. This may hinge on the fact that data is not currently collected for the purpose of case and court management, which limits the capacity of the Department of Justice and the judiciary to access the data needed to manage resource allocation effectively and assess case trends and their impact on judicial operations. The report highlights options to scale up the collection of data to underpin management decisions.
- Fourth, while significant efforts have been undertaken by the Irish judiciary to streamline court processes, the study highlights inefficiencies across all court levels in relation to case management and identifies further scope for procedural simplification. Adopting advanced case-management techniques supported by an automated system could address this issue. Case- and court-specific timelines could be developed in the short term through collaboration between the judiciary and Courts Service, enabling the development of broader court performance measures, which this study recommends be adopted. Courts Service's current Modernisation Plan envisions the creation of an advanced automated case-management system reflecting new timelines and performance measures, which would benefit from being developed in close collaboration with the judiciary. The report also underscores opportunities to introduce differentiated techniques based on case complexity and recommends consideration of the option to create case management teams to monitor case progression. The development of a sound automated system with the required features may take several years, and it is therefore urgent to commence the process. This effort should be placed in the broader context of an upgrade to existing digital tools and connectivity, building on the lessons learned in Ireland from the measures adopted during COVID-19 pandemic to mainstream the use of technology into procedural steps and trials.
- Finally, the study emphasises options to enhance accessibility of justice for individual users and lay litigants by mapping their justice needs and identifying pathways to ensure that these needs are met, along with the need to adopt easy-to-use tools, information, partnerships with legal counselling services and *ad hoc* training for judges and court staff to facilitate their engagement with the justice system and the courts.

Looking ahead, holistic reforms to justice system processes and workload distribution in these areas could have a significant contribute to building a sound judiciary and improving overall court performance, taking advantage of the possibilities offered by digital tools, data collection and good practices from OECD countries to create a more efficient justice system that safeguards access by all to justice in Ireland. Indeed, the justice modernisation efforts underway in Ireland could be underpinned by a clearer understanding of the human resources needed and the factors that drive efficient court performance.

# 1 Assessment and Recommendations

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This Chapter outlines the main take aways of the OECD assessment and summarises key policy recommendations aimed at supporting ongoing efforts in the country to ensure effective planning of the judicial workforce and to strengthen the overall performance of courts. OECD recommendations have been designed to support Ireland's justice actors in leveraging the experience of other OECD countries and relevant international standards to achieve their strategic objectives.

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This study primarily aims to analyse the state of judicial staffing in Ireland, assessing whether the judiciary is adequate in size and composition in light of current case and non-case workloads. It also evaluates trends and needs within the context of good practices of OECD countries like Australia, Canada, the Netherlands, the UK, and the US, addressing recommendations that could support Ireland's ongoing efforts to strengthen co-ordination among justice stakeholders and modernise court, human resources, data collection and case management practices, including for lay litigants. In so doing the study also highlights international judicial performance standards in an effort to enable Ireland to benchmark its strategic objectives against these standards. This chapter summarises key policy recommendations<sup>1</sup> to support the ongoing efforts in the country to ensure effective planning of the judicial workforce and to strengthen the overall performance of courts.

## **1.1. Workforce needs**

### **1.1.1. Judicial workforce size and composition**

The primary aim of the study was to assess the current judicial positions needed in view of existing annual workload and current procedures, state of case-management techniques and technologies. Overall, the results of the assessment show that, currently, more positions are needed at every court level. The study identifies a need for an average minimum increase required of around 26.2%. This need may be exacerbated by the impact of upcoming legislative changes, such as the creation of new Family law courts, shifts in how cases will be handled at different court levels, and increased training requirements resulting from the EU Training Strategy 2021-2024.

At the same time, the judicial needs may also be affected by the ongoing reforms and implementation of some of the recommendations contained in this report aiming to support more efficient court operations. In this context and since the impact of more streamlined and better automated processes are difficult to assess at this time, a phased approach to increasing the permanent positions could be meaningful. The exact phasing process and numbers of positions to aim at initially and in the medium term will need to be established in consultation with the government and the judiciary. The study recommends that further position adjustments be decided using updated Delphi estimates and new case data from Courts Service after some changes are made to current processes.

The study has also underscored that temporary judicial resources (e.g., judicial back-up teams, part-time and temporary judges, and employment of retired judges up to a certain age [phased retirement]) in addition to the permanent positions could be useful to address case backlogs generated by the COVID-19 pandemic, as well as to cover for sick judges and emergencies, while putting in place the necessary safeguards for judicial independence. These options can also prove an effective long-term solution to address temporary judicial resource shortages and avoid high backlog rates in the future.

Importantly, while it was not the focus of the report, the weighted workload study results and stakeholder interviews point to the need for a wider organisational review, which could map in detail the flow of different case types at a particular court level and in different geographic locations to identify efficiency options. This organisational review could include each processing step, action and decision from first registration through to final decision at every stage of a case and by all those involved, including litigants and their lawyers. It could take into account that the role played by courts is central to the Criminal Justice System and therefore has significant impacts on prison, probation and other related entities. When any reforms are made to increase the capacity of the Courts, this may have implications for other agencies in terms of capacity, collaboration mechanisms with the courts, digital tools, etc.



### 1.1.2. Support staff

Availability of administrative, research and other staff support greatly impacts how efficiently judges can work and how much time they spend on individual cases. Space for enhancing judicial and court efficiency by making shifts to the existing administrative, research and quasi-judicial functions on the one hand and by upscaling qualified support staff on the other has been identified across court levels. The report suggests to consider a support needs assessment to identify opportunities for adjusting support staff job descriptions, hiring and reporting requirements to better reflect the changing needs of judges serving on different court levels, including lawyers to support judgement writing, secretarial staff, sufficient numbers of qualified registrars, and staff to support enhanced case management approaches and related data tracking. As electronic processes and IT solutions expand, additional support to effectively use those will also grow in importance, which may require a revision of quasi-judicial staff numbers, especially at some court levels where this figure can play an important role in interlocutory hearing phases.

### 1.1.3. Key recommendations

- Given current workloads and court procedures, **consider increasing the number of permanent judges at all court levels**, in line with the results of the study.
- **Consider conducting a detailed process and organisational assessment** to understand fully the need for streamlining operations.
- **Explore the possibility to engage temporary, part-time and retired judges** to better reflect the current needs of the judicial work environment and provide flexibility to address temporary resource needs, while ensuring appropriate safeguards to protect judicial independence and impartiality.
- **Advanced succession planning and early onboarding:** These tools may smooth staff transition between new and retiring judges, to benefit from the experience of retiring judges to train newcomers and avoid gaps in case management. These practices could also benefit from conducting future needs studies to plan effective hiring in advance and avoid the creation of bottlenecks and further case backlog.
- **Support needs assessment.** Review the judicial support needs to ensure that judges across each court level have the staff support required, including quasi-judicial positions as well as the Judicial Assistant and Court Registrar job requirements. This should be undertaken in collaboration with the Courts Service to collect the relevant information, assess the results and develop support staff options. Consider adapting job description and hiring practices of Judicial Assistants and quasi-judicial staff following the results of the evaluation, as well as reviewing the possibility to introduce a function of staff attorney to support judges in screening of cases and conducting in-depth legal research. To test new job descriptions and support structures, pilots could be conducted such as a central support staff team and testing of online staff support options.

## 1.2. Strategy and coordination

The study finds that it would be important for courts to outline a vision for the future from the perspective of and for the judiciary. A strategic outlook to frame decision-making in these areas is necessary for the entire court system as well as for each court level for the next few years, also to align with the Court Modernisation strategy of the Courts Service.

In addition, overall effectiveness of the justice system and the ability to implement reforms depend on the performance of and coordination across the entire justice chain. Relevant justice actors, including the Department of Justice, the judiciary and Courts Service all play a crucial part in the successful modernisation of the courts. This calls both for establishing effective cooperation mechanisms and

ensuring clarity in the distribution of roles and responsibilities, also with a view to ensuring seamless case management, positive user experience and strong justice performance.

To develop useful case-management approaches and the related IT systems, the judiciary would need to play an important role in their design. The study highlights that closer cooperation is needed among the judiciary and Courts Service to develop data-collection strategies to track and assess judgment writing timelines, time standard setting, etc. It also identifies the possibility to consider establishing a specialised committee or group within the Courts Service's internal structure, or on the Courts Service Board, to focus on case management and overall court performance to develop overall policies and drive changes in this area. The study signals limitations in the Courts Service's internal capacities, particularly in relation to IT and automation projects. In this regard, the study finds scope to establish new partnerships, including outsourcing projects that require specific technical expertise.

Other actions require fundamental leadership from the Department of Justice, such as the consolidation and redesign of forms required by litigants. The Parliament taking whole-of-state and whole-of-justice-chain approaches in legislative reforms could advance the broader justice modernisation agenda and the overall implementation of the recommendations.

### 1.2.1. Key recommendations

#### *Short term*

- **Clarity of responsibilities, leadership, co-ordination mechanisms and internal capacities:** Enhance clarity in the distribution of responsibilities and strengthen collaboration among the judiciary, Courts Service and other relevant institutions regarding case-management policies and data collection. Consider establishing innovative co-ordination arrangements across institutions and external partnerships to boost Courts Services' internal capacities.
- **Establishment of a specialised group to focus on case management and overall court performance:** Consider the establishment of a specialised committee or group within the Courts Service's internal structure, or on the Courts Service Board, to develop overall policies and drive changes in this area.

#### *Medium and longer term*

- **Strategic outlook:** Develop a 10-year strategy for the judiciary that aligns with the current strategy for Courts Service to transform the courts into the modern institution and articulates a broader strategic outlook and framework for the full justice chain, including the criminal justice system.
- **Allocation of resources:** Strengthen the match between investment in court operations and the courts where most users are located, through possible re-balancing of the allocation of resources to venues where they are most needed, while ensuring accessible justice throughout the country.
- **Cross-jurisdictional collaboration:** Strengthen coordination mechanisms across relevant courts where there are separate criminal, family law and, where applicable, child-protection hearings arising from the same incident, to ensure seamless procedures for litigants, avoid victim re-traumatization (where applicable) and foster efficiency gains.
- **Provincial sittings and venue coverage:** Identify potential alternatives to support provincial sittings and assess provincial venue coverage, including by leveraging digital options.

## 1.3. Human resource management

The sound management of human resources of the judiciary is increasingly viewed as fundamental for the efficiency of the justice system overall. In addition to evidence-based planning of judicial and support staff resources in the judiciary, this study provides a range of options in human resource management that can support overall court performance.

### 1.3.1. Adopting a strategic approach to human resources

The report identifies room for Ireland to develop a comprehensive and strategic approach to human resource management for the judiciary, in particular one that is based on evidence. It highlights that by assessing judicial needs, judicial workload, workplace and applicant trends, as well as identifying avenues to continue strengthening judicial skills, Ireland may attract needed talent to the judicial profession and develop long-term position planning capacities. The study also finds room to further clarify the roles and responsibilities for human resource management processes related to judges, which is important to implement a coherent and coordinated human resources strategy. With the present study, Ireland has already taken important steps in this journey, with a first set of workload data available. Eventually, a permanent mechanism could be established to track and anticipate judicial staffing needs systematically in light of evolving caseloads, legislation and socioeconomic context.

### 1.3.2. Judicial selection and performance management

In Ireland, judicial selection and hiring will become the responsibility of the Judicial Appointments Commission if its creation is approved through the ongoing legislative reform by the *Oireachtas*. Handling of complaints against judges and judicial training are now the responsibility of the Judicial Council created in 2019. In regards to hiring practices, the report highlights that while qualification criteria for the selection of candidates are stated in a general manner by law, they are currently not differentiated by judicial positions and therefore remain generic. Promising improvements are foreseen following the establishment of the new Judicial Appointments Commission if it is approved, including the publication of statements regarding the necessary experience, skills, etc. The selection process was reported to be time-consuming and leads to some delays when new positions were being filled. In addition, the study identifies scope to promote further religious, ethnic, and professional background diversity in the judiciary through outreach programs.

### 1.3.3. Judicial training

Regarding judicial training in Ireland, until recently it has been limited to basic on-boarding training and an average two days of continued judicial education per year for sitting judges until recently. Some gaps have been identified in the existing training scheme, which could benefit from additional on-boarding and continued learning opportunities. They include training on judicial soft skills, specific training on IT use and case management for all court staff, as well as further training on the alternatives to custody options in criminal cases. In addition, future needs may include the new requirements on EU law training, which implies that the provision of judicial training in Ireland would need to increase (along with training for other justice sector professionals and staff). In order to make these additional trainings possible, providing staff with enough time and back-up personnel to attend training courses or programmes would be important.

In this context, Ireland could benefit from an in-depth detailed study to ascertain the training needs and opportunities of its judiciary and support staff. The resulting initiatives could be coordinated by the Judicial Studies Director in the Judicial Council.

### 1.3.4. Key recommendations

#### *Short term*

- **Data and analysis for judicial resources needs:** Building on the OECD workload study, efforts should continue to develop a set of base data that can be fine-tuned to inform the impact of new legislation, new case management practices, changes in caseload trends, etc. on future judicial resource needs, as well as to inform the development of an effective automated case management system and monitor justice sector reforms.
- **Clarity of HRM responsibilities:** Enhance clarity of responsibilities for the full set of human resource management processes related to judges to ensure that current human resource support for judges is effective across all courts, and that planning strategically reflects future as well as current needs.
- **Standardising and modernising judicial HRM processes,** including selection, hiring and judicial performance management through developing standardised guidance, relevant data, reviewing processes and ensuring sufficient training to those involved.
- **Enhance training and specialisation opportunities for judges and support staff.** The study identified a great need and desire for continued training across all levels, especially at the lower courts.

#### *Medium and longer term*

- **Ensure a strong leadership for human resources planning and management in the judiciary.** The Judicial Council could take on this role; if so it could benefit from adequate and qualified staffing to ensure it can fulfil its human resources functions.
- **Comprehensive HRM strategy:** Develop an evidence-based, strategic and holistic approach to human resource management for the judiciary, including on attracting, retaining, and developing best talent.
- **Judicial workforce planning:** Devise a sustainable approach that takes into account workload shifts in staffing practices throughout the years, such as periodic obligations for the judiciary to report on the judicial resources needs, and builds capacity in the Courts Service and judiciary to model workloads and report regularly on staff needs.
- **Consider undertaking a training needs assessment to define priority training needs,** reflect on the needed skills and competencies for judges and all court staff and how training can become a lever for increased efficiency and effectiveness of the justice system as a whole.
- **Consider collecting relevant HRM data** (sick leaves, vacation days, retirement schedules, diversity characteristics) in a standardised manner across all courts to support decision-making and planning.
- **Ensure cooperation, coherence and exchanges between judges across the territory:** Ensure the creation of spaces for judges throughout the State, particularly in rural areas, to receive adequate training and be able to attend exchanges with colleagues, both virtually and in-person.

## 1.4. Data generation and use

Access to solid data that holistically reflects the work of the judges and the courts is essential to predicting court resources needed for the future, and in ensuring proper court and case management. The study identifies a series of challenges in the nature of data currently collected and analysed in Ireland, and therefore an in-depth review of practices in this area is recommended. In this context, it could be helpful to

improve Courts Service's capacities and resources to generate the relevant data and to drive an evidence-based transformation of the justice system.

In addition, court performance data should be developed after timelines and other performance goals are established for the courts. To accomplish this, the most efficient process is often for judges and Courts Service to come together and define timelines, backlog and other case and court performance measures using similar experiences elsewhere.

There also appears to be scope to develop accompanying assessments when legislative –and other– reforms are implemented in the courts, including post-implementation assessments. Monitoring and evaluating the impact of initiatives to capture lessons learned, to inform further change and reform plans, be they of legislative or organisational nature, can provide valuable guidance for future initiatives.

### 1.4.1. Key Recommendations

#### *Short term*

- **Data collection:** Ensure an increase in regular and systematic data collection on a wide range of issues affecting court performance, such as the average hearing time, also assist in case management, resource planning, performance measurement and monitoring and evaluation of justice sector reforms. In particular, this would require determining necessary case process data to begin the development of time standards, backlog definitions and eventually broader performance measures through a collaborative effort among the judiciary, the Department of Justice and the Courts Service. Consider further clarification of the roles and responsibilities of the judges and Courts Service Staff regarding keeping track of data, developing analytical reports and developing resulting recommendations.
- **Data tracking for case management and court rules:** Put in place improved data tracking processes (e.g., for case processing data, age of pending caseloads, number of adjournments) to inform the development of solid case management and court rules (and adjusted legislation) to control adjournments and require early discovery, including via streamlined cooperation efforts with the Courts Service.
- **Develop a definition of backlog** for each case type and court level, through a collaborative effort including the judiciary and Courts Service, to enable its measurement.

#### *Medium and longer term*

- **Courts Service:** given the pivotal role to be played by Courts Service in the development of sound data collection and use policies for effective case and court management, consider assessing whether there are any adjustments necessary to its role, structure, human, technical and financial resources.

## 1.5. Case management and court administration

### 1.5.1. Case management

Case management is one of the focal points of this study. Courts in Ireland already manage case lists using case management techniques at different levels, and the pandemic has spurred additional efficiency options. This opens up opportunities to evaluate, strengthen and expand these approaches, possibly by introducing differentiated techniques based on case complexity and the use of court-level management teams to monitor case progression. In general, the study shows significant room for courts to improve their efficiency by adopting international case management standards and designing IT systems to support

individual judges in monitoring their workload. Enhanced case management would also allow a targeted approach to tackle backlog of cases across court levels, measure adjournments and settlements and screen appeals early to ensure they comply with legal requirements.

The judicial time-study also highlighted the potential backlog that currently affects the Irish judiciary, aggravated by the COVID-19 pandemic. Limited data and the lack of a backlog definition makes it challenging to assess the extent of the backlog. To this end, the report suggests several strategies to tackle it in the immediate and longer term. After a definition is established for each case-type, specific teams tasked with this purpose could assist in compiling backlogged cases and developing solid case management plans with the parties to resolve these cases, as well as exploring opportunities for faster processing, such as the use of written or digital means to conduct procedural steps.

To introduce improved case management across all courts, case and court specific timelines can be developed in the short-term. Key possible techniques to pilot include fast track for small claims, triage by case type and complexity, effective limits to adjournments and multiplicity of interlocutory hearings. For this, adequate data will be needed, and any automated system will need to be able to track these data accordingly. Well trained staff to support both the development and especially effective implementation of new case management approaches, the related data collection and analysis would need to be available. An enhanced and comprehensive file management system would also help standardisation and ensure that automation is possible once the technology is developed.

### ***1.5.2. Digitalisation of the justice system and lessons from the COVID-19 pandemic***

Ireland has made important strides towards digital transformation of the justice system, which were also accelerated by the COVID-19 pandemic. In 2020, hundreds of virtual trials were held, and as a result efforts are now underway in some court levels to develop and standardise guidelines for e-document submissions and make digital judgment banks available. While these new practices require appropriate evaluation to minimise risks to the population, they have proven to be effective avenues to explore for the future.

Yet paper-based work remains the norm in many cases and that upgrades are necessary throughout IT equipment and connectivity in the Irish judiciary, with challenges identified to make inputs to case records, scheduling of case events, sending notifications, controlling and storing final records, expenditure accounting, budgeting, tracking, and accounting for filing fees and revenue and human resource and talent management functions. The Courts Service's current Modernisation Plan envisions the creation of an advanced automated case management system, which could have a positive impact in improving efficiency and the availability of data for a range of purposes. Achieving this goal would require intensive involvement from the judiciary and should be developed with new timelines and other performance measures in mind. The design could benefit from adopting a people-centred lens that ensure the system is user-friendly for staff, counsels and parties alike. It could also consider inter-operability, or even integration with, existing alternative dispute resolution mechanisms, to capture processes both online (online dispute resolution (ODR)) and in-person. The development of a sound system that provides the court with a solid platform that is nevertheless flexible enough to make the constant adjustments needed as legislation, rules, policies and user needs change will take time. Therefore, it should be understood as a long-term undertaking that may require several years to develop.

Importantly, any IT-supported solution would need to be accessible and easy to handle by all who access the courts. Limitations in bandwidth, connectivity and available technology may make it difficult for some individuals or organisations to participate in virtual court processes, creating a vulnerable group due to the digital divide. In addition, the impacts of virtual trials on litigants, judges and support staff alike must be taken into account in strategic planning. A balance must be struck between ensuring that technology's benefit to people is maximised and protecting fundamental human rights and the most vulnerable groups. In this context, a multichannel approach to justice that offers different possibilities to cater to the needs of each group would be preferable.

In this context, it could be useful to build on the lessons from the COVID-19 pandemic to identify long-term solutions that enhance efficiency of the justice system. Ireland could consider systematising learnings through the creation of a “Lessons Learnt Committee” that includes all relevant stakeholders and judges from each court level. The aim could be to assess the impact of new processes and IT solutions introduced on users, especially vulnerable groups, and other justice sector officials, and on time requirements for judges and court staff. In view of the lessons learned, Ireland could reflect on the needed adjustments to court operations and infrastructure, support for court users, proposals for legislative adjustments, and staffing and budget requests. Building on these efforts, the report highlights that there is also scope to work on the system’s preparedness for emergencies.

### **1.5.3. Streamlining legal procedures**

Courts efforts to streamline case flow may require some changes in the applicable legislation to be effective. At the legislative and court rules level, Ireland could benefit from adopting measures to streamline cases and enhance court control. In line with what was already suggested by the Kelly Report, adopting early discovery measures, adjusting adjournment rules, timelines and establishing submissions standards and e-document rules may be beneficial. These should be adapted to the needs of each court level, as highlighted throughout the study. In advance of the legislative changes resulting from the Kelly Report, the report finds that judges may consider developing early court rule changes and directions, especially those that could be introduced before laws are changed, to streamline case flow.

Scope to simplify existing procedures through greater specialisation, the creation of ODR and better small claims processing options for certain case types, for example licensing and simple road traffic cases at the District Court level, has also been identified.

### **1.5.4. Key recommendations**

#### *Short-term*

- **Consider piloting targeted case management efforts by court level:** Consider pilot-testing specific and differentiated case management techniques led by case management teams (possibly led by a judge), following a review of priority areas and implementation requirements, including adjustments to staffing and training.
- **Procedural simplification and automation:** Maintain existing simplification and streamlining of procedures derived from the COVID-19 pandemic with a view to reducing administrative burdens on people and businesses. Identify options for streamlining and requirements for the automation of case processes, including e-forms, requirements and standards for full e-filing, as well as more detailed data tracking of case processes and timelines, in collaboration with the Courts Service. Consider the development of early court rule changes and directions in advance of legislative changes resulting from the Kelly Report as well as standardising operations by the County Registrar and Courts Service staff across different locations.
- **Reducing backlogs:** Develop an initial strategy for involving back-up judges and/or considering the creation of backlog teams, including legal and Courts Service staff, with a view to implementing backlog reduction strategies.
- **Consider upgrading IT systems and use of digital tools:**
  - **Consider upgrading and connecting various IT systems and applications** to enable better decision making and to support the court to manage its resources according to case volume and demands, as well as to increase provincial coverage.
  - **Enhancing use of e-documents:** Continue efforts to develop and standardise the current guidelines for e-document submissions.

- **Multi-channel service delivery:** In view of increasing adoption and adaptation of technologies by the justice system, establish a multichannel approach to legal and justice service delivery to ensure vulnerable groups are reached, while placing emphasis on ensuring fair access to technology so that no groups are disadvantaged when accessing justice.
- **Monitor impact of virtual hearings on judicial workloads:** Consider deepening the understanding of the impact of virtual hearings on judicial time requirements, including through Delphi estimates of the requirements for virtual versus in-person hearings
- **Online judgement banks:** Strengthen the availability of internal online judgement banks/repositories to support judgement writing.
- **Case file management policies:** In relation to the Courts Service, assess current case file management policies and ensure clearly established procedures, standards and regular audit processes are in place for the creation, maintenance, disposal and retention of files, supported by related staff training.

### *Medium and longer term*

- **Goals for court and case management:** Set goals for court and case management overall and at each court level, and develop advanced case management options in collaboration with the Courts Service and other stakeholders. In collaboration with the Director of Judicial Studies of the Judicial Council, ensure advanced case management training for judges and any case management teams is provided.
- **Court timelines and performance measures:** Building on the experience with judgement delivery timelines in the Court of Appeal, consider the CEPEJ recommended minimum timelines to implement related measures with the needed staff, underpinned by data support from the Courts Service. Eventually, consider adopting broader court performance measures in Ireland, benefiting from experiences in other countries, such as the US National Center for State Courts' Model regarding the calculation of time standards.
- **Caseflow in the Criminal Justice System:** Consider matching annual reports with an IT system that enables judges to track the pending inventory of their cases and a clear idea of caseflow in the Criminal Justice System.
- **Court specialisation:** Consider selected additional court specialisation options, such as a District Traffic Court in Dublin and adjusted small claims operations, as well as greater use of online dispute resolution (ODR).
- **Legal framework:** Consider adjustments to the legislative framework to support efforts to better streamline processes and forms to enable access to a judge to all litigants irrespective of their financial capacity or legal literacy.
- **Invest in the development of an automated case management system,** in line with the Courts Service's Modernisation Plan. Consider adopting a people-centred lens to ensure its design is user-friendly, accessible, and integrated across court levels and alternative dispute resolution methods.
- **Stakeholder engagement in automation processes:** Ensure the involvement of all relevant stakeholders, including the judiciary, to provide needed guidance for the planned phased automation of all processes to secure a system that facilitates the tracking of individual cases effectively, and supports regular data-driven processes, staffing and user needs assessments in the long run.
- **Monitor the impact of digitalisation across the system and its users:** Consider ensuring that data collection and case management systems being developed can effectively track the use of virtual/audio hearings or online dispute resolution (ODR) solutions created by case type and court level. At the same time, measure and evaluate the impact of digital tools on court users, especially



vulnerable groups, those without access to digital connectivity or skills, and sensitive user categories such as victims, witnesses, minors and the accused.

- **Lessons learned from COVID-19:** Continue efforts to leverage the modernisation measures adopted during the COVID-19 pandemic, including by systematising the lessons learnt and analysing the impact of new measures to adopt them as permanent if appropriate.
- **Emergency preparedness:** To ensure courts are prepared for future pandemic or other crisis situations, consider updating the disaster management and response plan based on current experiences, along with mock implementation test and related training programmes.

## 1.6. Accessibility and justice pathways

The study highlighted that the number of lay litigants is increasing across court levels. Lay litigants need detailed information about their legal rights, how courts work, filing documents and handling their cases, which absorb many court resources. While some systems are in place to support lay litigants in Ireland, there is scope to increase accessibility of information further, including through guides to be made available covering proceedings in all court jurisdictions utilising audio-visual as well as textual formats, the creation of a central on-line information hub and drop-in locations to request advice. Efforts to this effect are being targeted to be completed by 2024. The Access to Justice Civil Reform User Group can be a useful avenue for engagement with lay users in this process.

Similarities exist between the needs of lay litigants and the needs of all citizens who wish to better understand their rights, obligations and possibilities to achieve a legal remedy, including crime victims and witnesses. Similar solutions to provide access to accurate and easy to understand information about court processes and appropriate tools (e.g., self-help options) and ensure appropriate courtroom environment for proceedings could be beneficial for access to justice in Ireland. To deepen this analysis, the study recommends reviewing citizen justice needs and pathways to identify the avenues by which they may access legal information, assistance and counselling, including legal aid, and how they understand existing mechanisms to resolve their disputes, including the court system and ADR. This would help to develop meaningful options to address gaps in this area in collaboration with lawyers and other public services, as relevant.

### 1.6.1. Key recommendations

- **Legal literacy support for lay litigants and the general public:** Continue to increase the availability and accessibility of information for lay litigants in several formats across all court jurisdictions, especially regarding help in deciding to seek an appeal.
- **Consider simplification options:** Building on existing structures and by engaging through the Access to Justice Civil Reform User Group, consider providing more effective support for lay litigants, including special filing and other procedural options.
- **Ad hoc training:** Consider providing judges and judicial support staff with training on appropriate approaches to handle cases with lay litigants effectively in a way that safeguards their rights and promotes the efficient flow of the procedures.
- **Consider reviewing citizen's justice needs and pathways** (possibly through conducting a legal need survey), including their journey to access legal information and assistance, to access lawyers, including legal aid, and to understand the existing legal mechanisms at their disposal such as the courts and ADR mechanisms, and develop options to address gaps in this area.

Building on the country's positive steps, these recommendations aim to support Ireland on the journey of improving court performance with a view to fostering citizen and business trust in the justice system while driving legal certainty and economic growth. They are tailored to Ireland's strengths and its strategic

priorities for reform, using international benchmarking practices, to help the country improve outcomes for citizens and business. Moving ahead, they can help ensure that the modernisation efforts already underway in Ireland are underpinned by a clear understanding of what drives efficient workload distribution, courts' performance and the well-being of judicial and support workforce. The OECD stands ready to continue supporting Ireland in strengthening the resilience and responsiveness of its justice system.

<sup>1</sup> This chapter summarises main policy recommendations from the study. More detailed recommendations and specific recommendations for courts at each level are provided in relevant chapters.

# **2** State of the Irish courts and judiciary in Ireland

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This Chapter provides an overview of the state of the Irish courts and judiciary as well as its legislative and organisational reform environment, diving deeper into the Irish justice systems' case and workload trends and COVID-19 pandemic impact. Further, this Chapter provides a description of the study's methodology and limitations, as well as includes examples of relevant workload studies in OECD countries. It also outlines the structure of the Report.

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## 2.1. Introduction

Courts and other justice system agencies around the world continue to strive for increasing efficiency and effectiveness within and across their organisations to ensure access to justice for all. A well-functioning justice system is indispensable to democratic societies and to the proper functioning of markets. Judicial efficiency is closely associated with accessibility to judicial services and the certainty of judicial decisions, raising people's trust (OECD, 2018<sup>[1]</sup>). The judicial system is complex and its effectiveness comprises many facets, including efficiency, fairness, and the quality of decisions. Trial length is the indicator of judicial efficiency that tends to be most closely related to economic activity since it ensures contract enforcement, which is the basis of market transactions (Palumbo and al., 2013<sup>[2]</sup>). There are several other indicators that link efficient justice systems with better financial and economic outcomes. Secure property rights are associated with greater use of external finance; the reliability of the legal system for dispute resolution is found to increase firms' use of external financing to fund growth; and creditor rights are found to affect the terms of bank loans, such as bank lending spreads as well as loan maturities (Gin and Amaral-García, 2019<sup>[3]</sup>). The judicial system is also found to be significantly important for Foreign Direct Investment inflows.

With all these factors in sight, this report aims to identify sound avenues to enhance capacities and efficiency of Irish courts through a variety of staffing, case, court and data management tools.

Tools to estimate staffing needs are important to help courts update their judicial maps, manage workloads and improve their responsiveness to user needs and geographical locations. When caseloads rise and budgets are limited, courts usually need to provide justifications to validate their requests for increases in judicial or other staffing positions to match increasing work demands. Hence, a clear measure of workload is central, as in any other government agency, to help determine the number of judges and staff needed to resolve court cases in a timely manner, without compromising fairness and quality judgements, and to allocate resources accordingly.

At the same time, sound court performance, including effective staffing also requires that processes and operations are designed with efficiency, cost effectiveness and user-friendliness in mind. Studies have found that while overall court performance can be affected by the total amount of resources, the efficient allocation of judicial resources is even more important (Palumbo and al., 2013<sup>[2]</sup>). Countries with similar budget allocated to courts as a percentage of GDP can have very different average trial lengths. One reason is that unnecessarily complex processes require more judicial and other staff time than streamlined and well-managed operations.

Furthermore, the demands and pressures of global economic trends, demographic changes and societal expectations for different government services have also translated into demands for public services, including justice, that are more transparent, accessible and efficient to address people's and citizens' needs. Indeed, similar to other public sectors, judiciaries across the globe have experienced increasing pressure to adjust in recent years – the COVID-19 pandemic temporarily halted some of these trends, while putting spotlights on areas lagging behind (OECD, 2021<sup>[4]</sup>). Moreover, the COVID-19 pandemic pushed the need for enhanced court IT solutions to the forefront. Similar to the trends in other OECD member and partner countries (OECD, 2021<sup>[5]</sup>), in Ireland, the need to optimise operations and ensure the justice system can respond adequately to justice needs has been exacerbated by the COVID-19 pandemic, where access to justice had to be provided despite months of lockdown, mobility limitations, social distancing requirements and increasing sick leave reports. Virtual hearing options, which had been used sporadically until the pandemic started, were swiftly put in place for the courts to begin hearing the most pressing cases. While the courts had to close for the first few months of the pandemic, except for emergency matters, the judiciary and Court Service worked to develop and implement virtual hearing processes and equipment where possible to significantly increase the ability to hold such hearings.

Nonetheless, similar to many other jurisdictions, in Ireland, pending cases and criminal trials were backlogged and the filing of many new cases was halted. This led to a surge of cases in Autumn of 2021 (Courts Service, 2021<sup>[6]</sup>).

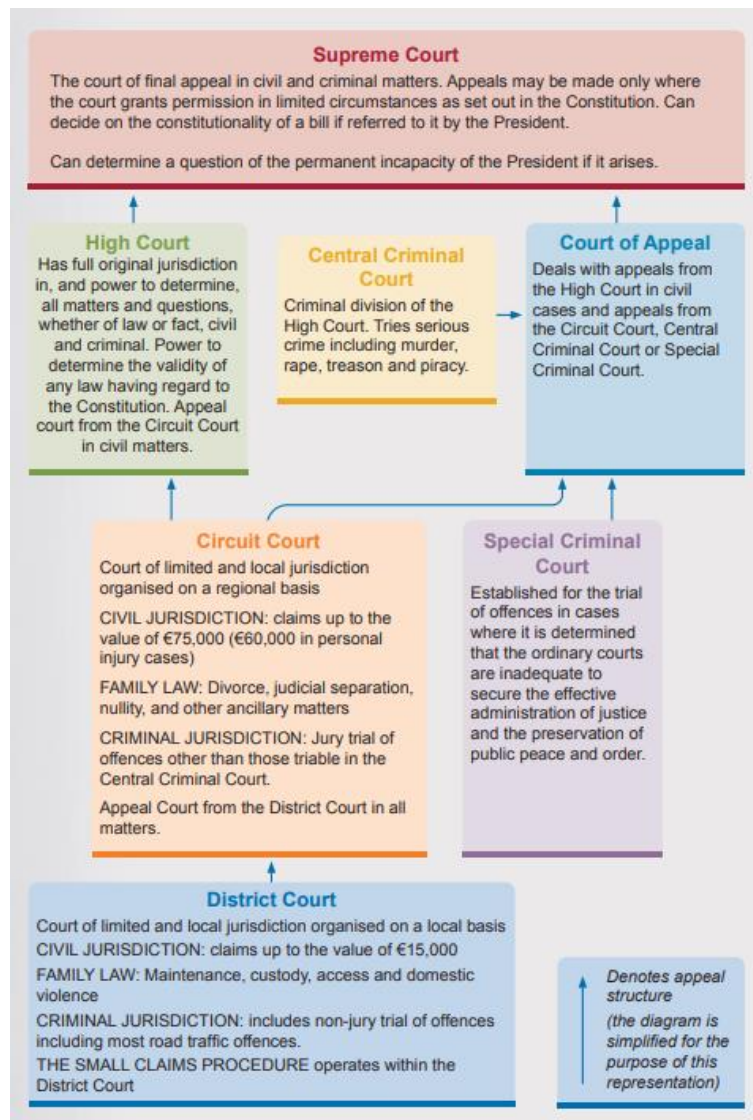
In partial response to the COVID-19 pandemic and to create short-term and long-term solutions, the newly formed Government of Ireland agreed on the *Programme for Government: Our Shared Future*. This programme outlines a broad vision and ambitious five-year agenda to better equip the government to prepare for and address the many challenges Ireland and the world face. The threat of a changing climate, increasing resource scarcity and economic challenges, more rapid societal changes, and the urgent need to prepare for an effective and just post-COVID-19 recovery shaped this agenda. Every branch of government, agency and government institution was challenged to adjust and achieve important common goals, including court reform. Recognising that “an independent, impartial, and efficient judiciary and courts system is critical to our democracy”, and recognising the need to modernise the court system to better meet the challenges of a changing world and the needs of court users, several reform areas were outlined, such as more efficient management of cases, greater timeliness and less costly proceedings. A particular focus has been placed on reforming Ireland’s family court system. To ensure that the courts are provided with the needed human resources to respond to these challenges, the Government of Ireland committed to “Establish a working group to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years” (Government of Ireland, 2020<sup>[7]</sup>).

To support this working group, the Department of Justice approached the OECD to assess the state of its judicial workforce within the context of good practices successfully applied in comparable countries, and to share future trends and needs in this sector. In particular, the OECD was invited to carry out an analysis to support Ireland in ensuring that its judiciary is appropriate in size and composition so that justice services can be provided in a timely and accessible manner, supported by an effective and efficient management and administrative structure.

## 2.2. The Irish court system

Considering Ireland's population size of about 5 million inhabitants (Eurostat, 2020<sup>[8]</sup>), its court system appears relatively complex (see Figure 2.1), with five court levels and a range of specialised courts operating in approximately 103 court venues across the country (Courts Service, 2021<sup>[9]</sup>). While this court structure is not unusual, considering that currently 175 judges<sup>1</sup> (including nine judges serving on the Supreme Court, which is not part of this study<sup>2</sup>) serve a population of which almost 64% live in urban centres, it appears that judicial resources could be easily stretched. Coverage of the 25 counties outside of Dublin, especially those further away from the few urban centres, may present a special challenge. Striking the proper balance between access to justice and efficiency can also be a particular challenge across the provinces. In this context, ensuring that judicial resources are effectively assigned across all locations requires considerable flexibility and well-informed and supported judicial management structures.

Figure 2.1. The Irish court system



Source: (Courts Service, 2021<sup>[10]</sup>), *Courts Service Annual report, 2020*, p. 5, [https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts\\_Service\\_Annual\\_Report\\_2020.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH).

Over the years, the judiciary in Ireland has shown great agility in covering resource demands across the country, especially in the two lower court levels, the Circuit Courts and District Courts, that are the primary courts serving provincial areas. Several judges on both the District Court and Circuit Court are “movable” or “unassigned” judges, i.e. designated to regularly travel to different provincial locations to handle cases, in addition to locally assigned judges. Other judges, mostly located in Dublin, also tend to be amenable to sit in different venues or cover for other judges when needed, where their workload allows.

The administration and management of the Irish courts is the responsibility of the Courts Service, an independent agency established in 1998 and governed by a board mostly consisting of judges. The Department of Justice is the “parent” ministry. The Courts Service has a broad range of responsibilities beyond supporting the work of judges (Box 2.1). In 2019, it had a staff of about 1 100 (Courts Service, 2020, p. 9<sup>[11]</sup>). This figure includes staff assigned to corporate services of the Courts Service such as HR, the financial unit, etc. which do not directly support the judiciary in court operations.

### Box 2.1. Courts Service Ireland: Mission, vision and functions

The Courts Service's mission statement is "to support the judiciary and provide excellent services to all users of the courts thereby facilitating access to justice". Its vision is "to develop a world class organisation that has as its primary objective, meeting the needs of court users", and its values are service, integrity and respect (Courts Service, 2022<sup>[12]</sup>). It publishes a three-year corporate strategic plan, as well as annual progress reports on how it is meeting these goals.

The Courts Service was created in 1998 and has four functions: 1) manage the courts; 2) support judges; 3) provide information to the public on the court system; and 4) provide users with court buildings and facilities. This includes priorities such as carrying out a ten-year modernisation programme, designing processes and systems that make courts more effective for users, and upskilling staff to support legislative compliance. To carry out its responsibilities, the Court Service works collaboratively with other partners such as the Department of Justice (Courts Service, 2021<sup>[13]</sup>).

Source: (Courts Service, 2022<sup>[12]</sup>), *About us (webpage)*, <https://www.courts.ie/about-us>; (Courts Service, 2021<sup>[13]</sup>), *Court Service Corporate Strategic Plan 2021 - 2023: Modernisation Programme for the Courts Service*, [https://www.justice.ie/en/JELR/Pages/Courts\\_Service\\_Corporate\\_Strategic\\_Plan\\_2021\\_-\\_2023](https://www.justice.ie/en/JELR/Pages/Courts_Service_Corporate_Strategic_Plan_2021_-_2023); (Courts Service, 2021<sup>[10]</sup>), *Annual Report 2020*, [https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts\\_Service\\_Annual\\_Report\\_2020.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH).

Overall, investments in the modernisation of all justice system operations, especially of the courts, have been relatively slow and uneven for years due to 12 years of austerity measures and the subsequent challenges of the COVID-19 pandemic, which has impacted the operational environment of the courts. These challenges have been continuously highlighted by both Irish sources (Government of Ireland, 2020<sup>[14]</sup>) and international organisations, including the Council of Europe and the World Bank (World Bank, 2019<sup>[15]</sup>) (OECD, 2012<sup>[16]</sup>) (CEPEJ, 2020<sup>[17]</sup>). In particular, and as will be discussed throughout the report, there is scope to enhance approaches to court management and court information technology (IT) systems, including the modernisation of case management systems and greater data collection to inform case and court management. The introduction of IT solutions appears particularly difficult in some of the provinces where Internet connectivity is limited, even though the situation is evolving and has greatly improved lately<sup>3</sup>, and court infrastructure (including buildings) are in need of significant upgrading (and repairs). In the same vein, alternative options to resolve disputes, especially those that build upon IT-supported alternatives that could provide cost-effective access to justice across the entire nation, are still to be fully developed.

### 2.3. Legislative reform environment

Over the years there have been a range of substantial justice reform plans and bills, although their implementation seems to be uneven, which might have affected the creation of efficient procedural processes across the justice system and in cross-agency operations. For example, it has been reported that most of the planned or implemented reforms related to court operations are yet to integrate full legislative impact assessments, in particular impacts on the courts, including preparation requirements, and needed changes in operations, staff and other resources. Furthermore, when legislative (and other) changes are implemented in the courts there appears scope to develop accompanying assessments, including post-implementation assessments to capture lessons learned, to inform further change and reform plans, whether legislative or organisational in nature. For instance, it might be relevant to review the recently created court level, the Court of Appeal, organisationally located between the High Court and the Supreme Court. As this court was created to address high numbers and case backlog in appeal cases

in the Supreme Court, and absorbed the jurisdiction of the former Court of Criminal Appeal, there could be scope to assess its impact, including on the lower courts, and user satisfaction in order to continue the development of an efficient and effective appeals process.

More recently, Ireland took steps to develop a more comprehensive reform approach, not unlike the UK reforms spearheaded by Lord Woolf in 1996 (Bramley and Gouge, 1999<sup>[18]</sup>) that aimed at comprehensive legal changes to create more efficient procedures and effective case management solutions. The 2019 Review of the Administration of Civil Justice, or “Kelly Report”, appears to be created with the same objectives in mind. The Government’s current legal reform agenda reflects many of the recommendations included in the 2019 report, and some related changes to the legislation have passed or are pending (Government of Ireland, 2020<sup>[19]</sup>).

The Irish Government reported that similar efforts to inform a more holistic reform agenda for criminal justice system procedures and operations are underway. The reform recommendations included in the Kelly Report and in the subsequent Civil Justice Efficiency and Reform Measures adopted as a result were based on a wide-reaching and cost-effective public consultation process. Similar efforts could accompany other reform designs to capture insights from those potentially impacted by the measures, such as judiciary, legal professionals, court users, legal aid organisations and court administration staff. It would also be beneficial to support these consultations with solid data and information about potential resource implications beyond estimates.

The COVID-19 pandemic, as in many countries, accelerated legislative developments concerning the use of digital tools in the justice system. In August 2020, the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 was approved to allow some remote hearings to occur by default, and provided judges with discretion to determine when a hearing should be conducted in person to preserve litigants’ rights and with safeguards in place to ensure no unauthorised recordings would be made. The Act formally authorised courts to accept the electronic filing of proceedings, including the electronic authentication of documents, and provides a legal basis for the video appearance of persons in custody for criminal cases.

Most of these comprehensive reform efforts are too recent or awaiting implementation to be able to assess their impact on court operations. As a result, the Irish judicial system continues to be seen as costly (CEPEJ, 2020<sup>[20]</sup>; World Bank, 2020<sup>[21]</sup>), and many cases still take a long time to be decided by the courts, a situation only compounded by the COVID-19 pandemic.

## 2.4. Organisational reform environment

In 2019, the Courts Service Board approved the *Modernisation Programme for the Courts Service* (Courts Service, 2021<sup>[13]</sup>) as a response to a 2019 *Courts Service Organisational Capability Review* that pointed to significant gaps in court management and IT solutions (Courts Service, 2019<sup>[22]</sup>). Since the establishment of the ten-year base funding in 2020, efforts have been made to put in place the structure to support and implement the programme. However, concrete modernisation planning and judicial engagement are in the early stages.

So far, the programme has a strong focus on introducing IT solutions to modernise the courts, for example a new information and communication technology (ICT) strategy and a data strategy are being developed. It also appears to primarily focus on Court Service priorities and the needs of external users (i.e. the general public and lay litigants). In line with the OECD people-centred justice modernisation agenda, this focus is important, especially as the number of lay litigants has been increasing significantly for some time – as in many other countries. At the same time, there is scope to further assess and address the needs of other users of the judicial system (such as lawyers, police, prosecutors) to ensure that the modernisation programme responds to their needs and fully serves them. A Legal Practitioners Engagement Group has been established to work with the Courts Service on the modernisation programme, which can be a



promising initiative to engage these groups. A Judicial Engagement Group has also been set up to work through how the Courts Service would engage with judges for their input into modernisation plans. Building on this channel to gather the views of judges, there is scope and an opportunity to further strengthen consultation with judges of the different court levels.

In addition, and as further studied in Chapters 4 and 6, interviews as part of this report highlighted that as part of efforts to implement the modernisation programme there is scope to deepen understanding among various stakeholders of the full range of modern court management approaches applied in well-performing courts across OECD countries, how they can impact the efficiency of court operations, and the specific techniques that can be applied to better manage court operations and case processes, etc. This could help create effective IT solutions and an urgently needed solid case management system.

## 2.5. Case and workload trends

Annual Courts Service reports indicate rising numbers of incoming cases for a range of case types for most court levels (see Table 2.1). In four years, the number of cases on hand at the end of each year has increased along with waiting times, indicating an increase in backlog across all court levels and most case types. However, solid case data to better understand these trends and their impact on court operations and judges are lacking. Published since 2000, the annual report includes data on incoming and resolved matters, as well as more specific numbers for commercial and chancery motions and other decision points. However, how these data are collected and presented does not always reflect the in-depth work of the courts. For example, the report does not include data on how cases progress throughout all levels of courts (and the system as a whole), the scope and volume of incoming work required for each case, and how individual courts are performing. While the data collected by Courts Service appear to respond to data needs from a range of agencies, they do not fully depict the work of the courts and judges. These data limitations related to many of the core court functions have been pointed out in other studies (Government of Ireland, 2020<sup>[14]</sup>). Further details are addressed in the sections below and in Chapters 4 and 6.

**Table 2.1. Ireland court business trends 2016 to 2020, by court level – Civil business overview**

Civil business overview					
		District Court	Circuit Court	High Court	Court of Appeal
2016	Incoming	133 724	53 287	43 132	594
	Resolved	105 177	37 723	35 964	591
2017	Incoming	133 823	53 795	39 659	611
	Resolved	121 075	36 612	27 398	470
2018	Incoming	137 493	49 253	39 219	499
	Resolved	106 698	39 606	30 982	475
2019	Incoming	144 485	50 723	36 701	685
	Resolved	111 158	35 590	28 117	491
2020	Incoming	93 719	38 535	29 811	733
	Resolved	67 784	17 121	12 784	476

Source: (Courts Service, 2022<sup>[23]</sup>), *Courts Service Annual Reports, 2020 – 2017*, <https://www.courts.ie/annual-report>

**Table 2.2. Ireland court business trends 2016 to 2020, by court level – Criminal business overview**

Criminal business overview						
		District Court	Circuit Court	Special Criminal Court	Central Criminal Court (High Court)	Court of Appeal
2016	Incoming	382 325	28 387	60	1 946	1 099
	Resolved	284 678	25 344	67	734	1 109
2017	Incoming	391 207	32 787	54	1 761	1 281
	Resolved	290 567	47 716	50	2 098	1 078
2018	Incoming	391 296	33 096	51	1 202	1 266
	Resolved	296 971	60 556	74	1 941	1 472
2019	Incoming	406 480	34 616	70	1 982	1 440
	Resolved	301 506	68 069	90	1 125	1 003
2020	Incoming	382 455	29 074	136	2 911	1 405
	Resolved	194 796	27 788	31	1 433	1 719

Source: (Courts Service, 2022<sup>[23]</sup>), *Courts Service Annual Reports, 2020 – 2017*, <https://www.courts.ie/annual-report>

As in other countries, the actual workload of the courts, and especially of judges, is comprised of a range of activities within and outside the courtroom, some of which may not be apparent to the public. For example, judges and relevant court staff engage with litigants/defendants and their lawyers before any hearing to ensure all needed submissions are ready, information has been exchanged as required and schedules can be adhered to. They also prepare for hearings and develop judgements. Judges also have other responsibilities outside of case work, including serving on government committees to inform court, legal and broader justice sector reforms. They are often involved in external work that supports the continued development of the legal profession and a range of public outreach activities, such as conferences and teaching.

When the Government's COVID-19 related measures struck, the Irish courts, similar to courts in many other countries, had to halt most operations for some time, and certain case types could not be heard for even longer. Not only were pending cases postponed further, but potential litigants were also delayed in filing cases. As a result, the Irish judiciary had to prepare for a significant deluge of cases to be heard at the start of the new court year in October 2021.

As such, competing claims for judicial time, court backlog and an increasing number of cases to hear present significant challenges for judicial (and other staff) resources in the short and long term.

The Courts Service annual report outlined some of the current short-term challenges the courts face (Courts Service, 2021<sup>[10]</sup>):

- High volumes of low-complexity cases and a lack of out-of-court resolutions take up precious court time.
- The requirement for physical attendance for most court cases and services slows down proceedings.
- The lack of accessible information frustrates users and delays case progress.
- The lack of active case progression management means that proceedings can drag on for extended periods.

- The complex and divergent stakeholder landscape makes delivering change across the court system a major challenge.

Court Service and external stakeholders concluded that:

- User experience is poor due to costly, complex, and often delayed services, cases and processes.
- Current ICT application architecture is not fit for purpose, putting day-to-day court business at risk, limiting access to data, and reducing governance and management effectiveness.
- Operations are dated, complex and inefficient.

At the same time, the report paid limited attention to resource requirements in the justice system, which are also core to the effective functioning of the system, including judicial and support staff resources and capacities. While the number of judges at the Court of Appeal was increased by 5 in 2019, and the number of judges at the High Court level was increased from 40 to 45 in October 2021<sup>4</sup>, the number of available judicial positions has not changed for the Circuit Courts or District Courts in more than eight years (Courts Service, 2021<sub>[10]</sub>).

## 2.6. The impact of the COVID-19 pandemic on Irish courts

When the COVID-19 pandemic struck, it caught most justice institutions around the world off-guard. Courts in Ireland, like other government and most private sector operations, were significantly slowed down in the initial weeks of the outbreak. However, Irish courts were able to adapt quickly to the pandemic. The Courts Service identified alternative hearing room options, provided suitable IT solutions for online hearings for appropriate cases and, together with judges and other essential partners, created workable remote hearing solutions. At the same time, the COVID-19 crisis prompted several innovations and lessons learnt that provide valuable insights into what is possible in Ireland. The introduction of remote hearings, electronic filings, online licence applications and process simplification show significant potential to enhance efficiency and upgrade the use of technology across the justice sector, if stabilised and maintained. The business of the courts was and continues to be heavily impacted by the crisis, which highlights the importance of learning lessons to build back a better and more accessible justice system. This report considers these lessons from Ireland and around the world throughout.

The many restrictions governments placed upon citizens to manage the health outcomes of the pandemic prompted the CEPEJ to issue a declaration on the lessons learned and challenges faced by the judiciaries across the EU, reminding member states that any measures put in place should remain in line with the standards of the Council of Europe (see Box 2.2).

### Box 2.2. CEPEJ Declaration: Lessons Learnt and Challenges Faced by the Judiciary During and After the COVID-19 Pandemic

The main lessons and issues addressed in the CEPEJ declaration focus on the following:

- Any measures put in place in courts and other justice sector agencies that reduce access to the courts to protect the health of all have to be proportionate. The public service of justice must be maintained as much as possible, including providing access to justice by alternative means.
- Greater consultation and co-ordination with all justice professionals are important to ensure a good level of access to justice. All measures have to be explained clearly to all concerned, regularly evaluated and adapted as circumstances change.
- Priority should be given to cases which concern vulnerable groups.
- Well-functioning case management systems and statistical data collection concerning the functioning of the courts are essential. Court presidents, judges and authorities responsible for court management have to monitor and manage cases. This includes triage of cases and possible prioritisation and redistribution of cases based on objective and fair criteria.
- The high numbers of adjournments of hearings and significantly increased backlogs require human resources and budgetary support to help courts put in place a plan to absorb delays. Allowing for a better and flexible allocation of resources as close to local reality as possible during and after the crisis is instrumental.
- There is significant need to not just expand IT solutions but to ensure that these protect fundamental rights and principles of a fair trial. Their impact on justice delivery should be evaluated regularly, and remedial measures taken when necessary.
- Training is fundamental for the effective management of a health crisis in the future. Judicial training should adapt to the emerging needs, including the use of IT.
- A transformation strategy for judiciaries should be developed to capitalise on the benefits of newly implemented solutions.

Source: (CEPEJ, 2020<sup>[24]</sup>), *CEPEJ Declaration: Lessons Learnt and Challenges Faced by the Judiciary During and After the COVID-19 Pandemic*, <https://rm.coe.int/declaration-en/16809ea1e2>.

The Irish courts handled considerably less business than usual in 2020. The 2020 Annual Report issued by the Courts Service in July 2021 showed that the overall numbers of new civil matters entered decreased by almost 30% compared to 2019, with a similar drop in civil matters resolved, varying by case type. New criminal matters overall decreased by only 6.5%. Looking at these numbers more closely, it becomes clear that the high numbers of simple traffic and other less complex matters drive this result. Not surprisingly, the number of criminal cases resolved dropped as jury trials were not held for several months (Courts Service, 2021<sup>[10]</sup>).

In business areas where the courts were able to hear cases remotely quickly, the impact was less stark, with even some positive trends. For example, at the High Court, incoming judicial review cases decreased by just 4%, and there was a 6.5% increase in such matters being resolved. The High Court's judicial review list had continued remotely throughout most of the pandemic. The bankruptcy list started to be heard remotely in 2021, and early indications are that applications returned to normal levels in 2021 (Courts Service, 2021<sup>[10]</sup>).

Jury trials had to be halted for a long time, and long trials could not be scheduled as the number of individuals that had to be accommodated was significantly higher than court buildings and other locations could manage under social distancing rules.

Most of the more time-consuming cases at all court levels could not be heard, and the current court lists indicate a significant backlog of cases already submitted and waiting to be heard in many case categories. It remains to be seen if all of these will continue to move to full hearings as expected. The longer waiting times may prompt some to settle or enter a plea who may not have done so before. It is also unclear if the Courts Service has taken steps to contact parties in these cases to identify if the case is likely to continue as entered.

In addition, it remains to be seen if and when the expected deluge of cases not filed due to government moratoria or held back by litigants will come to the courts. Early indications from some US courts seem to show a slower re-start, with many parties still not ready to experience a day in court. This would mirror experiences in other government and private sectors, with many people remaining cautious about entering the public domain in all its facets again.

Incoming court business in 2021 picked up again, coming close to pre-pandemic rates in some areas, but not in others, especially not more serious and complex cases. Backlogs have grown as the courts' abilities to respond were still challenged by social distancing restrictions, as well as higher sick rates and quarantine requirements among judges, registrars, litigants and others essential for hearings.

The development and implementation of these responses has had a significant impact on judicial and court staff resources, although related data have not been collected. Like in other countries, the measures put in place enabled Irish courts to continue some but not all court business, and case backlogs have especially grown in jury trials and more complex cases. The Chief Justice and Court Presidents have communicated to the government the urgent need for more positions. The government has responded with the creation of a Judicial Resource Working Group and the request for this study, as well as the approval of five additional judicial positions for the High Court. In Autumn 2021, joint submissions of all Court Presidents further detailed the significant delay situations and need for a more comprehensive approach to judicial staffing. In 2022, decisions about alternative options to bring in temporary judges and to adjust permanent judicial staffing levels more strategically across all court levels remain to be addressed.

The Courts Service provided detailed data on the volume of virtual hearings overall; however, data to track workload and backlog developments during the pandemic are limited. Court Presidents had monthly updates on the number of cases listed awaiting hearings, and could see that hearing schedules got pushed back for not just months but years in several case categories. They were also informed about increasing numbers of defendants in pre-trial detention awaiting trials. Additional detailed data and trend projections to inform and support alternative response options and emergency staff allocations were not available, but would be a useful moving forward.

At the end of January 2022, the Chief Justice of Ireland, jointly with all Court Presidents, announced the intention to resume in-person sessions in phases. While COVID-19 continued to render unprecedented numbers of judges, court staff, other justice sector officials, parties and their representatives unable to attend in person, the resumption of in-person cases was slated to be arranged as resources permitted on a location-by-location basis across the country (Courts Service, 2022<sup>[25]</sup>). In addition, the judiciary issued the request to legal practitioners to assist the court in its effort to provide more timely justice by:

- Agreeing in advance to as many issues and as much evidence as possible to shorten hearings and avoid witnesses attending court unnecessarily.
- Engaging in consultations related to upcoming proceedings before a hearing date is assigned to a case using virtual or audio solutions, or locations where social distancing could be better accommodated than at the courts.
- Aiming for at least hybrid hearings when witnesses should be heard.

The Courts Service established a team of frontline staff from across the courts to agree on and continue to review the measures to be applied in every courtroom as health restrictions were eased and increased numbers of cases were heard in person. Other premises, such as hotels and a club, were used to

accommodate some hearings. Of the court buildings outside of Dublin, 12 were deemed suitable to hold jury trials while observing social distancing rules (Keena, 2020<sup>[26]</sup>). Court Presidents communicated regularly, frequently involving Courts Service management.

## 2.7. Study methodology highlights

This study builds on a decade of OECD research concerning the benefits of relying on evidence-based approaches to establish efficient, people-centred and accessible justice systems (OECD, 2021<sup>[4]</sup>). The use of data to measure existing justice needs, map the available justice services and match them can result in an optimal allocation of resources and targeted investments that improve access to justice for the population. In this context, the weighted workload methodology relies on data to ascertain the judicial workload needs and establish judge numbers required accordingly and has been used successfully around the world to calculate judicial staffing needs. This study, conducted in Ireland from mid-June 2021 to February 2022, represents the first application of the weighted workload methodology in Irish courts (and conducted fully online due to the COVID-19 related restrictions).

In addition to the weighted workload method, the study has relied on the standard OECD research methods, including mission interviews, desk research, country peer review and policy analysis against good practice principles and international standards to provide additional recommendations concerning cross-cutting efficiency options, case, court and data management techniques and ways forward on digital transformation and simplification in the justice system. At the request of the Irish authorities, the scope of the study was largely focused on staffing needs and the functioning of the courts and the judiciary more broadly, given that the civil justice system has recently undergone a full review resulting in the Kelly report, with an extensive range of valuable recommendations concerning efficiency and accessibility, and due to the fact that an additional review of the criminal justice system is ongoing.

The methodology applied to the judicial workload study followed the well-tested approaches used in the United States (Box 2.3) and other countries (Box 2.4) and was tailored to the current situation of the Irish courts. The model generally calculates judicial time and position needs based on each court's total annual workload, and requires three core data elements:

1. Case filings, or the number of new cases of each type opened each year.
2. Case weights, which represent the average amount of judge time required to handle cases of each type over the life of the case.
3. The “judge year value”, or the average amount of time a judge has available for case-related work in one year.

To calculate case weights, the average time needed for all case action types per case must be collected and calculated from the time study data. Second, the total annual case-related workload is calculated by multiplying the annual filings for each case type by the corresponding case weight, then summing the workload across all case types. The time judges need to handle all non-case related work (e.g. other administrative tasks, co-ordination meetings, community outreach, work-related travel time) is then added. Finally, each court's workload is then divided by the judge year value to determine the total number of full-time equivalent judicial positions needed to handle the entire workload.

This study represents the first application of the weighted workload methodology in Irish courts. To adjust this model to the Irish court system, significant preparation steps had to be completed before detailed data collection instruments could be designed. It was decided that all court levels would participate except the Supreme Court, as its jurisdiction and role differ from other courts. With respect to the specialised courts, judges suggested to exclude the Drug Treatment Court as it has a unique focus, limited caseload and is adequately staffed. A Judicial Liaison Group made up of one judge from each of the participating court levels and two representatives from the Courts Service was formed to ensure that the study design,

implementation, analysis and resulting recommendations were fully reflective of court operations and their environment. The Group provided valuable support by advising the OECD team on existing case-types and their weight, distributing judicial time study sheets and training judges in their court levels to complete them, vetting the results through the Delphi method and providing comments to the core recommendations of this report (see Annex A).

### **Box 2.3. United States' experience with workload studies**

Weighted workload studies were first conducted and implemented in the United States over 30 years ago, both at the state and federal level. Today they are the standard methodology used to assess position requirements for judges and court staff, as well as for prosecutors and public defenders at the federal level and in at least 30 US states (National Center for State Courts, 2022<sup>[27]</sup>). Workload studies can now also be used to predict the resource implications of proposed legislation and internal efficiency innovations.

The methodology applied in early workload studies included mostly time sheet data collection in combination with a Delphi estimation and vetting process. These studies can only measure current workloads, however, so any established weights require adjustments over the years as legislation, especially procedural laws, change, and as internal efficiency processes, including availability of support staff and automation, are introduced. As courts do not operate in a vacuum, changes in how private attorneys, prosecutors and public defenders work also impact the ability of courts to process cases. Other external changes, such as an increase in the police force or creation of special police and prosecution units, can also significantly impact the number and complexity of criminal cases coming to the courts.

As a result, US courts learned that established case weights must be adjusted over time. Today the Federal Courts and the courts in several states, such as Florida, California and Michigan, conduct studies to update their case weights every five to ten years (Florida Courts, 2016<sup>[28]</sup>; Judicial Council of California, 2003<sup>[29]</sup>). Over time, as case weights were adjusted by US courts, the methodologies applied were further refined. Based on the courts' prior experiences conducting these studies, timesheets were adapted and overall improvements were made to the data collection processes used to inform court management decisions. This reduced the need for more extensive Delphi estimations. As automated case management systems became more sophisticated, data could be readily developed to feed into workload studies and reduce the number of elements collected via timesheets. This included gathering more information about the caseload, past and current, the age of pending cases, etc. through more detailed case categories, as well as better data processing. For courts supported by good court management systems, it is now almost standard to collect data on the number of and reasons for postponements, length of trials and other court events, as well as information about factors that impact the time needed, such as translation, multiple witnesses and defendants, self-representing litigants, and child witnesses. More recently, as more processes are supported by technology, studies have been exploring using time logs of video-supported court events other than trials, such as arrangement, bail and sentencing hearings, as well as computer log-in times to capture the length of time needed to develop court documents, including judgements.

These developments have significantly reduced the need for judges – and others – to fill out timesheets, and limited the need to fill data gaps via Delphi estimates. However, what remains important is the need for a representative and experienced group of judges to inform data collection and vet the results. It would be useful to ensure some interpretation and reflect the whole story, i.e. all the elements and details that comprise a judge's work.

Sources: (National Center for State Courts, 2022<sup>[27]</sup>), (Florida Courts, 2016<sup>[28]</sup>; Judicial Council of California, 2003<sup>[29]</sup>)

Workload assessment is a resource measurement methodology that weights cases to capture the varying complexity and corresponding need for individual attention. Its basic premise is that all cases are not equal. By weighting cases, a more accurate assessment can be made of the amount of time judges require, in and out of the courtroom, to handle their cases. In addition, workload studies collect information about the time judges are spending on non-case related work, such as administrative work, community outreach and committee assignments (National Center for State Courts, 2008<sup>[30]</sup>). Workload studies have the added advantage of providing standardised assessments of time needed among regions that vary in geography, population and caseload composition, if sufficient data are available. Box 2.4 provides further details concerning how weighted workload studies have been applied in Canada and the Netherlands.

### **Box 2.4. Workload studies in Canada and the Netherlands**

#### **Canada**

In Canada, several similar workload studies have been undertaken (National Center for State Courts, 2008<sup>[30]</sup>). Judicial workload assessment studies were also part of a comprehensive study about how criminal matters are handled in Canada's criminal courts. As a result, new workload and case indicators have been introduced to address court performance and backlogs, including the lack of judicial resources. The indicators look at the number of open cases and how this interacts with the constitutional requirement that cases be tried in a reasonable time. Completion rates are also used to develop an understanding of case processing time from first appearance to sentencing. This is compared with data on overall court work from the Integrated Criminal Court Survey Workload Time Series, which helps gain an understanding of how much work courts must do to complete the same number of decisions as the previous year (i.e. number of court appearances, active days per decision), as well as the backlog index (Statistics Canada, 2020<sup>[31]</sup>).

#### **The Netherlands**

A self-reporting approach was used in the Netherlands, where judges self-reported their work time by work sampling and time estimates. With work sampling, employees reported their activities at random time points to determine the amount of time spent on various activities. This was trialed in 2017 using a smartphone app, and an external consultancy was hired to manage the data over a week-long period per participant. Each participant was assigned to a designated research week that matched their average schedule and received training documents on how to use the app and log activities throughout that time. At the end of the trial, time was allocated to case and non-case related activities, and case types were assigned an aggregated weight to determine their proportion of FTE. This was supplemented by time estimates, where expert focus groups reviewed the work-sampling statistics and compared them with their own experiences to work backwards from the aggregated weight to identify six to eight case types. Between the two methods, an average could be used to reflect national and local court data (CEPEJ, 2020, pp. 31-33<sup>[17]</sup>).<sup>5</sup>

Over the course of several months, the OECD, in communication with all members of the workload study liaison group and other judges from all court levels, addressed a range of data availability and reliability matters, and studied existing processes and case management techniques, staffing and operational challenges to inform this study and the resulting recommendations. Further interviews with relevant stakeholders, including registrars, representatives of the DPP, the legal aid community and barristers, provided further qualitative information and insights into the staffing and operational situation at all court levels.



### **2.7.1. Methodology caveats**

The study methodology faced some limitations in the Irish context. Firstly, court schedules and the very tight timeline for completing the study meant that the time study data collection was limited to the shortest time period possible that would still reflect a representative workload. Typically, workload studies are conducted over four to six weeks; however, for this study a three-week timeframe was used. While this is feasible, it is only reliable if the study period is representative of the annual workload, which the courts confirmed it was.

A second caveat relates to the available data concerning cases filed, which is one of the key datasets required to calculate annual workload. A lack of common, clear data definitions and data collection standards across the courts, Courts Service and the DPP presented a challenge to ascertain the accurate number of cases filed. While the data gathering process typically takes four to eight weeks to complete in other studies, the lack of an integrated case management system for each court level presented significant challenges and extended this timeline to several months.

An additional challenge was related to the current approach to data collection by the Courts Service, and particularly that much of the collected data do not reflect or match the actual workload of the courts and judges. While the OECD detected some of these challenges at the outset of the study and inquired if other data collection options, such as sample case file reviews, could be possible, it was not deemed possible at the time by the Courts Service in view of their lack of resources.

Another aspect to note is that cases settled out-of-court following their filing (which is a usual practice) are not registered, and therefore are included in the total numbers of cases filed. Other countries have started collecting data regarding settlements to achieve a more accurate number of the cases filed that will need to be handled by judges. The limited detail in some datasets resulted in a greater need to rely on Delphi-style estimations, which were at the same time more challenging for judges to carry out.

Finally, the COVID-19 pandemic context may have affected the results of the study. Some residue case filings belated due to COVID-19 and handling the pandemic's impact may have taken place affecting the final result. Further details on the methodology, including its limitations, are provided in Annex A.

In order to conduct further workload studies in the future with closer accuracy, Ireland would benefit from developing more relevant and reliable data collection mechanisms to support the ongoing efforts to develop new case management applications, as outlined in Chapter 6.

## **2.8. Report structure**

This report firstly brings together the cross-cutting key recommendations for the improvement of performance of the Irish judicial staffing and court performance from throughout the report in an Assessment and Recommendations section. It then offers an introductory overview of the Irish court system, the legislative reform environment and caseload trends, including the impacts from the COVID-19 pandemic, and a section outlining the methodology (Chapter 2); it then illustrates the calculations and results of the weighted workload study for each court level (Chapter 3). Next, the report analyses ways to modernise and improve performance of procedures based on the specificities of each court level (Chapter 4), and into drivers to improve strategic management of judicial human resources (Chapter 5). Finally, it studies options to improve efficiency of court, case and data management in the Irish justice system (Chapter 6). Comparisons on the basis of the selected peer OECD countries are offered on a topical basis, throughout the report. A more extensive explanation of the study methodology, including case weights and FTE calculation data, can be found in the Annexes.

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## Notes

- <sup>1</sup> There are 174 judges in Ireland serving as of 30 August 2022.
- <sup>2</sup> The applicable law permits up to ten appointments of judges to the Supreme Court, but only nine are currently in office.
- <sup>3</sup> See Ireland's National Broadband Map that provides live updates on connectivity, accessible here: <https://www.gov.ie/en/publication/5634d-national-broadband-plan-map/#interactive-map>
- <sup>4</sup> A sixth additional judge was appointed to the High Court in February 2022.
- <sup>5</sup> Further practices in Austria, Denmark, Estonia, Germany and Romania are outlined in pp. 18-31 of the CEPEJ report.

# 3 Calculating judicial needs in Ireland

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This Chapter discusses recent developments in judicial needs estimation globally and provides information on the current number of judges and resource needs in Ireland. In addition, this Chapter highlights the results of the study of the current judicial time use and workload by court level. In light of Ireland's current judicial workload and procedures, the Chapter highlights the need for, inter alia, increasing the number of judges, providing further flexible work options, and review of the number and necessary capacities of support staff.

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### 3.1. Towards estimating judicial needs

Today, the importance of an efficient judicial system that can settle disputes, provide redress for victims of crime, and hold offenders accountable in a fair and timely manner is widely accepted as essential for a well-functioning democratic society and effective market economies. In established democracies, this is generally assumed to be implemented, and judiciaries in countries seeking accession to the European Union (EU)<sup>1</sup> or the OECD<sup>2</sup> must demonstrate satisfactory performance.

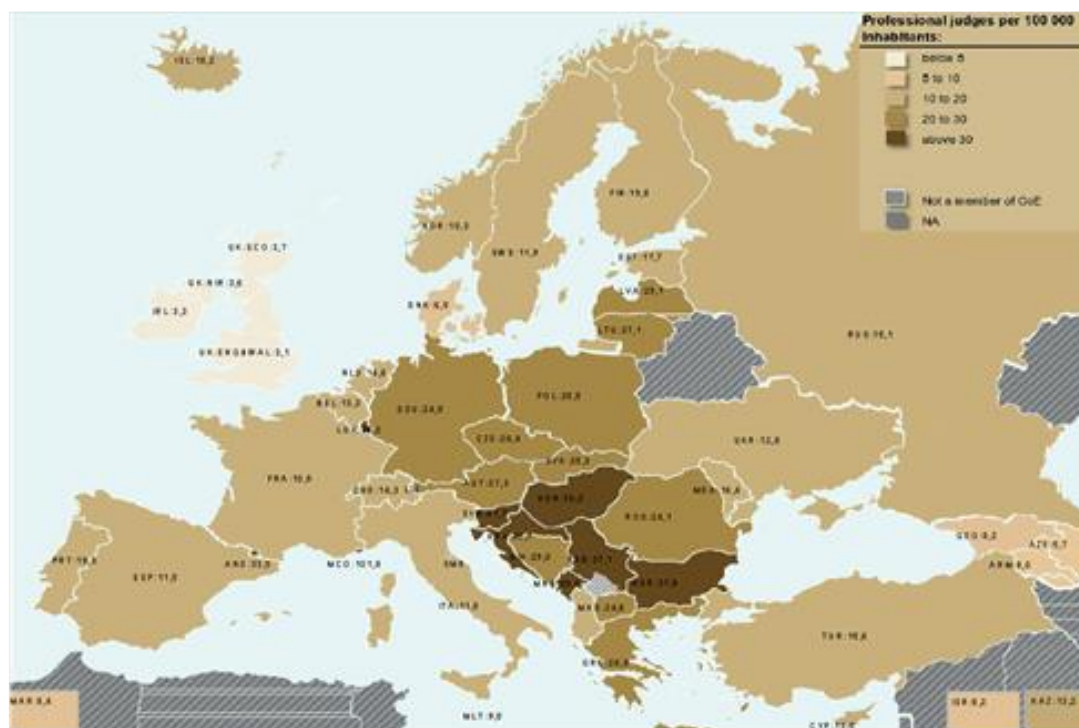
In long-established democracies such as Ireland, the need for and importance of well-functioning courts is undisputed. In many countries, efforts to improve court performance tend to focus on improving efficiency of procedures, the need for more modern information and communication technologies (ICT), innovative ways to settle disputes, shorter timeframes, quality management, more efficient court management practices, improved diversity and reduction of elitism, (perceived) biases towards under-represented groups, and sometimes the elimination of undue political interference and even corruption.

It is important to acknowledge that courts are complex, labour-intensive organisations that need to have a sufficient number of judges who are supported by an effective administrative structure with qualified personnel to address the justice needs of their population (Fabri, 2017<sup>[1]</sup>). At the same time, as other public sector institutions, justice systems ought to evolve together with the societies they integrate, adopting modern practices and integrating new possibilities to optimise cost-effectiveness and efficiency. This includes the application of innovative and simplified procedures, technologies and ideas, including avenues for out-of-court solutions, new ICT solutions, and strategies based on data analysis. Therefore, modern justice systems should strive for a balance between appropriate judicial and support staff and the application of state-of-the-art procedures that maximise efficiency and responsiveness to user needs.

A possible starting point to calculate the needed number of judges to deal with a country's courts' caseloads is to compare the number of judges across countries with similar legal systems that appear to operate in a similar way. At the same time, the difficulty of using such or any other comparative method to establish how many judges are needed in any other country was recognised as early as 1902, when efforts were made to compare the number of judges in England to other countries (Macdonnell, 1902<sup>[2]</sup>).

Importantly, since 2013 the European Commission for the Efficiency of Justice (CEPEJ) has aimed to provide information about the number of judges, calculated per 100 000 of participating countries' population. It has stressed, however, that the direct comparison of these data is not possible, stating: "The report aims to give an overview of the situation of the European judicial systems, not to rank the best judicial systems in Europe, which would be scientifically inaccurate and would not be a useful tool for the public policies of justice" (CEPEJ, 2014<sup>[3]</sup>). This caveat has been repeatedly noted in subsequent annual reports.

**Figure 3.1. Number of professional judges per 100 000 inhabitants, 2018**



Note: As indicated in the Key, the darkest brown colour indicates the presence of above 30 judges per 100 000 inhabitants, followed by 20 to 30, 10 to 20, 5 to 10 and below 5 respectively in the lightest colour. Grey colours indicate that they are not a Member of the Council of Europe or there is no information available.

Source: (CEPEJ, 2020<sup>[4]</sup>), *European judicial systems, CEPEJ Evaluation Report*, Map 3.2, Number of professional judges per 100 000 inhabitants in 2018, p.46. <https://rm.coe.int/rapport-evaluation-partie-1-francais/16809fc058>

As such, while comparative analysis across countries with similar legal systems might be instructive in terms of good practices and achieving impact, direct comparisons of judicial numbers could be difficult for a range of reasons, including differences in procedural rules, judicial culture, case management techniques, measurement methods and other elements that impact the number of judges required to address a certain workload.

### **3.1.1. The role of judges and quasi-judicial staff**

The role of a judge in court proceedings in a civil law system tends to be different from that of a judge in a common law system. Judges in common law countries generally sit alone, not as a multi-judge bench; civil cases settle more frequently; and greater prosecution discretion usually leads to high plea rates in criminal cases. As a result, and notwithstanding many other differences and reasons, the time judges need for preparing, hearing and deciding similar cases differs between civil and common law countries, and with it the number of judges needed. The 2020 CEPEJ report has continuously shown that the number of judges in the United Kingdom and Ireland are the lowest across the EU. The figures are relatively similar among UK entities and Ireland. With 3.3 judges per 100 000 population, Ireland ranks second lowest, slightly above the 3.1 judges in England and Wales; while the numbers in Scotland and Northern Ireland are 3.7 and 3.6, respectively (CEPEJ, 2020, pp. 47, Figure 3.3<sup>[5]</sup>).

In addition, in many countries, quasi-judicial staff, including lay judges, have the authority to make a range of decisions that judges make in other countries. These can be Justices of the Peace or Sheriffs in many common law countries, Rechtspfleger in Germany, Austria and Switzerland, and staff in some regulatory

agencies. In Ireland this includes Country Registrars, Court Masters and Deputy Masters. A study using 2014 data submitted by countries to CEPEJ showed that the reported numbers of non-professional judges compared to professional judges were twice as many in Scotland and England and Wales, with significant numbers of professional judges sitting in their courts on a part-time basis (CEPEJ, 2016<sup>[6]</sup>) (Fabri, 2017<sup>[11]</sup>). Similarly, while acknowledging all the differences across jurisdictions that make it difficult to compare judicial and non-judicial support staff among the different UK entities, it could still be relevant to consider the example of Scotland, which has 3.7 professional judges per 100 000 population (compared to 3.3 reported for Ireland) and 236 lay judges performing quasi-judicial functions, especially in the provincial regions (Judiciary of Scotland, 2021<sup>[7]</sup>). It is also important to consider that the 3.1 professional judges reported for England and Wales and the 3.6 reported for Northern Ireland are also supported by a high number of quasi-judicial magistrates (CEPEJ, 2020<sup>[4]</sup>).

In Ireland, with the current data it is difficult to identify the number of quasi-judicial staff and its ratio to professional judges. The data available from the Courts Service's annual reports does not provide details about the allocation per position or function of over 1 000 of its staff. At the same time, the Courts Service's June 2021 request to receive a budget increase showed 19 office holders across all jurisdictions, i.e. staff with quasi-judicial functions, such as Master and Deputy of the High Court, Examiner of the High Court, Legal Costs Adjudicator and County Registrars (Cole, 2021<sup>[8]</sup>). Yet, overall, there is scope to clarify the availability and role of quasi-judicial staff in Ireland in deciding matters brought before Ireland's courts at any court level.

### **3.1.2. Support staff**

The availability of administrative, research and other staff support greatly impacts how efficiently judges can work and how much time they spend on individual cases. While direct comparison remains challenging, the 2018 CEPEJ report showed that for the 2018 reporting year, the median ratio of professional judges to non-judge staff across EU countries was 3.4 (CEPEJ, 2018<sup>[9]</sup>). Ireland reported a 6.0 ratio, while data for England and Wales indicated a 9.0 ratio and Scotland 7.7 (later data are unavailable). At the same time, one of the reasons why this ratio could be challenging to compare is that in some countries, a significant number of support staff working within the body responsible for supporting the administration of the courts are actually supporting functions more peripheral to the work of judges. For example, they may be in charge of managing property and other registers, or have various enforcement functions. Understanding how many and what type of support staff are directly available to provide support to the judiciary is therefore more important than overall support staff ratios.

Establishing how many support staff are directly available to judges at different court levels in Ireland presents several challenges. The 2019 Annual Report showed a total staff of 1 080 assigned to the Court Service (Courts Service, 2020<sup>[10]</sup>). In 2021 this number slightly increased to 1 100 serving 174 judges (Cole, 2021<sup>[8]</sup>), which appears comparable to some UK nations, as indicated by CEPEJ (CEPEJ, 2018<sup>[9]</sup>). The Scottish Courts and Tribunal Service, for example, reported a staff of 1 736 in 2018 serving about 230 judges (Scottish Courts and Tribunals Service, 2018<sup>[11]</sup>). According to the Court Service data, a total of 76 Judicial Assistants for the Court of Appeal, High Court and Circuit Courts, 1 for the District Courts and 1 Executive Legal Officer each for the Court of Appeal and High Court were available in 2021. There were an additional 70 office staff, which include several management level staff, and mostly secretaries, criers and ushers, who also support primarily the High Court, Court of Appeal and some Circuit Courts. There is also a legal research and library division with 18 staff in Dublin that all judges can draw upon.

This number does not appear to include all court registrars, which in other countries would often be considered direct support for the judiciary. Importantly, without a registrar no hearing can be held, meaning that enough registrars must be available to effectively schedule hearings across all locations throughout the week. Data provided by the Court Service indicated that in September 2021 there were 26 court registrars supporting the Court of Appeal and High Court level, yet establishing how many court registrars



support the District and Circuit Courts has proven to be challenging, as the same registrars in the provinces tend to support District Courts and Circuit Courts. Based on interviews and review of secondary sources, it appears that the maximum number that could be assumed for court registrars supporting judicial operations is 100, which would mean that around 255 (or 22%) of Court Service staff provide direct support to the judiciary (a ratio of 1:3). As mentioned, stakeholders reported several conflicting numbers of support staff, which makes it challenging to calculate an accurate ratio.

### 3.2. Current number of judges and resource needs in Ireland

As of October 2021, there are 176 judicial positions approved across all five court levels in Ireland (see Table 3.1). The number of judges in the Court of Appeal (established in 2014) was increased from 10 to 16 in 2019. For the High Court, 5 additional positions were recently approved, increasing the total number to 45<sup>3</sup> in 2021. The number of Circuit Court judges was increased in 2013 from 38 to 46 by legislation (Section 191 Personal Insolvency Act 2012) that permitted 8 specialist judges to focus on personal insolvency. This legislation required that these specialist judges only sit on insolvency matters. Other effective mechanisms to resolve such matters outside the courts evolved at the same time, however, and these positions were never needed to their full extent (Courts Service, 2015<sup>[12]</sup>). Today, the number of Circuit Court judges remains at 38. The number of District Court judges has not changed since 2008 (Courts Service, 2021<sup>[13]</sup>; Courts Service, 2009<sup>[14]</sup>).

**Table 3.1. Number of judicial positions in Ireland: 2011 vs. 2021 (excl. Supreme Court)**

	2011	2021
Court of Appeal*	10 (in 2014)	16
High Court	36	45
Circuit Court**	38	38(8)
District Court	64	64

Note: \*The Court of Appeal was only created in 2014. \*\*Includes eight special positions currently not filled/required.

Source: (Courts Service, 2022<sup>[15]</sup>), *About us (webpage)*, <https://www.courts.ie/about-us>; (Courts Service, 2012<sup>[16]</sup>), *Court Service Annual Report, 2011*, <https://www.courts.ie/acc/alfresco/e6101193-2abe-459e-b142-73316aac70f5/Courts%20Service%20Annual%20Report%202011.pdf/pdf#view=fitH>.

Importantly, judicial tasks involve not only handling cases, but also, depending on the court level and case type, reading file materials to prepare for the hearing, conducting legal research, deliberating and writing a judgement. Furthermore, in Ireland, many of the judges at the District and Circuit level are regularly assigned to hear cases in different provincial locations and require travel time. High Court judges also often sit outside of Dublin, in particular to hear personal injury actions and criminal trials in several venues, as well as non-jury actions in Cork.

In addition, depending on their role, judges may have some or significant management responsibilities, including efficiently managing their own caseload and fulfilling a range of administrative and management tasks. In Ireland, judges at all court levels have a range of special assignments beyond hearing court cases, such as providing judicial oversight to investigative surveillance activities (McIntyre, 2015<sup>[17]</sup>) and serving on different judicial and government committees. Judges' roles on committees range from providing judicial input to legislative reforms to co-ordinating with other justice and government agencies. Data reported by the Courts Service illustrate that judicial participation in committees has increased over time, and may rise further as the Judicial Council becomes fully operational. Annex B shows the impact of several core committee assignments on the judicial available full-time equivalent (FTEs) positions.

### 3.2.1. Calculating the full-time equivalent for judges internationally and in Ireland

The full-time equivalent (FTE) is a core data element to calculate the number of judges required to complete case work. FTE refers to the full-time equivalent of hours/days a full-time judge should be working each year. Determining the FTE typically involves counting the hours in a full-time work week (i.e. regularly five days in most EU countries), multiplying it by work weeks in a year, and subtracting vacation days and average sick days.

In general terms, across the public sector this tends to be a simple calculation based on standard public holiday and labour rules. For judges, the challenge is that standard civil servant regulations normally do not apply to an independent judiciary, and many judiciaries around the globe have not needed to establish their own related rules. As a result, for the purpose of assessing needed judicial positions, rather than any indication of work terms for judges, the work term rules applied to civil servants of similar rank are generally used for judicial position calculations (see Box 3.1).

#### Box 3.1. Calculation of judicial FTE in common law countries

##### United States

In the United States, where workload studies to assess judicial resource needs have been conducted for over 30 years at both the federal and state level, a standard approach to calculating judicial FTE has evolved that is similar to what is used in other sectors. Some examples include:

- **Texas (2007) and other states.** A judicial Workload study conducted in Texas in 2007 outlines that calculating the "average" judicial officer work-year requires determining the number of days a judicial officer has per year to perform case-related tasks. After deducting weekends, holidays, vacation, sick leave and continuing legal education from 365 days, it was determined that judicial officers in Texas have, on average, *215 days available each year* to perform case-related and other work activities (National Center for State Courts, 2008<sup>[18]</sup>). The same is repeated across similar studies conducted in over 30 states and at the federal level in the United States (Kleiman M., 2019<sup>[19]</sup>).
- **A weighted workload study for federal-level bankruptcy judges (2009)** states that "the federal work year is *2 080 hours per year, based on a 40-hour work week*", and that after calculating the time needed to process all court cases, sufficient time has to remain for "holidays, annual leave, training, and non-case-related administrative tasks" (United States Government Accountability Office, 2009<sup>[20]</sup>).
- **California State Courts (2001).** The report states that the case-related judge year value "was reached after careful consideration of the typical number of days per year and hours per day that a judge should be available for case related work", and it determined that judges, on average, have *215 days per year for case resolution*, "which was reached by removing weekends and applying a standard deduction for vacation, sick leave, and participation in judicial conference and education programs from the calendar year. California's choice of a 215-day judge year places the state at the average point of the twenty-five states that have established an official judge year." Furthermore, it was recognised that judges have also completed a range of non-case related work activities during their "eight-hour workday (nine hours less an hour for lunch)". Like other states, California judicial officers are assumed to spend an average of six hours a day on case specific responsibilities and two hours per day on non-case related administration, community activities, travel, etc." These 215 days per year, 8 hours per day, result in a total work year of 103 200 minutes, which, in California "breaks down into a case-related judge year value of 77 400 minutes (215 days, 6 hours per day) and a non-case-related judge year value of 25 800 minutes (215 days, 2 hours per day)." It was also recognised

that this standard is “above the national norm, but within the range of other states’ case-related judge year value” (Judicial Council of California, 2001<sup>[21]</sup>).

### Australia

A 2020 report on the approach taken for assessing judicial needs for the Family Court in Australia outlines its approach chosen without pointing to a lack of working days, vacation and leave days guidelines for judges (Justice O’ Ryan, 2020<sup>[22]</sup>).

### United Kingdom

A similar approach to Australia’s is adopted by the UK Ministry of Justice in the related to the establishment of a part-time work policy for judicial salaried office holders, including most judges (Ministry of Justice, 2020<sup>[23]</sup>).

Source: (National Center for State Courts, 2008<sup>[18]</sup>), *Measuring Current Judicial Workload in Texas, 2007*, <https://www.txcourts.gov/media/868706/Weighted-Caseload-StudyFinal-Report-July-7-08.pdf>; (Kleiman M., 2019<sup>[19]</sup>), *Weighted caseload: A critical element of modern court administration*, <https://doi.org/10.1080/09695958.2018.1490293>; (United States Government Accountability Office, 2009<sup>[20]</sup>), *Federal Bankruptcy Judges: Measuring Judges’ Case-Related Workload*, <https://www.gao.gov/products/gao-09-808>; (Judicial Council of California, 2001<sup>[21]</sup>), *A New Process for Assessing Judicial Needs in California (Action Required)*, <https://www.courts.ca.gov/documents/judneedsreview.pdf>; (Justice O’ Ryan, 2020<sup>[22]</sup>), *Benchmarking and Productivity for the Judiciary*, <http://www5.austlii.edu.au/au/journals/FedJSchol/2000/3.pdf>; (Ministry of Justice, 2020<sup>[23]</sup>), *Judicial Salaried Part-time Working*, <https://judicialappointments.gov.uk/wp-content/uploads/2020/11/Revised-Judicial-Salaried-Part-Time-Working-Policy-Final-002.pdf>.

The CEPEJ suggests that the number of judges and other court personnel available in participating European countries are counted using the FTE method to ensure that positions are calculated in a consistent manner across all countries as a starting point for any comparative analysis (CEPEJ, 2016<sup>[24]</sup>).

These reports acknowledge that calculating the judicial FTE is an accepted, standard approach for calculating the number of positions available and needed, and that the calculation does not include an attempt to regulate or a statement of judicial work terms.

### 3.2.2. How judicial positions in Ireland have been calculated so far

In general terms, to understand how many judges are available to handle the cases coming to the courts, it is important to consider both the number of full-time judicial positions approved and filled, as well as the other work demands of judges. In Ireland, to date, requests for additional judicial positions are mainly based on annual forecasts, including those which consider the impacts of the COVID-19 pandemic. These forecasts use the number of court sittings and case listing expectations developed by the Courts Service for presiding judges. The Courts Service also uses the number of court sittings as a base output for annual budget calculations for “supporting the judiciary” (Rubotham, 2017<sup>[25]</sup>).

The number of court sittings, as well as case listing expectations, enable forecasts for the next term, possibly the next year, if they consider prior year(s) data. In the longer term, additional indicators of actual workload to be handled would be needed. Prior year sitting data, for example, make no distinction between the number and type of cases handled per sitting day and the difference in judicial effort different case types require, nor can it reflect how many cases were not dealt with in the limited sitting time. Forecasts using case lists, on the other hand, show how many cases are waiting to be heard, some with an indication of the estimated hearing time needed. Hearing time estimates can be imprecise, and hearing list forecasts are not able to consider if cases settle or plea out in the meantime, nor can they predict priority cases getting to the court that lead to postponements of other cases. Neither of these measures can reflect the significant time that all judges must spend working on out-of-court responsibilities.

Looking ahead, it may be relevant for Ireland to consider strengthening the quality and granularity of the data it collects, including case data that reflect differences in workload requirements by case types and

information to calculate the need for back-up judges in case of illness or temporary filing peaks (see Chapters 4 and 6).

### **3.2.3. Calculating “judge work per year” for Ireland’s judiciary**

After establishing how many judicial full-time positions are available to handle cases, the next step for an FTE calculation is to identify the number of annual working days available in a particular country. For example, 2020 was a leap year with 366 days and there were 104 weekends and 9 public holidays – resulting in 253 working days in Ireland (if there is a replacement for Saint Stephen’s Day). In most common years, this number is 252.

As mentioned, further calculations (i.e. establishing workdays/hours required, subtracting average vacation and sick days) could be complicated for the judiciary in many countries for several reasons. First, internationally, as a reflection of judicial independence, judges are not considered civil servants and are therefore not subject to governments’ civil service regulations. This also applies in Ireland, where judges are appointed office holders according to Article 35.1 of the Constitution (Art. 35.1 read with Art. 13.9 and Art. 13.11 of the Constitution of 1937 with amendments). The Irish courts have established rules for some of these elements for District Court judges.<sup>4</sup> As independent constitutional officials, Irish judges have the prerogative to organise themselves within the parameters of the Constitution and related laws. As such, they are also accountable for providing fair, efficient and timely access to justice, which includes operating during meaningful regular court business hours and the timely processing of cases.

The prerogative to organise themselves provides the judiciary with flexibility to set court *business hours* and regulate their own *work hours*. At the same time, judges are expected to work the hours needed to ensure that court cases are processed in a timely manner, without impacting the quality of their decisions. Given high caseloads, it is common for judges in many countries, including Ireland (Provincial Court of British Columbia, 2016<sup>[26]</sup>; Government of Wales, 2019<sup>[27]</sup>; Casaleiro, Relvas and Dias, 2021<sup>[28]</sup>), to work after standard court business hours to achieve this aim. Judges reportedly read case files and write judgements on weekends, and strive to take vacation days outside regular court sitting days. It is also common for Irish judges to fill in as needed when another judge is sick. Ensuring coverage for judges who need to take maternity, paternity or adoption leave, or who are sick for a longer period, presents additional challenges.

In addition, as in other sectors, some judges are expected to work *variable or additional hours*. This applies especially to the denominated “movable” or “unassigned” judges at the Irish District and Circuit Court levels, who regularly travel to and work in different jurisdictions across the counties.

There is a growing trend across courts in OECD countries to establish *internal rules* that govern these matters, track leave patterns and gather solid data to regularly assess the availability of judges to handle work efficiently. Where official vacation, leave and work hour rules or policies set by the courts do not exist (an option chosen by some courts in the United States), judges faced with growing caseloads may find it challenging to define their own work hours in a balanced way. This can result in judges having difficulties to support budget requests for additional judicial positions if their work demands become overwhelming. In this context, Irish courts may benefit from considering to develop a standard system that tracks vacation days and/or sick days taken across all court levels. At present, the absence of such a system tends to limit the ability of courts to calculate the average days of leave accrued over time, which could be used to support the better management of judicial assignments and resources in the long term.

### **3.2.4. Calculating judicial FTE positions in Ireland**

Taking into account the above considerations, the OECD and the judicial liaison counterparts appointed to support the project and their Court Presidents agreed on a process to calculate the number of FTE positions needed to handle all cases and other judicial work in a timely manner throughout a judicial year.

This has been undertaken by building upon similar approaches from other countries to determine the number of judges needed to efficiently handle all cases and other non-case related work (National Center for State Courts, 2008<sup>[18]</sup>).

For example, an acceptable proxy-regulation applied to other office holders of similar rank in Ireland, i.e. Assistance Secretaries and up, could be used for this study. Using related guidelines published by the Department of Public Expenditure and Reform (DPER) for public and civil servants as proxy measures was accepted as a plausible option. This approach is also used by the Office of the Director of Public Prosecutions to assess its position requirements. To begin with, as stated on the DPER's Human Resources website (DPER, 2022<sup>[29]</sup>), most civil servants in Ireland work 43 hours and 15 minutes gross per week, inclusive of 30-minute lunch breaks. This means that the base net working hours per week are 42.5 hours. Next, using DPER guidance for Assistant Secretaries and up as the average number of vacation days for judges equates to 31/32 days, based on a five-day work week per year. The DPER also publishes sick leave statistics for civil and public servants on its human resources website. According to DPER data, while the average number of sick days varies by service, the average number of sick days per civil service FTEs in 2019 was 10.1. As highlighted elsewhere, some court levels in Ireland do not have five-day working weeks, which may need revision in view of existing and growing caseloads.

Using this approach, one FTE judge would be available to work for 252 annual workdays, minus 30 vacation days and 10.1 sick days, equalling 211.9 days per year (i.e. 1 694.2 hours or 101 712 minutes, Table 3.12). The resulting number of days (211.9) is comparable to what has been used in other common law jurisdictions to calculate the FTE for judges. For instance, in the United States, the states of Michigan and Virginia have adopted a judge year of 216 days. Court of Appeal Judges and High Court Judges are expected to devote themselves to judicial business throughout the legal year, which usually amounts to somewhere in the region of 185-190 days. UK Circuit judges are needed to sit for a minimum of 210 days, although the expectation is for them to sit between 215-220 per year. UK District judges are expected to sit for a minimum of 215 days. Judges also have out of court duties to perform such as reading case papers, writing judgements and keeping up to date with new developments in the law (Courts and Tribunals Judiciary, 2019<sup>[30]</sup>). In Ontario, Canada, judicial scheduling follows the Callaghan scheduling convention of 1992, which stipulates that judicial time is not just in court but includes time spent outside of court to read, analyse and draft documents. Full-time members of the court must sit 35 weeks per year (17 for supernumerary), as well as 9 non-sitting weeks and 8 holiday weeks. From July to August, courts operate at 30-40% capacity as a maximum due to holidays by judges, lawyers, witnesses, etc. Similar reductions apply for the holiday period between 24 December and 6 January (Ontario Superior Court of Justice, 1992<sup>[31]</sup>).

In addition to sitting times, Irish judges are required to attend an *educational event*, the Annual Judicial Conference, two full days twice per year. Therefore, two days should be deducted to arrive at the actual number of days Irish judges should be available for handling cases and other non-case related work (see below under non-case related time). In comparison to other common law jurisdictions, this tends to be at the low end and is planned to be increased to include five additional days as the new Judicial Council takes on its judicial training and education role (see Chapter 5). Internationally, continued judicial education tends to be voluntary, but is frequently combined with a requirement to continue to develop legal and other judicial skills. As a result, judges in Canada are entitled to 10-15 days of training over a four-year period. In England and Wales, at least one multi-day training per year is offered by the Judicial College. For US state court judges, 7 to 15 hours per year of training are required (Reaves, 2016<sup>[32]</sup>). In Australia, judges should be able to spend at least 5 days each year in professional development, with some flexibility to meet 15 days education over a three-year period (Judicial Commission of New South Wales, n.d.<sup>[33]</sup>). In line with these international trends, Ireland's newly established Judicial Council is developing plans to increase judicial training to better equip judges to decide cases and respond to litigant needs. The aim is to provide all judges with an additional five days of training. Judges who wish to become trainers themselves will require

additional time away from hearing cases. This will have implications on actual FTE calculations in the future.

In addition, it would be important to ensure that judges have the time to actively engage in the modernisation process, such as the development of new IT-supported case management systems, defining data needed for case management, and informing the development of IT solutions that support performance measurement and tracking. As highlighted in the 2019 Review of Courts Service operations, its directions and operations need to strengthen focus on court management (Courts Service, 2019<sup>[34]</sup>), which will require close engagement of the judiciary. Currently, while case management techniques are increasingly applied at all court levels, there is still room to enhance judicial leadership in creating a concerted effort to develop a broader court management structure and implement modern court and case management approaches across all courts (see Chapter 6).

**Table 3.2. The standard work year of Ireland's judiciary**

Days and hours	Judicial work year calculations
Annual number of days 2021	365
Minus annual weekend days 2021	104 (standard five-day work week applied by DPER)
Minus annual public holidays Ireland	9
Total annual workdays available	252 (if the replacement Saint Stephen's Day is taken)
Minus average estimated leave days for judges	31/32 (Depending on grade/pay rate applied by DPER) based on five-day work week
Average estimated sick days	10 (Calculated by DPER for related grades/pay rates)
Total number of days available annually per position	212 (minus 2 days for training currently, about 7 in the future)

### 3.3. Current judicial staffing, workload and time study results by court level

The crucial role played by judges in societies around the world involves a range of tasks that are similar across countries. They include sitting in court for hearings, preparing for hearings and reading case files, conducting case-related research, deliberating with other judges, writing judgements, attending to administrative and management responsibilities and participating on a range of committees. The workload study presented in this chapter aims to capture these judicial work components to provide a snapshot of the current judicial resource needs in Ireland. At the same time, these estimates of the judicial needs are not reflective of the potential efficiency gains from various ongoing and needed modernisation efforts in the Irish judiciary (some of which are analysed in this report in the subsequent chapters).

Overall, results of the study and interviews with key stakeholders in Ireland have highlighted that currently judges tend to work long hours, occasionally on weekends and during the court holidays. This trend tends to be exacerbated for some judges who may be required to regularly travel to hear cases in provincial courts around the country. As discussed in subsequent chapters, there is room to reduce these hours by enhancing the efficiency of processes, strengthening staff support, and modernising infrastructure and IT systems. Without such efficiencies, additional judges would be required, as calculated in the rest of this section.

In general terms, the study indicates that some of the staffing and other challenges appear to be similar across all court levels in Ireland, while others are specific or more prevalent in each of the four court levels. The following sections will provide a snapshot of the current staffing and workload situation at each court level, and the results from the time study. Specific modernisation opportunities for each court level are highlighted in the Chapter 4.

### 3.4. Court of Appeal

The Court of Appeal was created and became operational in late 2014, mainly in response to the high number of cases in the Supreme Court and in an effort to ensure that Supreme Court judges had the time needed to effectively handle the particular cases typical in an apex court. The Court of Criminal Appeal that existed previously was merged into the new court. This was the first substantial adjustment of the court structure since the foundation of the nation. As a result, comparable case trend and resolution data are only available for the past six years.

Initially staffed by 10 judges, this number was increased to 16 in late 2019, primarily to address backlog issues in the new court. Most of these additional positions were filled by November 2019, which was the first year the court operated with a full complement of judges. The transition of appeals continued from the Supreme Court to the Court of Appeal until early 2021. As a result, the Court of Appeal was still a court in transition in 2018, 2019 and to some extent in 2020, which impacted case resolution capacities and the related data available for this study.

#### 3.4.1. Caseload trends and workload compositions

The 2015 case data, the first year for which full year case data are available, and 2020, the last year for which case data for the Court of Appeal is available, indicate that incoming civil cases increased by 14%, while incoming criminal appeals declined by less than 12%. 2020 data is heavily influenced by the COVID-19 pandemic, which is why examining 2019 data is equally important. The data show some differences in comparison to prior years, but the overall trend remains similar. Data for the number of cases pending at year end in 2020 and 2019 continue to show high numbers of cases taking a long time or not being processed. Positively, the court was able to reduce the number of pending cases and the length of processing time in 2020. These may, however, also be influenced by pandemic trends that impacted the types of cases coming from the High Court and lower courts. Nevertheless, even the lower number of cases pending at the end of 2020 remained high compared to incoming cases. In addition, the average length of time for civil cases was still over 1.7 years, and just over 1 year for criminal cases. As a result, most cases currently shown in the Legal Diary of the Court of Appeal have been listed for over a year.

**Table 3.3. Court of Appeal case trends 2015, 2020, 2019**

Major court business type	Incoming			Resolved		Pending end of year		Average length in days*	
	2015 (2014*)	2020	2019	2020	2019	2020	2019	2020	2019
Civil	641	733	685	476	491	534	733	579	1 220
Criminal – appeal cases	302	260	282	367	344	398	419	371	705
Criminal – offences	862	1 405	1 440	1 719	1 003	n/a	n/a	n/a	n/a

Note: \*Time from issue of notice to appeal to final order.

Source: Courts Service Annual Reports from 2015 (p.34), 2019 (p.46, p.93, p.95, p.101, p.104) and 2020 (pp.100-101, p. 106) – (Courts Service, 2022<sup>[35]</sup>), *Court Service Annual Reports*, <https://www.courts.ie/annual-report>.

Comparing court of appeal performance in other common law countries, such as in UK nations or appeals courts in US states, is challenging given that the appeal court structure and range of jurisdiction differs, as do resources and processes. Still, in some cases, where such data is available, it can provide some indication regarding the usual length of the appeals court process in Ireland compared to the United Kingdom and United States. (Box 3.2)

### Box 3.2. Courts of appeals in the United Kingdom and Maryland, United States

In 2019-2020, the **Criminal Division of the Court of Appeal of England and Wales** reported an average waiting time of around 14.5 months for conviction renewals, and around 5.5 months for sentence only appeals (Court of Appeal UK, 2021<sup>[36]</sup>). The Civil Division has set a range of timelines for hearing dates that reflect the urgency and complexity of the appeal. Timelines for child cases and planning appeals are the shortest, ranging from 2-5 months, while most final orders from administrative, high and county courts should be heard within 11-19 months (Courts and Tribunals Judiciary, 2015<sup>[37]</sup>).

Both divisions of the Court of Appeal of England and Wales have a well-structured process to gain leave of appeal, designed as an effective screening mechanism, as well as years of experience with continuously enhanced case management processes based on solid case processing data. Each is also supported by a special administrative office. The Criminal Appeals Office (CAO), for example, provides not just administrative services to the Criminal Division, but is an important and integral part of a well-designed case management approach developed and refined over many years (Court of Appeal UK, 2021, p. 41<sup>[36]</sup>). Importantly, CAO staff include several attorneys who produce case summaries following Criminal Practice Directions and are available to judges and practitioners. These lawyers also provide procedural advice to practitioners and lay litigants, which reduces submission errors and thereby the judicial time needed to handle such issues. They are also responsible for new initiatives such as producing digital bundles that correspond to the Crown Court Digital Case System (Court of Appeal UK, 2021, p. 40<sup>[36]</sup>) and working with stakeholders to produce easy to read forms for litigants in person (Court of Appeal UK, 2021, p. 38<sup>[36]</sup>). The legal team is led by three senior legal managers who manage the output of work and provide specialist training as necessary. They ensure the CAO acts on behalf of the Registrar, and that the legal team can take a proactive role in preparing cases. In addition to the legal team, the CAO is staffed by administrative personnel who can assist with case management, write complex case summaries, and provide office support or complete assessments of costs (Court of Appeal UK, 2021, p. 41<sup>[36]</sup>).

The jurisdiction of the **Court of Special Appeals in Maryland (US)**<sup>1</sup> is an approximate equivalent to the Court of Appeal in Ireland. It is served by 15 active judges and supported by its own Clerk's Office, a Staff Attorney Office and an Alternative Dispute Resolution (ADR) Division that offers two ADR options to parties with appeals pending at the court (Court of Special Appeals Maryland, 2022<sup>[38]</sup>).

The Clerk's Office works to receive and file all court documents and to maintain the trial court record. It is also responsible for all communications between the court and litigants or attorneys (Court of Special Appeals Maryland, 2022<sup>[39]</sup>). While the Staff Attorney Office assists in reviewing certain appeals, the ADR division is primarily responsible for reviewing civil appeals and identifying matters that could likely be resolved through ADR. Those selected either proceed through mediation and work with a highly trained mediator and a judge to resolve their matter, or attend a pre-hearing conference with a Special Appeals judge (retired or current) to discuss the matter, any motions and ways to streamline the overall process. In both situations, if the matter is not successfully resolved through ADR it is referred back to the court.

Both the Criminal Division of the Court of Appeal in the United Kingdom and the Court of Special Appeals in Maryland provide detailed and specialised information to assist lay litigants in applying to and representing themselves in court (Court of Special Appeals Maryland, 2018<sup>[40]</sup>). In addition to a



specialised online guide, the Court of Appeal Criminal Division in the United Kingdom also supported the development of “Easy to Read Forms”, i.e. forms that provide further detailed guidance using terminology that is easier to understand by non-lawyers, for all major process steps (HM Courts and Tribunal Service, n.d.<sup>[41]</sup>).

Note: <sup>1</sup>The US state of Maryland had a population of 6.2 million in 2021, covering an area of about 30 530 square km. Maryland also has significant rural areas with a highly productive agricultural sector. Economically it is one of the richest states in the United States, with an annual GSP of USD 383.4 billion in 2016, and a poverty rate of 7.8%, which is the lowest in the United States.

Source: (Court of Appeal UK, 2021<sup>[36]</sup>), *In the Court of Appeal (Criminal Division), 2019-2020*, [https://www.judiciary.uk/wp-content/uploads/2021/05/6.7429\\_JO\\_Court\\_of\\_Appeal\\_Criminal\\_Division\\_2019\\_20\\_WEB-v2-with-tweak.pdf](https://www.judiciary.uk/wp-content/uploads/2021/05/6.7429_JO_Court_of_Appeal_Criminal_Division_2019_20_WEB-v2-with-tweak.pdf); (Courts and Tribunals Judiciary, 2015<sup>[37]</sup>), *Practice Guidance: Court Of Appeal Hear-By Dates*, <https://www.judiciary.uk/publications/practice-guidance-court-of-appeal-hear-by-dates/>; (Court of Special Appeals Maryland, 2022<sup>[38]</sup>), *Alternative Dispute Resolution (ADR) Division (webpage)*, <https://mdcourts.gov/cosappeals/mediation>; (Court of Special Appeals Maryland, 2018<sup>[40]</sup>), *A Guide for Self-Representation*, <https://www.courts.state.md.us/sites/default/files/import/cosappeals/pdfs/cosaguideselfrepresentation.pdf>; (HM Courts and Tribunal Service, n.d.<sup>[41]</sup>), *Guidance for Litigants in Person and third party assistance*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/644757/Guidance\\_for\\_third\\_parties\\_assisting\\_LiPs\\_0717.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644757/Guidance_for_third_parties_assisting_LiPs_0717.pdf).

To better understand the implications of different case types on judges’ workload, it is important to look at the actual time judges are spending on different case types. The time data may be partially skewed by business concentrations on certain lists or case categories handled during the collection period, but they show the difference between the number of different case types reported as incoming/resolved by the Court Service and time reportedly spent by judges on various case types. While the percentage of criminal cases handled by judges in 2020 was about 24% lower than civil cases handled (see Table 3.3 above), they required less than 30% of the time judges spent on civil cases. In other words, civil cases, on average, require more time, and different civil cases require more or less time depending on various levels of complexity. Therefore, incoming cases by themselves would not be a suitable indicator of judicial time requirements and judicial positions.

This is also one of the reasons why tracking case data trends over time, even where reliable case data are consistently available, would need to be complemented by other sources to provide a solid understanding of workload trends and related resource needs.

This is reflected in the current approach to assigning judges to court business at the Court of Appeal, with 3 judges mainly assigned to criminal business, 12 judges mainly assigned to civil business and the remaining judges with more flexible assignments covering both business types based on demand.

Courts Service data from 2020 indicate that disposition rates in some case categories increased. As outlined in more detail below, this may be due to management decisions to increase scheduling.

The reduction in pending cases and length of time in 2020 appears to indicate that workload and staffing has begun to balance out to some extent. Judges recently assigned to the Court of Appeal were still carrying judgement writing responsibilities from the High Court, limiting their ability to deliver appeal judgement in time. However, 2020 data reflect operations under COVID-19 conditions, in which judges heard and concluded more cases in some categories, but a significant number of more serious cases were not held at the High Court level due to restrictions, thereby not arriving at the Court of Appeal. Furthermore, judges indicated that a decision was made to schedule more cases than usual to test if this would allow them to effectively address the high number of pending cases. This decision appears to have contributed to more limited time to write judgements, which in many cases has shifted to non-sitting court holiday periods. This delay in many cases has extended the time to finalise cases, and has required judges to spend more time on these judgements to familiarise themselves and reread documents.

### **3.4.2. Average number of hours worked during the time study**

On average, 49.3 hours of work per week was reported by the 15 Court of Appeal judges participating throughout all three weeks of the time study. When applying the standard 42.5 weekly working hours to this number, these judges are working an extra 6.8 hours – or nearly one full extra working day – per week. Annually, 7 extra hours a day comes to 34.6 extra days worked per judge, based on a 42-week work year. For the 15 ordinary judges, this comes to a total of about 590 hours per year, or more than 2.3 full-time equivalent (FTE) judge positions.

While this data alone may not be sufficient to fully establish that the current number of judges is insufficient to cover all work as required during the year, it does show that judges tend to work longer hours on a regular basis. There is currently limited flexibility for these judges to cover additional Court of Appeal work from case backlog or unprocessed cases from the COVID-19 pandemic. The data also show that the current number of judges may not be sufficient to respond to the increasing number of cases predicted to come before the court, as indicated by multi-year case trends data.

### **3.4.3. Workload and position calculations**

As mentioned, calculating how many FTE positions would be needed at the Court of Appeal to handle all work coming to the court in an average year was approached by looking at data. First, the average annual number of cases incoming to judges by case category was compiled from the 2018 and 2019 Annual Reports and confirmed by the Courts Service. To ensure that only cases that would eventually come to a judge, and not those that would be resolved out of court without judicial involvement, were considered, “incoming” for the Court of Appeal was defined as “resolved and determined”. For “other civil work”, “other criminal work” and “non-case related work”, the annual number of work weeks per judge, i.e. 42, was used.

The collected time study data were vetted and adjusted as needed by an expert judge’s Delphi estimation process. The data were then used to establish an average minimum and maximum number of hours needed to handle each case category, i.e. the minimum and maximum case weight for case category, other civil and criminal, and non-case related work.

By multiplying the average annual number of incoming cases by case category with their related case weight, the minimum and maximum number of annual work hours needed to process each case and work category was calculated.

Finally, the total annual minimum and maximum workload required to handle all case types and other work hours was divided by 1 802, i.e. the standard annual hours (8.5 work hours by 212 annual days) per FTE position, and a mixed complexity workload was calculated.

As noted, the minimum, mixed and maximum number of work hours and related number of FTE positions needed to process all cases and other work would need to be considered together. There is currently no further detailed case data available to better understand if cases eventually coming to judges are of greater complexity, if there are elements that tend to require more judge time (such as appeals brought by lay litigants), or how many cases by case category involve a short hearing or several days of hearings. As a result, these elements had to be estimated by the judges participating in the study. The time study also aimed to collect some of this information. However, overall the data did not provide reliable additional details. This was partly due to the adequate, but still short, duration of the time collection, as well as the data collection period that encompassed the last week of the 2019/2020 court year and the first two weeks of the 2020/2021 court year, i.e. periods that are not fully representative of the average work weeks. It was further impacted by the continuing effects of the COVID-19 pandemic impact on all court operations.

As a result, the minimum annual work hours and related FTE position estimates may to some extent underestimate the time needed to process the entire range of less and more time-consuming cases, while the maximum may overestimate the time needed for all cases. The mixed complexity workload provides a

gauge to understand the current position range required. Without data to understand how heavily very simple and very complex cases influence the overall workload, a more precise medium mixed workload calculation cannot be established (see Table 3.4). Further detail on workload and case weight data for all case and work types can be found in Annex C.

**Table 3.4. Case weights and position calculations**

Court of Appeal: Minimum and mixed complex workload and positions needed			
	Lowest complexity minimum	Low mid-point estimate	Mixed medium complexity
Total workload (hours)	33 464	39 989	46 515
Total workload-based positions	19	24	29

In light of these calculations, the current number of 15 plus 1 FTE positions approved for the Court of Appeal is below the minimum FTE positions estimate, which does not reflect the handling of more complex cases (nor any potential efficiency gains from the ongoing and needed modernisation efforts). Considering case complexity mixes, the low mid-point estimate points to 24 FTE positions needed, and the overall mid-point, which reflects a greater number of complex cases handled, indicates a need for 29 positions. Importantly, only 14.6 FTE are currently available due to committee assignments and administrative work requirements, which may be contributing to the regularly longer average hours worked per judge above the standard 42.5 hours per week. As such, to come to a full FTE contingent of judges that reflects committee assignments and administrative work requirements, the Court of Appeal would need three additional positions and five more judges to come to the lowest complexity minimum needed (unless the efficiency gains are realised).

In addition, considering that Circuit Courts and the High Court are starting full operations again, an expected surge of previously postponed cases and litigants held back due to the COVID-19 pandemic, there maybe a need for a substantial but temporary alternative solution. It is also expected that the recently increased number of High Court judges will be able to decide more cases, which will likely lead to an increase in the number of appeals in the long run.

Another challenge, particular to the Court of Appeal (and to the High Court), are multi-day hearings and the regularly associated many days of judgement writing that locks the availability of judges assigned to the case. As cases are generally heard by a bench of three judges, these judges are locked out of hearing other cases for the several days needed for the multi-day hearing, as well as the potential days required for preparatory reading. Based on the Delphi study results, and depending on the specific matter, a three-day civil hearing, for example, would mean each of the three judges assigned to hear the case will spend on average a minimum of three days reading and preparing, three days attending the hearing, and a half day deliberating. The judge drafting the judgement for a three-day hearing will on average spend about a week (or more) writing the decision, and this is assuming no interruptions to their work. In other words, three judges are not available to hear other cases for approximately 1.5 weeks, and one will be unavailable for a minimum of 2.5 weeks. While multi-day hearings lasting longer than three days are infrequent, they do occur and currently appear challenging to cover.

At the same time, as stressed before, increasing the number of judges is not the answer to all workload challenges. These calculations have been done in view of the current state of the system, where there is scope to reduce complexity and enhance efficiency, thus possibly reducing the need for additional judges. As such, there are a range of other options tested and successfully implemented by courts in other countries that could be considered and adjusted to the needs of the Irish courts, including the Court of Appeal, to enhance efficiencies in processes. The discussion in the next chapter will address further areas that could benefit from review and innovation. These areas could make the appeals process faster and more efficient, reduce the burden on judges, and enhance the experience of litigants. Several could shift some work responsibilities away from judges, reduce the burden of certain processing steps and possibly translate into lower time requirements for judges. Importantly, beyond judicial positions, all areas require

investment, either in the form of IT support, different support staff arrangements, or changes in administrative and management approaches. Most require further study, additional data to track impact and additional training for judges. Others will need to be supported by new court directions and rules, and some may require legislative adjustments. All require further deliberations and planning, and those impacting lay litigants and legal practitioners (such as innovations within or outside courts) may require their involvement in planning and design. Equally important will be a good communication strategy to ensure that the envisioned changes are understood and supported by others.

### 3.5. High Court

Building upon existing court structures, the Courts of Justice Act of 1924 established the modern court system of the District, Circuit, High and Supreme Courts in Ireland (Irish National Archives, n.d.<sup>[42]</sup>). The High Court's current structure evolved from the High Court of Justice, which was established by the Supreme Court of Judicature (Ireland) Act, 1877. The latter Act combined the courts of Chancery, Queen's Bench, Common Pleas, Exchequer, Probate, Matrimonial Causes, Landed Estates and Admiralty (Irish National Archives, n.d.<sup>[42]</sup>), into one High Court. Following the adoption of a new Constitution in 1937, the High Court now derives its authority directly from the Constitution. It is also regulated by the provisions of the Courts Acts.

Traditionally, the High Court sits in several provinces as well as Dublin. The High Court hears criminal matters in Dublin, Cork, Limerick, Waterford, Castlebar, Letterkenny and Kilkenny. For civil matters, the court currently sits twice a year "on Circuit" in Cork to hear non-jury cases, and in Cork, Galway, Limerick, Letterkenny, Sligo, Dundalk, Ennis, Kilkenny and Waterford to hear personal injury actions and Circuit Court appeals. In addition, the High Court hears Circuit Court appeals in Naas. On average, two judges from the civil divisions sit in provincial venues for about half of the year, rather than in the Dublin divisions to which they are customarily assigned.<sup>5</sup>

#### 3.5.1. Range of jurisdiction

Under Article 34.3.1 of the Constitution, the High Court is invested with full original jurisdiction with express power to determine all matters of law or fact, civil or criminal. It is also responsible for appeals from the Circuit Court, all of which are *de novo* and new evidence may be permitted. The court also hears appeals by way of "cases stated" from the District Court on points of law, as well as appeals from a large variety of regulatory bodies including the Tax Appeals Commission and the Commission for Communications Regulation. It has exclusive jurisdiction over judicial review and *habeas corpus*. The High Court's original jurisdiction in criminal matters is not unlike that of other higher-level courts; however, its original jurisdiction in family matters and select other case types is partially concurrent with the Circuit Court. Considering recent Government announcements, this broad scope of jurisdiction is likely to extend into the evolving area of artificial intelligence issues (Government of Ireland, 2021<sup>[43]</sup>), and the High Court is envisioned to become the hub for Ireland's plans to develop into an international dispute resolution centre. The High Court's territorial jurisdiction also extends nationwide, whereas the District and Circuit Courts are of local scope and hold limited jurisdiction.

As the third tier of courts in the nation, this broad range of original jurisdiction is relatively unusual compared to civil law countries, but not too dissimilar from other common law jurisdictions, except the United States. Over time, similar High Courts or other courts at a similar level in other common law countries such as Australia (Supreme Court of New South Wales, n.d.<sup>[44]</sup>), Canada (Supreme Court of British Columbia, 2021<sup>[45]</sup>) and the United Kingdom (Courts and Tribunal Judiciary, n.d.<sup>[46]</sup>) have been adjusted to make them more manageable. With the exception of Canada, appeals in these countries have been separated from trial courts and assigned to an appellate division at the High Court level, special courts for broader case categories (with their own Presiding Judge) have been created, or the position of Associate Chief

Justice has been created to support the broad management responsibilities that come with such diverse jurisdiction.

The broad range of original jurisdiction likely also means that the number of High Court appeals coming to the fourth tier of courts in Ireland, the Court of Appeal, may be higher than in other countries. It is beyond the scope of this study to assess the flow of cases from one court level to the next, but this is an important element to understand workload trends at the Court of Appeal, especially as there are currently few mechanisms in place at the Court of Appeal (or the High Court) to screen incoming appeals to determine if they are justified, and only some support for lay litigants launching appeals is available (see recommendations in Section 8.1).

As highlighted above, the High Court structure was created in 1924 in a very different context to the present day. As outlined in the Kelly Report, and as stated by the High Court's President in her submission to the Judicial Resources Working Group: "For far too long there has been a failure to recognise that the High Court is an entirely different entity than it was ten, twenty or thirty years ago. In many ways the High Court is still expected to function as if the bulk of its work comprised either personal injuries actions, most of which could be expected to settle, or relatively short criminal trials, and in both cases relatively few cases required a written judgment" (Kelly, 2020<sup>[47]</sup>).

The Kelly Report and others have also pointed to a broad range of new statutes enacted over the past two decades that have generated many additional legal issues that must be resolved and clarified by the High Court. In addition, technology, online publications and internationally operating legal resource firms, such as LexisNexis, Westlaw and Thomson Reuters, make a vast amount of case law available to the parties to litigation, both domestic and international, that have been used in their submissions to the court. Another trend, not just in Ireland, is that the requests and need to use expert evidence have increased, thus introducing more complex expert opinions in court cases. All these and other factors have made High Court litigation in several case categories more complicated, labour intensive and therefore time consuming.

The broad extent of original jurisdiction likely partially explains the (not unjustified) size of the High Court's judiciary relative to the two lower courts. Currently, the High Court has over 15% more judges than the Circuit Courts, the next lower level of courts in the nation. Neither of the comparable court levels in any UK nation have more High Court judges than the next lower-level courts<sup>6</sup> and the same happens in Australia,<sup>7</sup> Canada,<sup>8</sup> the United States,<sup>9</sup> and most civil law jurisdictions in the EU.

The results of the time study have shed light on the long work hours for judges in the High Court. The time study showed that during the data collection period, High Court judges reported working an average of 48.6 hours per week per judge. While there are now 46 positions approved for ordinary judges (of which 43 are currently filled), increasing management requirements and committee assignments (see Table 3.4 above) mean that the full allotment of judges is not available to handle cases in the present situation. Instead, only 40.8 FTE positions are currently available (not considering backlog and workload changes resulting from the COVID-19 pandemic and new legislation), which can also make it challenging covering for judges who are sick or diverted elsewhere.

A workload of 48.6 hours per week equates to 6.1 extra hours per judge per week, 256.2 extra hours per year per judge, or a total of 10 248 hours extra worked by the 40 judges available to handle cases at the High Court at that time (including the Court President). This translates to 1 206 workdays, or the equivalent of 6 FTE judge positions needed to address just the extra hours worked. In other words, if all judges no longer put in the significant extra effort, a total of 46 FTE positions would be needed to handle the regular level of incoming cases at the current pace, on top of the judges needed to handle management and committee assignments. This means that there is no additional judicial capacity to address backlogs, especially not the significant COVID-19-related backlog that has built up in many case categories.

Due to all of the above, the High Court would need to be appropriately supported by effective legislation, human and ICT resources, and case management systems to continue effectively handling the broad scope of cases it currently oversees at the national level.

### 3.5.2. Case and workload trends

Data reported in the Courts Service’s annual reports indicate that the total number of incoming cases has been slightly declining in civil cases, but increasing in select civil case categories and in family law and criminal cases. Reported cases resolved did not follow the same trends (Table 3.5). These data must be considered very carefully, however. In some instances, what is reported as “cases” does not refer to individual cases filed but the number of motions entered, orders issued, and, for criminal cases, offenders and offences handled.<sup>10</sup> This means that if An Garda Síochána or the Director of Public Prosecutions (DPP) change their charging and filing strategies, incoming criminal “case” data will increase or decrease, as will the data reported as criminal “cases” resolved given that these are only reported by offences. Another data source was identified that linked case outcomes to case record numbers, thereby providing an accurate count of criminal cases handled. Equally important is the fact that the number of incoming cases alone does not illustrate the complexity of the cases coming to the courts, which is an important driver of judicial time needed. Judicial workload is also affected by cases settling, as at the High Court parties tend to settle a civil case after it has been filed with the court. What is currently reported as cases “resolved out of court”, for example, tends to refer to cases that settle at some point after the case has been listed and judicial time has been expended. This means that settlement trends after filing likely influence judicial workload as much as overall cases brought to the courts.

While data for 2020 are directly impacted by COVID trends and are not comparable to prior years, they indicate the continued high volume of cases coming to the court during the first year of the pandemic and the ability of the court to respond by different case type. A decrease in incoming and resolved cases was reported in 2020 for civil cases and for incoming criminal defendants to the Central Criminal Court. As mentioned, the higher number of family cases reported to have come to and been resolved by the court may be due to a higher number of less complex cases brought and handled as a result of the pandemic; the decrease in criminal defendants versus an increase in criminal offences demonstrates the impact of the number of charges brought per case, not the number of cases the court actually handled.

**Table 3.5. High Court business 2018-2020**

Court business type	Incoming			Resolved			Average length in days		
	2020	2019	2018	2020	2019	2018	2020	2019	2018
Civil	29 811	36 701	39 219	12 784	28 117	30 982	660	785	749
Criminal offences (Central Criminal Court)	2 911	1 982	1 202	1 433	1 125	1 941	506	487	382
Criminal defendants	109	130	156	N/A	N/A	N/A	N/A	N/A	N/A
Family	415	320	268	387	329	421	N/A	N/A	N/A

Note: Reported as civil business: time from issue to disposal; reported as criminal business: time from receipt of return for trial to final order.  
Source: Courts Services Annual Reports from 2018 (p. 90), 2019 (p. 46, pp. 58-67, p. 89, pp. 100-101) and 2020 (p.39, p.56-68, p. 93, p. 105) – (Courts Service, 2022<sup>[35]</sup>), *Court Service Annual Reports*, <https://www.courts.ie/annual-report>.

The broad range of case types coming to the High Court presents challenges. The current Legal Diary shows that High Court cases are currently assigned to 32 different lists, not counting criminal lists (and not counting Masters, Legal Cost Adjudicators, among other lists) (Courts Service, n.d.<sup>[48]</sup>). Some lists include a broad range of case categories that vary significantly in focus and complexity, and include appeals as well as matters submitted for judicial review. This applies especially to chancery and common law non-jury cases, as well as to family law cases and others. As a result, a chancery case, for example, may require

relatively few judicial hours or a very high number of hours. The effective planning and management of such a diverse caseload requires further management efforts and improvements in the data collected, as well as the availability of supporting automated systems.

To help close the data gap (given the mentioned limitations of the data currently collected by the Courts Service), the High Court President undertook a sample case file review to gather more detailed information to better understand how cases actually progress through the courts, how many case events of what type are held, how often hearings are adjourned for what reasons, and how many cases settle at what point after coming to the courts, especially after taking up a certain amount of judicial time. The approach and results are outlined in Box 3.3. The findings both support the results of the time study indicating the significant effort judges spend on cases generally reported as “resolved out of court”, and provide valuable insights to inform the continued development of effective case management strategies for the High Court.

The National Centre for State Courts in the United States conducted a study of civil litigation in state courts that details of how the most important information can be collected concerning settlements, which types of data are relevant and how other courts have done so (NCSC, 2015<sup>[49]</sup>).

In this regard, countries have mainly collected reliable data on how many cases of what type are actually not pursued, at what case step and after how many court events for each court level. Additional data to identify reasons for and timing of decisions for out-of-court settlements have been collected via surveys to those who filed a case but did not pursue it further. Surveys to those who dropped a case can be regularly sent out, and countries may also rely on conducting ‘focus groups’ of particular users (barristers, the business community, civil legal aid providers, etc.) to identify reasons why a case was settled outside the court and at what point of the process.

The growing complexity of cases that reach the High Court has also been reported as a challenge. Determining case complexity resulting in increased need for judicial time differs from legal complexity, although it may be correlated. Legally complex matters tend to require more time, but simpler cases can become complex and require more time when certain elements occur: the presence of multiple parties, offenders, witnesses or victims; cases involving children; those requiring translation, interpretation or highly technical expert interventions, for example, all tend to trigger more time, regardless of the type of legal matter.

How these elements contribute to additional judicial time depends on the jurisdiction. To determine it, case data collection combined with a limited Delphi study may be needed. Based on the example of the United State Courts, first, the type of elements that tend to increase time needed should be determined by judges and others (McMillan and Temin, n.d.<sup>[50]</sup>), followed by collection of data to understand the number of cases involving such elements. A limited Delphi study can determine the estimated average time that each of these elements add to what is otherwise needed for the same case type when no such element is present.

Case complexity may lead to longer hearings, more reading time and longer judgement writing time. Similar to the Court of Appeal level, this also means that a judge assigned to handle a more complex case is not available to handle other cases for the duration of hearings, which can last several days or weeks. This delays other cases, potentially leading to their postponement. In addition, judges have reported that upon conclusion of one hearing they usually need to commence hearing a new case with no break in between to begin preparatory work on the judgement required from the previous hearing. Improved data collection to plan for the extra time these cases need would facilitate adjusting case lists and planning judicial resources accordingly. Information to assess changes in case complexity is currently not collected.

### Box 3.3. Case diversity and complexity and its impact on judicial resources

A two-month (November 2018 and 2019) sample case file review of chancery cases, undertaken by the High Court President in January 2022 to further inform this OECD study, provided insight into the diversity of these cases, the overall process time, the number of adjournments and hearings, and the judicial time required until a case was concluded as “settled” during different case processes compared to cases “determined” by a judge.

Over the review period, 106 chancery matters were listed for hearing (interlocutory hearings or trials): 67 in November 2018 and 39 in November 2019. Of these 59 (41 in 2018 and 18 in 2019), i.e. a little over 50%, were not concluded during the two-month review period and therefore excluded from the review as no full assessment of all case actions and judicial time needed would have been possible. Of the remaining 47 cases, 17 were determined by a judge and 28 settled after being listed for a hearing. Two additional cases were excluded as they were “outlier” cases, i.e. they required an unusual length of time and number of hearings over several years, which would have distorted the overall results.

The case file review indicated that most cases settled and determined were filed more than three years prior. The cases settled on average tended to be older than those determined by a judge. Further analysis would be required to determine why cases settle after being in the system for a long time and progressing through a series of hearings, and to devise ways to encourage earlier settlements.

For the 17 cases determined by a judge, the number of individual hearings held ranged from 4 to 10, with an average of almost 7 per case, resulting in a total of 114 hearings. Many of these hearings were for interlocutory applications. In this context, a wide variety of interlocutory applications can arise during the progress of an individual case. Of the 114 hearings, 41 resulted in an adjournment. The number of adjournments per case ranged from 0 to 7, with an average of 2.5 adjournments per case. The 28 cases settled by a judge resulted in 191 hearings, ranging from 2 to 22 individual hearings, also for an average of 7 per case. Similarly, many of these hearings were for interlocutory applications. The number of adjournments ranged from 1 to 17, with an average of 3 adjournments. Some case events could not be counted as part of the case file review as no accompanying information was available on the outcome.

Further information would be required to draw conclusions or recommendations. It appears that if judges take full control of a case, it gets resolved faster and with fewer hearings that do not move the case further towards its solution. However, this finding may also be influenced by the complexity, value or higher contest level of the matter involved.

The data showed that based on the Court President’s estimates, the judicial time needed to resolve a case by a judge’s determination was significantly higher than when a case settled after being listed. The average judicial time needed in cases determined by a judge was 177 hours per case versus 58 hours when the case settled after listing. The main reasons are the need for a full substantive hearing, the judicial time needed to read and prepare for the substantive hearing, and the time required for judgement writing.

The data indicate that judges spend significant time on cases “settled” after being listed, making it relevant to consider these cases when determining the need for judicial positions. It is also relevant to be able to distinguish them from cases determined by a judge.

This case file review and resulting data may inform further detailed study to understand which procedural requirements and their application by the parties and the court tend to delay cases, if any case management approaches had been applied in these cases, if they made a difference in general or for more or less complex case types, or if any particular case characteristic contributed to delays.

Source: Ad hoc study conducted by High Court President in January 2022 for the purposes of this OECD project.



### **3.5.3. Case management, legislative changes and support staff trends**

Overall, case management at the High Court is applied to varying degrees. The Commercial Court aims to manage cases as tightly as possible. To improve case management overall, a more integrated approach that can track and reflect different case advances is recommended, together with an automated system that provides effective event tracking, assesses needs for adjustments and informs revision of practices.

Not unlike at other court levels in Ireland, the number of cases in which at least one party is a lay litigant is increasing, although sufficient data are not available to better understand this trend. Collecting data on the percentage of lay litigants involved in High Court cases through the new case management system being developed in the Courts Service to identify which case types are most impacted, who the lay litigants are and their capacities to represent themselves in different case types, and to understand their impact on delay and judicial time requirements would enable the development of meaningful policies to address this. In this regard, the reform measures suggested by the Kelly Review Group to implement the Kelly Report highlighted that a Practice Direction introduced in 2010 in the High Court “Governing of proceedings in which one or more of the parties does not have professional legal representation filings” is not being complied with in practice by parties and practitioners, and recommended that it be implemented by the High Court Central Office by 2025 (Department of Justice of Ireland, May 2022<sup>[51]</sup>). High Court judges also have the capacity to strike out a claim or part of a claim which amounts to an abuse of process, is bound to fail, or has no reasonable chance of succeeding; and on an application for such an order, to consider the pleadings and, if appropriate, evidence, for the purpose. Building on existing capacities and efforts, as well as on additional data collection, the High Court can provide enhanced support for lay litigants.

High Court judges are significantly better assisted by administrative and legal support staff than judges in other court levels studied. High Court judges have reported useful support from their judicial assistants for their daily work and for special research projects. Nevertheless, room for improvement has been identified in obtaining support for judges to draft judgements, as additional expertise is often required. Similarly, judges pointed to a limited number of registrars and a high turnover in this role. They also reported a lack of access to effective document and content management software, which makes preparing for hearings and drafting judgements more time consuming, especially as the complexity of cases increases. For example, the Commercial Court can use the commercially available TrialView software developed for such purposes, but only if the litigants pay. Additional typing support is also reportedly needed in the High Court. Other than the secretary to the Court President, there are currently four secretaries employed to assist the judges in typing their judgements. This adds to delays in the delivery of judgements and adds to judicial time requirements when urgent judgements must be delivered. Generally, judges in Ireland take written notes during hearings and use a dictation device to detail their judgement. When urgent judgements must be delivered and no secretary is available, the judge has to either type the judgment himself/herself (which may not always be feasible where it is likely to be lengthy) or deliver it orally from notes prepared for that purpose, asking the parties to engage a stenographer to take a shorthand note of the judgment. Courts Service is presently piloting new speech recognition software with judges that will possibly speed up the turnaround of judgements. While this and other support options, including advanced technology solutions, are not available, additional typing support, possibly via temporary staff, is an option to consider.

### **Box 3.4. Expanding staff support options for judges at the Commercial Court in England and Wales**

All judges in the Commercial Court have a clerk assigned to them. In addition, a judicial assistant scheme has been established after an initial successful pilot scheme started in October 2019. Unlike the judicial assistants at courts in Ireland, these positions are for a shorter time period and aimed at qualified barristers and solicitors in the early stages of their legal career. However, the positions are open to all with suitable qualifications and skills, with applications invited from those able to demonstrate an outstanding intellectual ability, excellent organisational skills and the ability to manage large and complicated workloads, as well as a high level of professional integrity. Judicial assistants help the judges(s) to whom they are allocated by carrying out research, summarising documents and providing general support for the judge(s) in the organisation of their work and hearings.

Source: (UK Commercial Court, 2021<sup>[52]</sup>), *Commercial Court Report, 2019-2020*, <https://www.gov.uk/courts-tribunals/commercial-court>.

The impact of the pandemic on pending cases and case backlog, and the expected rise in incoming cases resulting from the government moratoria on selected enforcement actions, are not the only issues that further challenge a court system already under pressure.

The effects of the Assisted Decision-Making Capacity Act, 2015 and the further Schengen Agreement requirements are foreseen to create additional work that will require additional staff. Some may only be needed for a short period of time, but may still be challenging. Other new legislation is pending and will likely further increase the demands at the High Court. Earlier changes, such as the introduction of the Cervical Check Tribunal, may further exacerbate challenges as some claimants are bringing these cases to the High Court instead. The fact that medical negligence claims generally require significant judicial time to conclude needs to be considered. Finally, there have been recent changes in personal insolvency legislation that have the potential, in time, to increase the caseload in this area.

#### **3.5.4. Time and Delphi Data collection: Challenges and lessons learned**

The broad range of cases handled by High Court judges was a challenge for the time study, as recognised during the development of the judicial time study data collection instrument. With 7 criminal and 17 civil case categories, several with additional subcategories, each with around 5 case action categories and detailed descriptions as to which case and action types were to be collected by the judges, the High Court time study instrument was the most complex and lengthy of all (see Table 3.6) for one case category; the full data collection instrument is included in Annex A).

As at the other court levels, the time study instrument was tested by judges. Those selected for the study were trained by the liaison judge and provided with reference material and a weekly timesheet to collect the needed information. This involved recording on a daily basis the time needed during each of the three, seven-day data collection periods (as judges tend to prepare and read for upcoming cases, draft judgements, at least in part, and may be assigned to urgent weekend hearings, capturing work for all seven days was essential).

**Table 3.6. Judicial case category and case activity time study data elements for one case category required for the High Court time study**

Common law non-jury, i.e. breach of contract, negligence (except negligence resulting in personal injury), debt recovery, and Circuit Court appeals other than family law and personal insolvency appeals
Pre-hearing actions/decisions (reading/research time, etc., except notices of motions)
Notices of motions
Substance hearing
Judgement drafting/consideration
Other post-hearing actions/decisions

The judges confirmed that the High Court was largely back to pre-COVID level operations, except for some jury trials and select case types. Any differences in processing times lingering from COVID-impacted operations were addressed during the Delphi study.

The first week time study data collection for the High Court started in July 2021, with 22 judges participating. The judges were selected by the High Court to reflect a representative group of judges handling the entire range of cases coming to the court. Each judge was assigned an identification number known only to the liaison judge to protect the anonymity of the participating judges, to ensure that follow-up data collection questions could be effectively fielded, and to ensure that each judge's data collection forms from all three weeks would not be mixed up.

At the end of each week, the completed time data forms were returned to the liaison judge, who sent them to the OECD study team. The study team reviewed the data for completeness and potential errors. Any issues detected were referred to the liaison judge who then followed up with the relevant judges. This process resulted not only in a high data collection form return rate (almost 95% for the High Court), but also in a relatively low rate of entries that had to be excluded due to missing or potentially incorrect data.

The first week's data collection results were fed into an initial analytical process to identify potential data gaps and test the analytical approach. The experience from the first week of data collection led to slight adjustments mostly related to the layout of the form to make it easier to use and limit entry gaps and errors. Other adjustments to the reference material were made to address misunderstandings. The overall results from the first week's data collection were compiled and shared with the liaison judge to discuss potential data and results issues. The second and third week of data collection commenced as planned at the beginning of the Court Year in October 2022. Only the second phase of asylum case data collection had to be postponed until November 2022 as no such cases were handled in October due to lack of judicial resources. At this point, all time study data were compiled and fed into the Delphi estimation process, which was conducted in late October and November 2022.

The data collection design and implementation was similar for all four courts, with some adjustments to reflect the differences in caseloads and court structures. The challenges faced, however, differed for all. The most common data collection issue at the High Court, as with the other courts, was that judges overlooked the need to enter how many cases were involved in each case type, not just how much time they spent on different case types and actions. For some categories this was unproblematic as one case is regularly handled per action. For others, especially when multiple notices of motions and case were involved during a morning or afternoon sitting, this became more difficult. Nevertheless, early identification of entry gaps and meticulous follow-up by the liaison judge reduced the number of entry gaps and errors.

The complexity of the High Court's caseload also implied a particular challenge for the workload data assessment. The requirement for all workload studies is to create a manageable set of composite case

types to make data collection easier. Each case set must be composed of similar cases that require about similar time. This was set out at the start and outlined in the reference material provided. Considering that the High Court already uses several composite case categories for its hearing lists, such as common law non-jury and chancery, these appeared to be appropriate combinations for this study. However, after bringing together all data from the time study, the Delphi estimation process and the case data available from Courts Service to be analysed, it became apparent that some of these composite categories, while containing case types of similar legal matter, represented case types that significantly differed in how they were processed and in how much judicial time they required. This meant that the time data collection likely did not fully capture several interim steps involved. While this could largely be addressed as part of an additional Delphi estimation process, it would require additional time. Importantly, the wide range of case complexity in some case categories made estimating “average” judicial time required for the major case steps captured in the study challenging (also as compared to other court levels). Without data available to understand how many cases of the same type that require more or less time are handled. The minimum and maximum judicial time needed to process a case from start to finish could be estimated, but without establishing a reliable average minimum or maximum time range, it was challenging to establish a reasonable case complexity mix that reflects the High Court workload. The resulting broad range of time estimates and limited data to assess the actual number of case events and duration meant that the minimum average calculations underestimated judicial time needed, while the maximum average overestimated. Neither appropriately reflects the mix of shorter and longer cases that judges handle in each case category. The medium time requirement, i.e. case weight, and the resulting medium position estimate is a better anchor to establish a meaningful time and position range.

Another challenge resulted from the significant number of matters reported by the Courts Service as resolved “out of court”. The fact that “out of court” generally meant that cases were settled after several actions that involved judicial time had been expended only surfaced late in the analysis. Other challenges resulted from the relatively frequent adjournments of interlocutory and other hearings, as no data on adjournments are collected. These gaps were also addressed through a combination of additional Delphi estimations by judges and registrars, and the abovementioned sample case file review conducted by the Court President.

### **3.5.5. Where do judges spend most of their time?**

Different from the lower courts, High Court judges spend the vast majority of their time on civil cases. Irrespective of whether minimum or maximum judicial time estimates are applied, the data indicate that criminal cases are the second highest case category, although by a distance. Of the almost 87 000 minimum hours needed, only 5 377 hours (6 707 including EU arrest warrants), or below 8% of the total workload, are criminal matters. Family law cases only take up 5,267 hours, slightly over 6% (see case weight and position information in the Annex C).

To provide further insight into the impact of increasing numbers of longer hearings on several case types, judicial assistants at the High Court conducted a sample data collection of all hearings indicated in the Legal Diary and listed in the relevant Dublin case lists for non-jury and judicial review, chancery and commercial cases in the context of this study. Data for family law cases were also gathered based on information collected by the family law registrar, who aimed to keep additional records of hearings actually held. Overall work demands precluded longer-term data collection of this kind by the registrar.

As the exercise focused on developing better information about trends in longer hearings, these results do not include the short matters listed for hearing on motion days (usually Mondays). As a result, they represent either substantive hearings or more lengthy procedural applications that could not be accommodated on motion days, but were listed on the remaining weekdays during data collection periods. The data were collected for the court year starting in October 2019 (Table 3.7) and October 2020), i.e. for

a period during the earlier days of the COVID-19 pandemic when the courts were closed for some time and efforts to adjust to the new circumstances had just started.

The results of the data collection showed a significant variation in the number and length of hearing days required across all four case types reviewed. It is important to note that “hearings” in the data (see Annex A) include both hearings of interlocutory applications and substantive hearings intended to lead to the final determination of a case. The results of this exercise also show again that judges have limited time left for non-hearing case work or non-case related work, and that there is a significant range of even just hearing time required within individual case categories.

Judgement writing requires several hours of judicial time, depending on the complexity of cases. Given that not all hearings trigger judgement writing, the number of average hearing days per case type does not provide a solid basis to estimate the average time needed per case type. During the 15-month data collection period, 105 hearings were conducted for family cases. The number of days required for all hearings was 235.5, an average of 18 hearing days per month, more than one hearing each non-motion day (not counting August and September, when no regular hearings are held). Given that the standard annual number of work days per judicial FTE position is 212, more than one judge had to be available to prepare and conduct all hearings, write judgements, conduct administrative tasks, meet with registrars, and undertake other regular tasks. The length of hearing days per individual case ranged from 0.5 to 6. Only 99.5 hearings, about 45%, lasted for less than 3 days. The average hearing length was 2.3 days, and they triggered significant judgement writing time (See Table 3.7). If the short half-day hearings, which may be mostly procedural matters or adjournments, are subtracted, the average hearing length remains 2.3.

**Table 3.7. Family law hearings held on non-motion days**

Family law list 8 October 2019 – 21 December 2020 (15 months)								Total	
Judges assigned: 1 judge, occasional back-up available									
Length of hearing days per case	0.5	1	2	3	4	5	6	-	-
Number of hearings by length	7	26	35	20	12	2	3	105	-
Number of hearing days	3.5	26	70	60	48	10	18	235.5	-
<b>Average # hearing days per month</b>									<b>18</b>
<b>Average hearing length</b>									<b>2.3</b>

Source: Elaborated by the OECD from data provided by the country.

The hearing day data collected for the other case types were based on hearings listed, meaning that not all will be held or may not be held as planned as some will settle during different stages of the case. Only some data are currently available to assess the impact of settlements on actual hearing days needed, and no data are available to indicate if and how many cases may require more or less hearing days than planned. Nevertheless, the listing data provide some overall insight into the number and length of hearings involved in these cases.

Courts Service data indicate that about 20% of non-jury common law and one-third of judicial review cases settled in 2018 and 2019 after being listed. Over the 12-month data collection period (not counting August and September when no regular hearings are held), 328 hearings were listed and an average of 37.5 hearing days were planned per month, i.e. more than two on every non-motion day. The number of days overall planned per hearing ranged from 0.5 to 20. Of the 328 hearings planned, 308 (over 90%) were planned to be completed in less than three days. Only 20 hearings were planned to last for more than three days, but some were planned for a significant number of days, which would mean the assigned judge would be blocked for a week or more to hear other cases, not considering the lengthy judgement writing involved in such cases (see Table 3.8). If the short half-day hearings are subtracted, the average length of hearing days increases slightly to 1.6.

**Table 3.8. Number of hearings planned for cases listed: Common law non-jury and judicial review list**

Common law non-jury and judicial review lists, 5 October 2020 – 5 November 2021 (12 months)										Total	
Judges assigned: Average 5.5 (1 is frequently "on circuit" hearing personal injury cases)											
Length of hearing days per case	0.5	1	2	3	4	5	6	8	20	-	-
Number of hearings by length	141	126	41	8	8	1	1	1	1	328	-
Total number of hearing days	70.5	126	82	24	32	5	6	8	20	375.5	-
<b>Average hearings per month</b>											<b>37.5</b>
<b>Average hearing length</b>											<b>1.2</b>

Source: Elaborated by the OECD from data provided by the country.

The sample data collection conducted by the Court President indicated that over 50% of chancery cases settled at some point after being listed in 2018 and 2019. During the 2020/2021 study period, the number of hearing days overall planned per case ranged from 0.5 to 24. Of the 234 hearings scheduled, 195, about 82%, were planned for less than 3 days. The average number of hearing days scheduled per month was 23.4, about 5 per four-day week. The average number of days planned per hearing was 1.5 (see Table 3.9). The review of chancery cases settled and determined by a judge in November 2019 and 2018, on the other hand, showed that the average duration of chancery hearings determined by a judge was 23 hours, about 5 hearing days. If the half-day hearings are subtracted, the average hearing length increases to 2.1. This may indicate that a range of interlocutory hearings that could not be accommodated on Mondays may influence the calculations, or that the number of cases that eventually settle greatly impact the average number of hours/days needed. More detailed data would facilitate longer-term planning.

**Table 3.9. Number of hearings planned for cases listed: Chancery list**

Chancery list hearings, 5 October 2020 – 5 November 2021 (12 months)											Total	
Judges assigned: Average 4.5 (4 FTE and 1 assigned part-time)												
Length of hearing days per case	0.5	1	2	3	4	5	6	7	8	24	-	-
Number of hearings by length	81	82	32	16	11	5	4	1	1	1	234	-
Total number of hearing days	40.5	82	64	48	44	25	24	7	8	24	366.5	-
<b>Average hearings per month</b>												<b>23.4</b>
<b>Average hearing length</b>												<b>1.5</b>

Source: Elaborated by the OECD from data provided by the country.

Courts Service data indicate that about 45% of commercial cases settled after listing in 2018 and 2019. There were 234 hearings scheduled for the 2020/2021 study period. The number of hearing days overall planned per case ranged from 0.5 to 17. Some 166 hearings were scheduled for less than 3 days, about 85%. Per month, 19.5 hearings were scheduled, a little over one hearing per non-motion day. The average number of hearing days was 1.7 (see Table 3.10). If half-day hearings are subtracted, the average hearing length increases to 1.9. Additional data were collected for the first three months of 2022. These numbers are different from the prior year, with fewer cases listed; however, the average length planned for each was 14.2 days, which is a high. If this could be considered an indication of the impact of the expected post-COVID-19 rush, and not an exception, this would show a need for more judges and registrars, along with temporary measures.

**Table 3.10. Number of hearings planned for cases listed: Commercial list**

Commercial list hearings, 5 October 2020 to 5 November 2021 (12 months)													Total		
Judges assigned: Average 4															
Length of hearing days per case	0.5	1	2	3	4	5	6	8	11	12	14	17	-	-	
Number of hearings	44	104	20	9	6	3	2	1	2	1	1	1	194	-	
Total number of hearing days	22	104	40	27	24	15	12	8	22	12	14	17	317	-	
<b>Average number of hearings per month</b>														<b>19.5</b>	
<b>Average hearing length</b>															<b>1.7</b>

Note: Most of the 0.5 and 1 day hearings may have been for motions, longer were most likely substantive hearings.

Early 2022 Commercial List, 11 January 2022 to 29 March 2022										Total	
Judges assigned: Average 4											
Length of hearing days per case		1	4	6	7	8	16	56		-	-
Number of hearings*		2	2	1	1	4	3	1		14	-
Total number of hearing days		2	8	6	7	32	48	56		159	-
<b>Average number of hearings per month</b>											<b>4.6</b>
<b>Average hearing length</b>											<b>14.2</b>

Source: Elaborated by the OECD from data provided by the country.

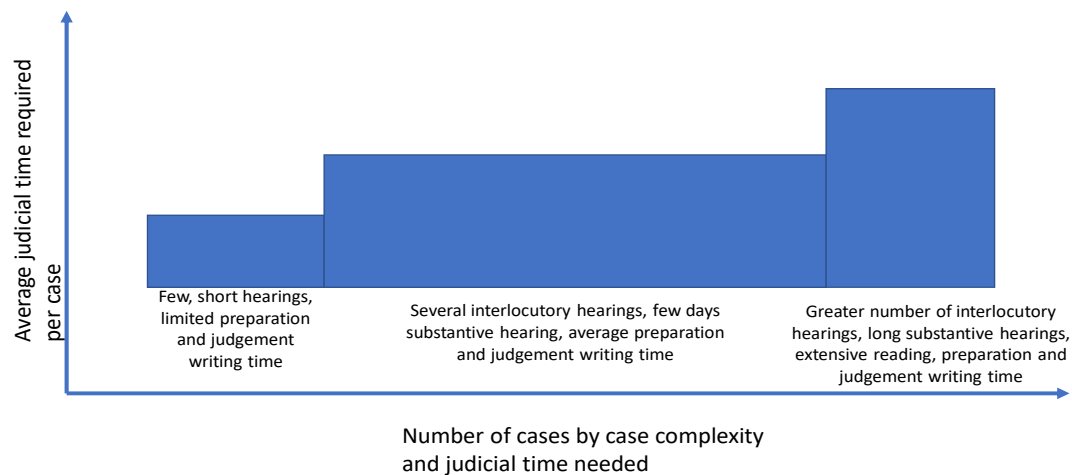
### 3.5.6. Time study results

As outlined throughout this report, the data currently available from the Courts Service do not fully reflect the work of the courts, and the case management system supporting the civil and family law streams at the superior courts appears to have been designed to track major actions in an individual case, with limited management information for effective case management and resource management planning. The development of an improved system is part of the Courts Service modernisation plan. Recommendations related to enhanced case management and IT solutions, as well as core data needs addressed in Chapter 6, may be considered to inform this effort.

Nevertheless, the detailed data reviews, additional data collection, the use of Delphi estimates from judges and court registrars, and additional meetings and interviews provided a workable basis to develop a set of case weights and related position ranges to inform short-term and longer-term adjustments to judicial positions.

As noted, the minimum position estimates developed likely underestimate the time requirements, especially as the number of interlocutory hearings and adjournments was challenging to estimate without access to better data. The maximum estimates, on the other hand, tend to overestimate the time requirements, as there is no information about case complexity frequencies and many of the case categories include such a broad range of cases that it is difficult to estimate the impact of more complex cases on an “average” case mix. This means that the lowest minimum time estimate does not directly equate to the lowest number of positions required, nor does the highest maximum estimate directly equate to the highest number of positions required. Rather, they indicate that the range of positions needed is higher than the lowest end and lower than the highest end. Figure 3.2 depicts the case mix a judge regularly faces in just one case category.

**Figure 3.2. Typical case mix per case type per judge**



Source: Source: Elaborated by the OECD from data provided by the country

The current results only shed light on the judicial resource needs to process the current workload and under the current situation (without any efficiency gains), not on future trends. Projections to estimate case trends require additional data to understand settlement trends and more reliable case data across the years. Expected impacts likely resulting from legislative changes will require a deeper analysis of influences on processing steps for impacted case types. One exception where more reliable projections are possible is the upcoming need to cover Wardship reviews resulting from the Assisted Decision Making (Capacity) Act 2015. In this regard, the court has reliable case data and meaningful time estimates for processing these reviews to support the reliable projection of judicial resources needed.

Importantly, without data to identify case backlog, including delay and backlog in getting cases listed or judgements delivered, it is not possible to address how many judges the court should have to be able to handle all incoming cases in a timelier manner. The High Court President provided some estimates of backlog related to select case types in her submission to the Judicial Resource Working Group. Her review of a sample of chancery cases processed in 2018 and 2019 (Box 3.3) further showed that all cases had been filed more than three years earlier, current case lists show similar case ages for other case types, and judges report that the final delivery of judgements in some case types has by now stretched to several months, almost a year in some instances. Therefore, there appears to be a backlog, likely considerable, for several case types, but the volume is not possible to quantify at this point. A clear definition of backlog, along with more data, would enable sound conclusions on how many judges would be needed to handle all cases in a timely manner. Suggestions for developing reliable backlog definitions and options to address delays are further outlined below and Chapter 6.

The data and qualitative information collected point to a need to increase judicial positions. Considering all caveats and the context of existing procedures and technology, the data indicate that the number of total judicial FTE positions needed by the High Court ranges, at minimum, between over 48.2 and the low mid-point of 83.2 positions (see Table 3.11; further detail can be found in the Annex C). As noted throughout, introducing procedural, operational and organisational improvements, adjustments to support staff and registrar resources, and investments to modernise case management systems and IT infrastructure may enhance efficiency and hence possibly reduce the numbers of judicial positions described.



**Table 3.11. High Court: Estimated position ranges**

High Court: Minimum and mixed workload and positions needed			
	Lowest complexity minimum	Low mid-point estimate	Mixed medium complexity
Total workload (hours)	86 925	149 891	212 859
Total workload-based positions	48	83	118

Source: Author's own elaboration based on study data (see Annex C)

Considering that the High Court currently has only 40.8 FTE positions available, this base FTE number could be considered when assessing the need to add judicial positions.

The time study data also indicate the overall time judges are spending on average on different cases in select case categories (case weight), and the resulting average minimum, maximum and mixed workload and related position requirements. These can be used to better understand workload overall, in selected case categories, and for selected case process steps. While the results and indicated data gaps point to several areas that could benefit from further review to develop better data to assess efficiency options, they also point to areas where positions could be shifted elsewhere.

Overall, lessons learnt from other workload studies have shown that the first time such data collection is undertaken tends to be the most challenging, and adjustments are always needed to fine-tune the results. Considering the significant effort and investment made when such a study is undertaken, workload studies should not just be seen as a one-time effort. The different datasets can continue to inform the development of better data and enhanced case management approaches. They can be used as the bases to continue to add new and other data and build a lasting source to assess workloads as legislation changes and new process options are explored.

### 3.6. Circuit Courts

Circuit Courts in Ireland were established by the 1924 Courts of Justice Act, combining the jurisdiction of the County Courts, Recorder's Court and the Court of Quarter Sessions. The court in its current form was established in 1961, see Section 4(1) of the Courts Act.

There are currently eight court circuits across the country, including the Dublin District. Most circuits have court locations in more than one town, and the court judges sit in about 40 venues across the different circuits. Only the cities of Dublin, Cork and Limerick have continual Circuit Court sittings. The other circuits are served by sittings scheduled for periods of one to six weeks every two to four months. Longer or more frequent sessions may be scheduled in busy venues for particular lists.

There are currently 37 ordinary circuit court judges, plus the President of the Circuit Court (which amounts to 38 judges) and 2 specialist (insolvency) circuit court judges.<sup>11</sup> Information provided to the OECD team outlined that 10 Judges are assigned permanently to the Dublin circuit by the Government, 3 Judges are permanently assigned to the Cork circuit, and 1 judge is permanently assigned to each of the other circuits.<sup>12</sup> These assignments are permanent and the judges only sit in their assigned circuits, although they may be temporarily reassigned by the Court President, if needed.

All judges outside of Dublin, including the other circuit judges that are "unassigned", travel to locations outside of Dublin throughout the country to account for the eight existing circuits. The President of the Circuit Court assigns these judges to family law in each circuit for a minimum term of two years to provide consistency, and then to the remaining sittings as agreed with each judge. Every effort is made to ensure that the same judge is assigned to the same list in each venue to achieve legal certainty and consistency for those lists, while still providing flexibility to ensure that judges are available to cover any special or

additional sittings.<sup>13</sup> However, it was reported that this is not always possible to achieve in practice in view of the existing number of judges.

The Government has permanently appointed four unassigned judges to spend 50% of their time at the two Special Criminal Courts (SCC),<sup>14</sup> where two have usually been required full time since 2016.

Circuit Court sitting weeks in each venue around the country are allocated by the Court's President. The process considers the past requirements of each circuit and the input of the office managers, who are aware of the pending cases in the list, cases that must be prioritised, and those that could take longer than normal. Once it is decided how many weeks will be allocated to each business on each circuit, the President fixes the sittings and makes assignments based on that information and the availability of judges.

The system for scheduling hearings could be made more precise through collecting information on the average numbers of adjournments and the percentage of cases settled out of court after listing. This could also improve certainty for lawyers and litigants. As trial date certainty is internationally considered an important court performance indicator, this is one area to be considered for further development across court levels (International Consortium for Court Excellence, 2020<sup>[53]</sup>). In line with these considerations, the Courts Service is planning to introduce a comprehensive case management system for all these case types and jurisdictions.

Most judges, especially the Court President, also serve on a range of Government, court and other committees.<sup>15</sup> As a result, and due to permanent assignments to the SCC, there are currently only 34.7 FTE judges available to handle Circuit Court cases, not the full 38 FTE. This should be taken into account when considering the creation of additional positions.

Circuit Court judges sit as single judges in all cases coming to the Circuit Court. Criminal trials are held as jury trials, similar to the Central Criminal Court level, which adds to the time required to manage substantive criminal hearings.

Ordinary judges are supported by an assigned judicial assistant or a crier. Both assigned and unassigned judges, especially in the provincial circuits, must travel long distances to venues. However, as discussed in the next chapter, assigned judges outside of Dublin and unassigned judges in particular may need support that is more geared towards administrative (such as judicial assistants) and logistical support when traveling to the different circuits. Interviews with judges indicated that timely access to IT support can be a special challenge for judges based outside of Dublin. The local court registrar provides the administrative and court room management support during hearings, but support outside the hearings appears limited.

### **3.6.1. Caseload trends and workload compositions**

The Circuit Court has original limited first instance civil, family and criminal jurisdiction, and handles appeals from the District Court. Interviews with Circuit Court and High Court judges indicated differences in opinion if this creates issues of double filing or not, although data are not available to substantiate such reports.

The available case data for the Circuit Courts indicate that incoming civil, criminal and family cases increased until the COVID-19 pandemic halted much of daily life across Ireland in early 2020. While the number of resolved cases increased for criminal and family matters, they declined for civil matters (Table 3.12). The Circuit Courts resumed business relatively quickly after the first lockdown in 2020, but business was scaled down to accommodate health and safety measures, which lengthened several proceedings. At the same time, while applications in areas such as personal insolvency and possession were not halted, decisions were adjourned in most cases. The health and safety measures especially impacted jury trials, which were challenging to accommodate, particularly outside of Dublin.

**Table 3.12. Circuit Court case trends, 2018-2020**

Major court business type	Incoming			Resolved			Pending end of year		Average "case" length in days*		
	2020	2019	2018	2020	2019	2018	2019	2018	2020	2019	2018
Civil	38 535	50 723	49 253	17 121	35 590	39 606	N/A	N/A	740	725	749
Criminal offences (includes DC** appeals)	29 074	34 616	33 096	27 788	68 069	60 556	N/A	N/A	499	672	547
Criminal defendants (includes DC appeals)	11 676	15 385	14 899	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Family	6 149	5 522	5 405	4 425	5 834	5 502	N/A	N/A	N/A	N/A	N/A

Notes: \*Civil business: from issue to disposal; criminal business: time from receipt of return for trial in Circuit Court to final order. \*\*"DC" is the abbreviation for District Courts.

Source: Courts Service Annual Reports from 2019 (p. 46, p. 58-67, p. 100-101) and 2020 (p.39, p.56-68, p. 105): (Courts Service, 2022<sup>[35]</sup>), *Courts Service Annual Reports*, <https://www.courts.ie/annual-report>.

As the pandemic continued and mostly urgent matters were dealt with, increasing numbers of non-urgent cases were adjourned. While backlog data are not currently collected, the high levels of case backlog in all Circuit Courts was stressed by judges, registrars and members of the District Operations Directorate of the Courts Service during interviews.

The case backlog has been exacerbated due to COVID-19, but preceded the pandemic, especially in family and other civil case categories, such as possessions (O'Shea, 2014<sup>[54]</sup>). As outlined below, the current backlog situation in these cases is large enough to prompt serious concerns about the capacity of available judges to tackle all pending cases in a timely manner, while also responding to incoming cases. This is an important matter to consider across all court levels. While the earlier increase in backlog indicate a potential need for additional judges, along with changes in the legislation and case management to enhance efficiencies, temporary additional judicial resources might also be an option to consider.

Data collected by the Courts Service show that the number of annual sitting days of the Circuit Courts varies across venues to reflect the estimated incoming judicial case and workload volume. As expected<sup>16</sup>, 2019 data show that the number of sitting days was the highest in Dublin (2 325), followed by Cork (334), Limerick (217) and Tipperary (235). The lowest number of sitting days were found in Leitrim (18). County-specific Courts Service data indicate that the number of scheduled Circuit Court sitting days has declined since 2015 across most circuits. Data from 2020 reflect the impact of the COVID-19 pandemic (see Table 3.13). The initial analysis of sitting day data indicates room to increase sitting days across provinces to reflect the growing population and caseload. Further analysis is needed to assess if there is scope to establish standard sitting times across the Circuit Court nationally, which should take into account the additional resources that would be needed in such case, including a correlated increase in the necessary number of judges, registrars and other court staff needed, as well as traveling, electricity and logistics costs.

**Table 3.13. Annual Circuit Court sitting day trends**

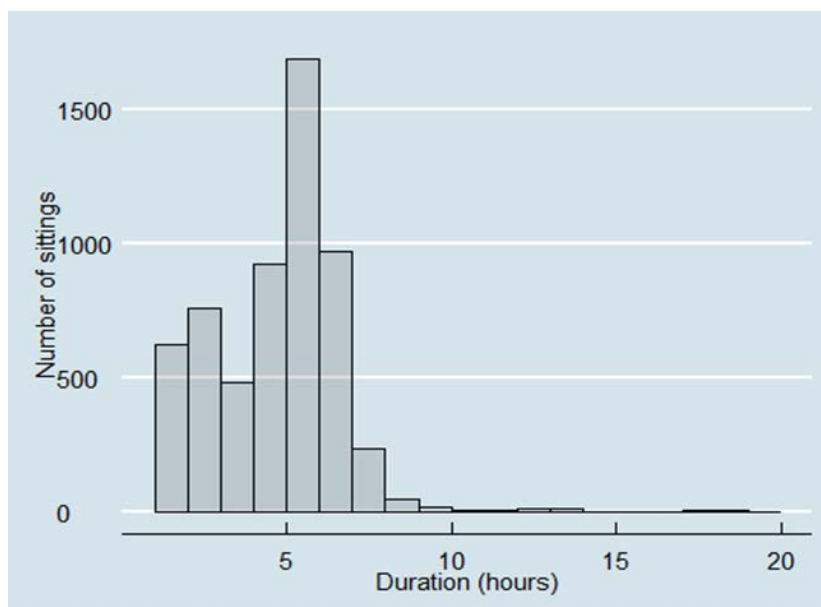
2020	2019	2018	2017	2016	2015
3 031	5 471	5 283	5 707	5 802	5 854

Source: Court Service data provided January 2022.

A review and initial analysis of 2019 raw data from Circuit Court sitting days regularly collected by registrars across all circuits and received from the Courts Service provides further insights.<sup>17</sup> This preliminary analysis showed that data are entered manually by different people across all districts, in different formats and with varying consistency. This impacts the quality of the data and would benefit from further investments in a comprehensive case management and data collection system that covers all case types and jurisdictions. For this reason, substantial data cleaning was necessary for a first level analysis of one year. As the data were not available consistently across all locations or for periods longer than one year, further detailed analysis would have provided limited value and required significantly more time. Therefore, it was not continued. The results presented here are more illustrative and need to be understood with these limitations in mind. At the same time, this is a valuable data source that is regularly collected, with variations for the District and Circuit Courts, and which could be strengthened. For example, it could be adjusted to serve as one data source to build upon and integrate into a future automated system, and provide a reliable source of important data before such a system exists.

In comparison to the multi-year data provided by the Courts Service, these data, also coming from the Courts Service but compiled separately, showed that a total of 6 036 sittings were recorded for the Circuit Courts in 2019. The average time per sitting was 4.6 hours, with variation from 2 minutes to 22.5 hours (the latter appears due to entry errors).

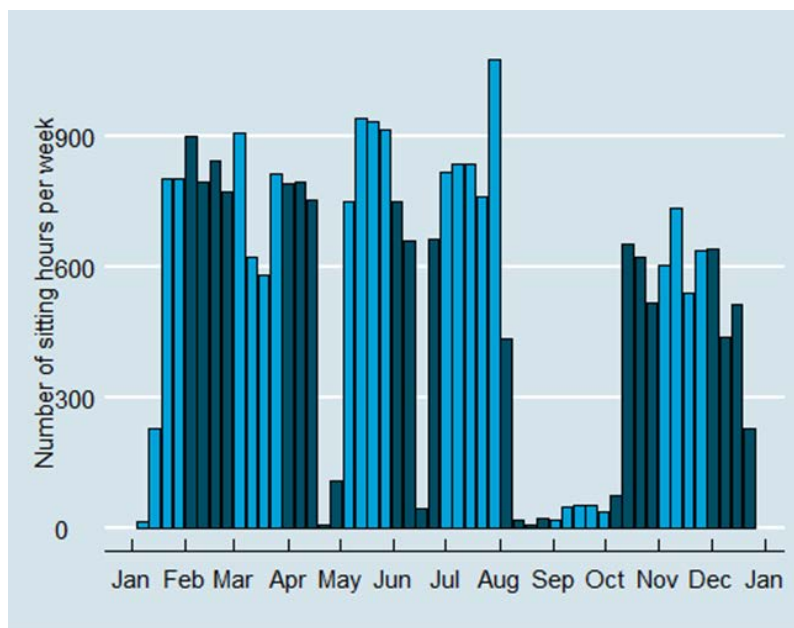
**Figure 3.3. Number and average duration of Circuit Court hearings, 2019**



Source: Court Service, special files, Sitting data 2019

The figure below shows how weekly sitting times varied over the year. In 2019 there were four distinctly visible sitting periods, following the courts' terms. The weekly sitting times tended to be higher in the first three of these periods.

**Figure 3.4. Weekly number of sitting hours, 2019**



Source: Court Service, special files, Sitting data 2019

While data were not systematically collected for the same year across different locations, the potential richness of this data source is significant. One example can be taken from the data compiled for visiting judges sitting in Cork in that year. Given that Cork has three permanently assigned judges (albeit one of them is on extended leave since 2019, without a substitute), and that specialised insolvency judges sit occasionally in Cork to hear such cases and are counted as visiting judges, it was still unexpected to find that visiting judges covered 60 sittings in 2019, involving civil, criminal and family cases. Another dataset collected by registrars at the same time, while not at all locations and not for all case types, covered the number of cases heard, disposed and adjourned. This is important information that needs to be regularly collected for case management purposes. These data also showed how varied sittings can be from day to day and location to location. For example, for civil cases the number of matters handled in Cork by visiting judges ranged from 40 to 1 per sitting, and the sittings lasted from 1 to 6:50 hours. Of the 40 civil cases heard in one sitting, 21 were disposed and 19 were adjourned. During a different sitting, one civil case was heard in a five-hour hearing and was then adjourned. These data highlight the significant level of complexity of cases handled by Circuit Court judges and the importance of data for resource planning.

### **3.6.2. Circuit Court workload data collection and position calculations**

As with the other court levels, the standard workload calculation methodology was applied for the Circuit Court. First, the average annual number of cases incoming to the Circuit Court judges was compiled by case category from the 2019 and 2018 annual reports, and confirmed with the Courts Service. To ensure that only cases that would eventually come to a judge were considered, and not those that would be resolved out of court without judicial involvement, “incoming” for the Court of Appeal was defined as “resolved and determined”. To calculate non-case based “other civil work”, “other criminal work” and “non-case related work”, the annual number of work weeks per judge (42) was applied.

As had been pre-shadowed during initial discussions with judges and the Courts Service in July and August 2021, the data published in the annual reports, as relating to the Circuit Courts (and all other court levels), are primarily intended to provide information to the general public and have only limited use for establishing an average workload per judge. As mentioned, “incoming” civil and family cases generally refer to all

matters initially brought to the court by litigants (or their lawyers) to issue proceedings, rather than as an indication of readiness to request a judicial hearing. These early filing steps may be necessary to officially notify the other party of the intent to take a matter to court, or may be taken to increase pressure on the other party to agree an out-of-court agreement. In the United States and United Kingdom, this practice of filing cases before settlement options has been explored in detail has changed, together with stronger court control to ensure that cases do not linger in the system for extended periods without action.

In the early stages, submissions do not involve judicial work and rarely administrative staff time (none if such process is automated); however, in Ireland they are being counted as “incoming” to the court. For several case categories, a “case” is not defined as one matter filed against another party, but frequently counted as multiple applications, and this way of counting continues as the case moves to a stage where judges become involved. This makes it challenging to accurately count the number of cases that may come before a judge and to estimate the total time needed to handle the entire case from when it is first assigned to a judge to final judgement. The issues related to criminal case data reported in the annual report were addressed in the methodology section, and were eventually resolved when the Courts Service provided a different dataset that related to a file record.

It was relevant for this report to identify sources that could produce a reliable case count to develop reasonable time estimates for cases handled by judges. These data needed to be available for civil and family cases.<sup>18</sup> In instances where these new data did not reflect a true case count, additional surveys of experienced registrars and judges were conducted to develop reliable estimates of numbers of applications involved.

The collection of the time study by 33 participating Circuit Court judges faced the same timing constraints as the other court levels. Data collection in July, the last month of the judicial year, was difficult due to a significantly higher workload. The cases listed during this time were also not fully representative of the annual workload as jury trials are usually not scheduled late in July. October, the start of the court year was also especially busy for the judges, but presented a more representative time period, and lists were less impacted by COVID-19 and running close to normal.

For the implementation of the data collection, unassigned judges were projected to face more challenges keeping track of the numbers of cases and time needed for different process steps than their colleagues working permanent posts. Several judges decided to engage their judicial assistants to assist in the data collection process. However, support staff also faced some challenges in collecting the appropriate types of data. As a result, the number of cases handled each day was not always reported, leading to related records being excluded from the analysis. Some of this information was captured later, but the full workload of the participating Circuit Court during the data collection period may still not be reflected.

After data cleaning, the collected time study data were vetted and adjusted as needed by a team of expert judges. The results from this Delphi estimation process were compiled to establish an average minimum and maximum number of hours needed to handle each case category, i.e. the minimum and maximum case weight per case category and non-case related work. In the case of the Circuit Courts, a prior study had provided some information on the length of different processing steps observed in eight circuits in 2014. These data closely mirrored the Delphi estimates provided by the judges (O’Shea, 2014, p. 13<sup>[54]</sup>).

The total annual minimum and maximum workload required to handle all case types and other work in hours was divided by 1 802 hours, i.e. the standard annual hours (8.5 work hours by 212 annual days), to calculate the FTE positions needed to handle this workload (see Table 3.14). This is understood to be a snapshot of requirements in view of the current procedures and functioning of the court system, and it would be useful to review potential efficiencies, as discussed below, which may also have an impact on the needed judicial positions.

**Table 3.14. Circuit Courts: Minimum and mixed workload and positions needed**

	Lowest complexity minimum	Low mid-point estimate	Medium mixed complexity
Total workload (hours)	83 872	119 581	155 290
Total workload-based positions	47	66	86

The minimum workload and related position requirements represent the average estimated time judges need if the cases present less complications, do not involve frequent adjournments or hearings, and require less hearing time. The maximum workload and position estimate presents the opposite. There is currently no reliable way to accurately establish the exact number of less or more complex and time-consuming cases within each case category coming to the judge. As all courts and judges handle a mix of both less and more complex cases, the average mix workload value is calculated.

The minimum time estimates underestimate the number of complex cases handled, while the maximum times estimates overestimate the impact of complex cases on the entire workload. The mixed case weights and the minimum case weights should be considered together to establish the lower end of positions needed. Any further position calculations would also need to consider future workload trends triggered by recent or pending legal and other reforms, as well as any potential efficiencies that could be gained by improving and streamlining court operations.

Reported case increases in select locations could also be further quantified and considered accordingly in the allocation of judicial resources to each venue. For example, on the criminal side there has been an increase from 152% to 207% of cases in counties such as Kildare or Wicklow. Regarding family issues, the upcoming reform package presented will, among other things, allocate jurisdiction of complex cases to the Circuit Courts. In terms of civil matters, case numbers have also risen in selected categories, and it is envisaged that there will be a sharp increase in personal injury cases due to new Personal Injuries Guidelines. Other factors likely to impact judicial workload in the long term relate to data protection cases, the jurisdiction of the Circuit Court over capacity issues, and the 2015 Assisted Decision Making (Capacity) Act due to be implemented in summer 2022, which replaces the Wards of Court system.

As at other court levels, data from time study data collection show that case types with high numbers of cases do not necessarily require the most judicial time. While Circuit Court judges processed about 8 215 criminal matters per year (average minimum of 13 702 hours per year), the time needed to resolve the average 8 093 family cases was significantly higher, with an average minimum of 29 352 hours per year (see Annex C). In other words, criminal cases only account for about 9% of the judicial time currently needed, despite being around one-third of the total cases incoming to the Circuit Courts. Criminal cases tend to require less judicial time than most civil cases across common law countries for three main reasons: the prosecution service in common law countries generally has sufficient discretion to bring only those cases to the court where sufficient evidence appears to support the case; the prosecution service, in most cases, does not have incentives to prolong any proceedings; and finally, when the accused is in detention, both sides tend to have a desire to keep the process moving in a timely manner. By contrast, childcare cases tend to result in multiple hearings over several months or longer and require the largest percentage of Circuit Court judges' time. The data indicate where time requirements are particularly high and where investing in alternative processing and support options could make the most difference.

The data also show that average hours worked by Circuit Court judges appears to be influenced by increasing numbers of court cases, increasing complexity of cases and greater demand due to other work requirements, and by the high number of work travel hours incurred by unassigned judges, specialty judges and others occasionally providing cover in provincial locations.

### 3.7. District Courts

The Irish District Courts developed from the jurisdiction of “Petty Sessions”, which was a court of local jurisdiction presided over by a Justice of the Peace. To this day, District Courts remain the main face of the courts to the Irish people. The higher courts may be more frequently mentioned in the media, but people have their first – and mostly only – court experience at lower courts, especially District Courts. This is where decisions about most business and other licence applications, from fishing licensing to alcohol licences, must be made, where traffic violations can be contested, where all lower value civil cases are taken, and where many family cases are decided or begin. The District Courts have also been called the linchpin of the Irish criminal justice system, as they are where all persons charged with criminal offences are initially processed and, despite their limited jurisdiction, account for most committals to Irish prisons. The prosecution of cases in District Courts is conducted by An Garda, the Irish police, under the direction of the Director of Public Prosecutions (O’Nolan, 2013<sup>[55]</sup>).

There are currently 23 District Court districts across the country, plus the Dublin district, most with court locations in more than one town. Of the 64 District Court judges, there is one judge permanently assigned to 21 of the provincial districts, two judges permanently assigned to Limerick City and County, and three permanently assigned to Cork City. Some 20 judges are assigned as “moveable judges” serving across the provinces, and 18 judges, including the President of the District Court, are assigned to the Dublin Metropolitan District. The government may only remove an assigned judge from their district to another district or to the moveable list with the judge's consent. Temporary assignments of moveable judges are the prerogative of the President of the District Court, who assigns moveable judges temporarily to a district where they are to sit (Committee of Judicial Studies, 2000<sup>[56]</sup>). Of the current 64 judges, 2 FTE judges are serving on the Special Criminal Court. Others, especially the Court President, serve on a range of government, court and other committees. As a result, there are currently 61.6 FTE judges available to handle District Court cases. Taking into account that the District Court works 365 days per year, this figure must be considered carefully in view of judges’ illnesses, training time and annual leave (which may result in less than 60 FTEs being available for work in any given day, in accordance with the interviewed stakeholders).

District Court judges sit as single judges in all cases coming to the District Court. Ordinary judges do not have support staff, and administrative support is available to them during court sittings from a local registrar (who may also have to cover sittings in several locations, along with other responsibilities), but not outside of hearings. Stakeholders reported room to renew and modernise provincial court buildings to enable the instalment of modern electronic equipment and connectivity (Courts Service, 2021<sup>[57]</sup>).

#### 3.7.1. Caseload trends and workload compositions

As a court of first instance serving all provinces and Dublin, the District Courts are very high-volume courts, which can often present challenges to effective case management. Available case data for the District Courts indicate that incoming civil cases increased until the COVID-19 pandemic halted much of daily life across Ireland in early 2020. The same applies to criminal cases, while family cases saw a slight decline in 2019. While the District Courts resumed business during the first lockdown, its business was scaled down to accommodate health and safety measures, as well as the limited number of incoming cases during that period. This caused the percentage of matters judges resolved to be lower in 2020, except in family cases. Waiting times increased during this period (see Table 3.15).



**Table 3.15. District Court case trends, 2018-2020**

Major court business type	Incoming			Resolved			Pending end of year		Averagelength in days*		
	2020	2019	2018	2020	2019	2018	2019	2018	2020	2019	2018
Civil	93719	144485	137493	67784	111518	106698	N/A	N/A	150	144	163
Criminal offences	382455	406480	391296	194796	301506	296971	N/A	N/A	259	249	242
Criminal defendants	226081	241520	235259	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Juvenile crime (orders made)	N/A	N/A	N/A	3326	4077	4151	N/A	N/A	N/A	N/A	N/A
Family	52384	55059	56628	43207	46981	44012	N/A	N/A	N/A	N/A	N/A

Note: \*For civil: from issue to disposal, excludes licensing. For criminal: figures are provided by offence, and here, for reference only, as the average of summary, indictable dealt with summarily and return for trial. Note that time is considered for each category in the following way: summary: time from issue of summons to disposal of offence in the District Court; indictable dealt with summarily: time from lodgement of charge sheet to disposal of offence in the District Court; return for trial: time from lodgement of charge sheet to transfer of offence to higher court for trial.

Source: Courts Service Annual Reports, 2020, 2019, 2018: (Courts Service, 2022<sup>[35]</sup>), *Courts Service Annual Reports*, <https://www.courts.ie/annual-report>.

As the pandemic continued and mostly urgent matters could be dealt with, increasing numbers of non-urgent cases were adjourned. In addition, summons requests from gardaí were not processed for several months. As a result, a significant backlog of cases was reported for the District Courts (Phelan, 2020<sup>[58]</sup>). Related data were not systematically compiled due to constraints at the time. However, new data on waiting times for select cases were reported in April 2021 for Limerick, which indicated a slow-down of activities and related backlogs during the period analysed (Table 3.16).

**Table 3.16. District Court waiting times in weeks, April 2021**

District Court waiting times in weeks, April 2021					
Office	Criminal		Civil	Family law	Family law
Limerick	Summonses (1)	Charge sheets (2)	Applications (3)	Domestic violence applications* (4)	Maintenance/guardianship/ap plications (5)
	65	28	20	4	8

Note: \*Urgent interim applications are dealt with immediately, i.e. on next sitting day in every district.

(1) Time from receipt of summons application to scheduled date for hearing – this should never be less than 12 weeks.

(2) Time from receipt of charge sheet to first court date.

(3) Time from receipt of application to date when it is actually heard – not just listed for adjourning or fixing a date.

(4) Time from receipt of application to listing for hearing in domestic violence matters.

(5) As (4) but for other family law applications.

Source: Courts Service, Special Files 2021.

The number of scheduled court sittings has gone up for several years to respond to the growing number of cases and their increasing complexity. The number of special sittings (i.e. sittings scheduled in addition to those set annually) and out-of-hour sittings (i.e. sittings after regular court hours) experienced a remarkable increase. Out-of-hour sittings especially intensified in 2020, the first COVID-19 impact year, an indication that the initially assumed scheduling capacities were expanded to continue to handle incoming cases, despite the many health precautions that had to be observed and that slowed down processes (Table 3.17).

**Table 3.17. Annual District Court trends**

Year	Scheduled sittings	Special sittings	Out of hours sittings
2020	6 891	733	1 219
2019	9 412	729	1 234
2018	9 612	585	1 200
2017	9 942	662	1 188
2016	9 354	670	1 091

Source: Courts Service submission to the District Courts, 2021

Similar to other court levels, time study data show that case types with high numbers of cases may not require most judicial time. While District Court judges processed close to an average of 290 000 criminal matters per year, the time needed to resolve the average almost 74 000 family cases was almost the same (see Table 3.17). These cases are known to be judicially time consuming, especially childcare cases where the level of involvement can be high.

The time study data also show that average hours worked by District Court judges was influenced by an increasing number of court cases, increasing complexity of cases and greater demand due to other work requirements, as well as by the high number of work travel hours incurred by moveable judges and others occasionally providing cover in provincial locations.

As discussed in more detail in the following Chapter, there appears to be room to reduce judicial workload by moving certain cases, such as licensing and low-level undisputed traffic cases, elsewhere, or handling them through different processes (i.e. better small claims options, more effective mediation and ODR), if appropriate alternatives and services are available. There is also scope for creating other efficiencies through better support for lay litigants, a review of administrative requirements, and the streamlining and automation of processes. The principal need would be addressing how family cases are currently handled.

The further collection of solid court data to assess bottlenecks, inefficiencies and their causes would be crucial to design better processes for the future that can both reduce the burden on judges and court personnel, and better serve the Irish people, especially the most vulnerable groups, including children.

Data collection to assess backlog is crucial to support the analysis of where and why it occurs. It has been reported that neither Court Presidents nor individual judges have access to comprehensive case processing and management information to alert them to potential delays and processing issues. It would also be helpful to collect data to track the number of adjournments, why they occur and in what type of cases. Adjournments tend to be a major cause of delay and directly impact judicial time (and the time of all involved). Gathering this information would enable the development of reasonable adjournment rules.

With all the caveats and in view of the current court operations and procedures, what the workload data seem to show is a need to adjust the number of judges to process the increasingly complex cases coming to the District Courts, and in preparation for the expected surge of cases waiting to be heard and submitted to the court that were held back due to COVID-19. It would also be beneficial to conduct a detailed review of all processes and alternative response options to identify potential improvements, and consider more solid case and court management approaches supported by reliable data that reflect the core business of the court (i.e. people come to the courts for their cases to be decided by judges).

### **3.7.2. District Court workload and position calculations**

Following the standard workload calculation methodology, the approach used for the Court of Appeal, the average annual number of cases incoming to District Court judges was compiled by case category from 2018 and 2019 annual Reports (Courts Service, 2022<sup>[35]</sup>) and confirmed with the Courts Service. To ensure that only cases that would eventually come to a judge were considered, and not those that would be

resolved out of court without judicial involvement, “incoming” for the District Court was defined as “resolved and determined”. To calculate non-case based “other civil work”, “other criminal work” and “non-case related work”, the annual number of work weeks per judge (42) was applied.

The collection of the time study data by District Court judges faced particular challenges due to the very high case volume, rapid processes and the fact that these judges operate without support staff. The time during which data could be collected by District Court judges had to be adjusted as data collection during July would have been too burdensome in this end of year month. As a result, the three-week study was conducted in October 2021, with 13 participating District Court judges.

The collected time study data were vetted and adjusted as needed by a team of expert judges. The results from this Delphi estimation process were compiled to establish an average minimum and maximum number of hours needed to handle each case category, i.e. the minimum and maximum case weight per case category, other civil and criminal, and non-case related work. By multiplying the average annual number of incoming cases by case category with their related case weight, the minimum and maximum number of annual work hours needed to process each case and work category was calculated. Finally, the total annual minimum and maximum workload required to handle all case types and other work in hours was divided by 1 802 hours, i.e. the standard annual hours per FTE position (8.5 work hours by 212 annual days) (see Table 3.18).

As was also stated for the Circuit Courts, and as discussed with judges and the Courts Service, District Court data published in annual reports present challenges for establishing an average workload per judge. First, as mentioned, “incoming” civil and family cases refers to all matters brought to the court by litigants (or their lawyers) to move a legal issue forward, but many cases settle before they are ever assigned to a judge. Second, similar to the Circuit Court level, what is reported by the Courts Service as a “case” is frequently multiple applications or orders issued in a case. Consequently, counting these actions as “cases” would multiply the workload count. Case count issues in criminal matters faced the same constraints as at all other courts levels.

After careful consideration, it was possible to identify additional sources to address remaining data gaps, similar to those applied at the Circuit Court level, to develop reliable time estimates. For childcare cases, additional data from Tusla requested by District Court judges were added. For criminal cases, data from the Director of Public Prosecutions were consulted to verify the calculations.

The workload and position calculations below (and the full data table in Annex C) present the results of this combined data collection effort of District Court judges, the Courts Service and the OECD team. The data show where workload concentrations lie, indicate where time requirements are particularly high, and show where investing in alternative processing and support options could make the most difference.

Similar to all other court levels, the minimum time estimates underestimate the number of complex cases handled, and the maximum overestimate the impact of complex cases on the entire workload. Considering that the range of case complexity is more limited at the District Court level, the differences may be less here. However, there is a high frequency of adjournments not fully captured by the Courts Service. Although additional surveys of judges and registrars provided a more reliable count, underestimating and overestimating court events may still influence the results for the District Court. For this reason, the mixed case weights and the minimum case weights would need to be viewed together to establish the lower end of positions needed. As at other court levels, further position calculations would also need to consider future workload trends triggered by recent or pending legal and other reforms, such as significant changes in family law.

Notwithstanding the need for additional case data to reflect these future trends in further position calculations, the current data and qualitative information collected point to a need to increase judicial positions. All caveats considered, the data indicate that the minimum number of total judicial FTE positions needed by the District Courts ranges between higher than 75 and the low mid-point of 88. The medium

mixed complexity workload presents the upper range of positions needed (Table 3.18, the full case weight table can be found in Annex C). Furthermore, the assignments of District Court judges to the Special Criminal Court and a range of committees must also be reflected.

As at all court levels, it would be important to consider position requirements in the current system together with the efficiency gains that could be prompted by procedural, operational and organisational improvements, and adjustments to support staff and registrar resources, which may have an impact on the actual needs for judicial positions.

**Table 3.18. District Courts: Minimum and mixed workload and positions needed**

	Lowest complexity minimum	Low mid-point estimate	Mixed medium complexity
Total workload (hours)	135 178	157 927	180 677
Total workload-based positions	<b>75</b>	<b>88</b>	<b>100</b>

### Box 3.5. Key recommendations

- Given the current workload and procedures, consider increasing the number of permanent judges at all court levels and providing further flexible work options, as well as review the numbers and necessary capacities of support staff.
- To fully understand the need for streamlining operations, consider conducting a detailed process and organisational assessment, in line with the submission by the President of the High Court to the Judicial Resources Working Group.<sup>19</sup> Such an assessment would map in detail the flow of different case types at a particular court level and in different locations. It could include each processing step, action and decision from first registration through to final decision at every stage of a case and by all those involved, including litigants and their lawyers.

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## Notes

<sup>1</sup> On the EU enlargement process, see [https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-eu\\_en](https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-eu_en).

<sup>2</sup> For information on the OECD accession process, see <http://www.oecd.org/legal/accession-process.htm>.

<sup>3</sup> Currently, the number of High Court judges is 46 with the appointment of an additional judge in February 2022.

<sup>4</sup> As the Handbook for Judicial Information, 2020 version, prepared by the Committee for Judicial Studies, shows.

<sup>5</sup> Submission of the High Court President to the Judicial Planning Working Group, shared with the OECD team on January 2022.

<sup>6</sup> See <https://www.judiciary.uk/about-the-judiciary/the-justice-system/court-structure/>.

<sup>7</sup> See [www.bccourts.ca/supreme\\_court/about\\_the\\_supreme\\_court/annual\\_reports/2020\\_SC\\_Annual\\_Report.pdf](http://www.bccourts.ca/supreme_court/about_the_supreme_court/annual_reports/2020_SC_Annual_Report.pdf).

<sup>8</sup> See [www.bccourts.ca/supreme\\_court/about\\_the\\_supreme\\_court/Judges\\_and\\_Masters\\_of\\_the\\_Supreme\\_Court.aspx](http://www.bccourts.ca/supreme_court/about_the_supreme_court/Judges_and_Masters_of_the_Supreme_Court.aspx).

<sup>9</sup> See <https://www.vacourts.gov>.

<sup>10</sup> Reported resolved civil and family “case” data can fluctuate, increasing or decreasing, based on litigants and/or their lawyers entering more or less applications or filing for more motions due to how the data is recorded.

<sup>11</sup> One of these insolvency judges is retiring on 31 March 2022.

<sup>12</sup> One judge is permanently assigned by the government to the Eastern Circuit (comprising Meath, Louth, Kildare and Wicklow – sits in Trim, Dundalk, Naas and Bray), the South Eastern Circuit (Waterford, Wexford, Tipperary, Kilkenny, & Carlow – sits in Waterford, Dungarvan, Wexford, Clonmel, Thurles, Nenagh, Kilkenny and Carlow), the South Western Circuit (Limerick, Clare and Kerry – sits continuously in Limerick and in Ennis, Kilrush, New Castle West, Tralee, Killarney and Listowel), the Western Circuit (Galway and Mayo – sits in Galway, Loughrea, Clifden, Castlebar and Ballina), the Midland Circuit (Laois, Longford, Offaly, Roscommon, Sligo and Westmeath – sits in Longford, Portlaoise, Tullamore, Mullingar, Athlone, Roscommon and Sligo) and the Northern Circuit (Cavan, Monaghan, Leitrim and Donegal – sits in Cavan, Monaghan, Carrickmacross, Carrick on Shannon, Letterkenny, Buncrana and Donegal).

<sup>13</sup> The OECD team was informed that to provide consistency in family law, the Court President tries to assign the same judge for family law sessions in each circuit, although it is not always possible.

<sup>14</sup> The second Special Criminal Court was established in 2016.

<sup>15</sup> The following is a non-exhaustive list of those committees: 1) Judicial Council (the President and one other member of the Court); 2) Committees of the Judicial Council Personal Injuries Guidelines, Judicial Conduct, Sentencing Guidelines, Educational and Wellbeing; 3) Courts Service Board (the President and one other member of the court); 4) Committees of the Courts Service Board – Finance, Building Committee, Modernisation; 5) Judicial Appointments Advisory Board (President); 6) Judicial Liaison COVID Committee (President); 7) Circuit Court Rules Committee (President and two other members of the Court); 8) Complaints Referee; 9) Benchers Kings Inns; 10) Hammond Lane Project Board; 11) Family Law Court Development Committee; 12) Council of King's Inns; 13) Audit Committee; 14) Irish Legal Terms Advisory Committee; 15) Annual Circuit Court Conference Committee; 16) Annual National Conference Committee; 17) Library Committee; 18) Courts Martial Rules Committee; 19) Criminal Justice Strategic Committee; 20) Association of Judges; 21) Working Group to report on University Research.

<sup>16</sup> In general terms, the Dublin Circuit sits 5 days per week, while most other Circuits outside Dublin sit 4 days per week.

<sup>17</sup> See Court Sittings (2019), Special data files, received from Court Service in July 2021. These data received by the OECD consisted of several spreadsheets of information compiled by circuit court registrars in all locations for 2016-2019. The data contained information about the dates, start, end and length of daily court sitting by major case categories. These detailed sitting day data are collected only for the District and Circuit Courts for the purpose of informing related travel expense submissions from the judges. The standard sitting day data collection is relatively consistent, although still require significant data cleaning and statistical work and had limited use for the time study. Additional information related to number of cases heard and decisions was also included in 2019, but is not available for other years.

<sup>18</sup> Among other data, the Courts Service provided the OECD team with a range of additional Excel data worksheets for the Circuit and District Courts that represented a range of data details regularly collected, not all which is of interest for the annual report but was essential to get a more precise case data breakdown for this study. The same are not available for the superior courts as they come from different sources and systems.

<sup>19</sup> Internal document provided to the OECD by the Chief Justice of Ireland in November 2021.

# **4 Modernising Irish Courts: key opportunities and challenges in Ireland**

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This Chapter highlights key opportunities and challenges for modernisation across each participating court level in Ireland, based on good practice examples from other countries and suggestions by Irish stakeholders.

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Justice systems around the world are increasingly adopting innovative trends that have permeated the public sector in the last decade and been accelerated by the COVID-19 pandemic. Key modernisation approaches have included the incorporation of digital tools, data-based approaches, simplification of procedures, further integration among public services and specialised case management for different case-types. These tools have the potential to increase efficiency and cost-effectiveness of the justice system, cutting trial length and optimising judicial staff time.

While a workload study is not designed to assess process and operational efficiencies, the results indicate where some gaps exist. This ranges from case processes that could be enhanced in terms of efficiency; potential for improved case management approaches that may better meet the needs of different case types; need for improved data collection, other information and resources to design and test more efficient case management techniques and inform other change options; scope to develop time standards and other court performance measures; and room to implement more effective IT solutions. These considerations are shared across all court levels, but manifest themselves differently in each. Challenges and changes at one court level also impact the others, which is why a strategic approach to making adjustments that reflects the common and particular needs of all court levels is needed. To fully understand the need for streamlining operations, Ireland could benefit from conducting a detailed process and organisational assessment, as recently suggested by the President of the High Court as part of her submission to the Judicial Resources Working Group.<sup>1</sup> Such an assessment would map in detail the flow of different case types at a particular court level and in different locations. It could include each processing step, action and decision from first registration through to final decision at every stage of a case and by all those involved, including litigants and their lawyers (SEARCH and NCSC, 2002<sub>[1]</sub>). The assessment could also map all processes as provided by the law to identify if and where implemented processes divert or do not take full advantage of legally provided options, and provide information on necessary legislative or court rule changes to develop appropriate solutions that can be implemented in the short term or over time.

In this context, this Chapter outlines key opportunities and challenges for modernisation across each participating court level in Ireland. It draws on global good practice principles, comparative experiences and Irish stakeholders' suggestions to highlight potential efficiency gains that may be suitable in Ireland. The issues selected were identified based on the most relevant factors that seem to be contributing to the current levels of workload at each court level. Addressing such issues through innovative strategies may have a high impact on achieving efficiencies and hence reduce the number of needed judges to deal with the total workload.

## **4.1. Modernisation opportunities at the Court of Appeal**

The Court of Appeal is a relatively new court (created in 2014) that has only recently begun absorbing its full functions and number of judges. The first eight years of operation have provided valuable lessons that can help it streamline procedures and optimise its potential. Building upon the combined qualitative and quantitative information collected, the following sections include specific recommendations for the Court of Appeal that aim to reflect comparative international experiences and examples, where appropriate.

### **4.1.1. Tools to make judgement writing more efficient**

The time study results and Delphi estimates illustrate that judgement drafting is the most time-consuming process step for judges at the Court of Appeal. While judgement drafting tends to require a significant proportion of a judge's time at any court level where written judgements are issued, the time needed to develop the judgement increases in higher level courts where the decision sets precedent, and especially at the appellate level where errors by subordinate courts may need correction and where law is developed. The fact that modern technology today provides for the online publication of appellate decisions on court websites and elsewhere is a development that increases access to legal resources for all and potentially

leads to greater consistency in judicial decisions, increased public understanding of judicial decisions and less unsubstantiated appeals. It also implies greater scrutiny as these decisions are currently read by many more people.

Proportionally, judgement writing requires the most of a Court of Appeal judge's time, not only in Ireland (Robin, 2020<sup>[2]</sup>). The usual case management and streamlining approaches tend to make little difference in judicial time needed for judgement writing. Targeted efforts to reduce the time needed to develop well-supported and reasoned judgements would therefore be required to reduce the time needed.

A specific current challenge for the Court of Appeal that adds to judgement writing time is that a significant number of judgements are backlogged. The current time between hearing a case and actual judgement writing can be months or a year later. This means that judges often need to refamiliarise themselves with court papers and their notes prior to writing. This repetitious work could be reduced if writing time for judgements could be scheduled soon after the appeal hearing, while things are fresh in the judge's mind. The court is currently experimenting with different scheduling options to set aside time for judgement writing throughout the year, rather than leaving this essential task mainly to non-sitting court holidays. Currently, no hearings are scheduled on Wednesdays, for example, to allow judges to draft judgements. This approach may also be considered by other court levels to ensure enough time is allocated for this task.

Judges reported that these efforts have helped address some of the judgement writing backlog, although a solution is still required for the cases that require several weeks of judgement writing. This challenge will particularly come to the forefront in 2022, when the Court of Appeal applies judgement delivery times. Part of this process still requires an implementation plan, so judges will be accountable through a complaints process being set up by the Judicial Council.

Although setting aside sufficient time for judgement writing shortly after hearings end is important, equally important is that the judgement writing process itself is as efficient as possible. When judgement delivery timelines are set, as is recently the case, efficient writing becomes essential to ensure that judges have enough time to deliver quality judgements. For this reason, courts in several countries have developed judgement writing protocols that outline how judgements should be structured, with guidelines for references and the scope of use of legal sources (National Judicial Colleague of Australia, 2017<sup>[3]</sup>) (International Criminal Courts, 2019<sup>[4]</sup>). Such protocols are then reflected in judgement writing courses for newly appointed judges and offered to already sitting judges. Ireland is also in the process of developing a judgement writing protocol, led by the Courts Service's Legal research and Library Service. If a template is agreed on with the judiciary that all jurisdictions would follow, this could significantly streamline and strengthen the efficiency of the judgment writing process.

As further addressed below, effective research and judgement writing also benefits from judges having access to qualified research and legal staff support, which they currently do, along with technology solutions that help with accessing and reviewing voluminous case files.

Effective judgement writing and the timely delivery of judgements is a challenge for many courts, especially courts of appeal. As a result, a range of options have evolved and are regularly applied in other countries. A well-designed and supported structure to enable judges to deliver judgements in a timely manner can be found at the Court of Appeals in Colorado, United States. However, it must be recognised that these were developed over time, often require significant changes and support, and must be viewed in the context of the Irish courts. Some of the efficiency options summarised in Box 4.1 may be worth considering in Ireland.

### **Box 4.1. Judgement writing at the Colorado Court of Appeals**

The Colorado Court of Appeals is served by 22 judges, including the Chief Judge. Cases are heard by three panel judges. In 2016, the court resolved 2 466 cases, including written opinions issued and dismissals due to settlement or lack of jurisdiction. The judges of the court issued 1 723 opinions, requiring each judge to author about 80 opinions per year. Some of the protocols implemented to reduce the time needed to deliver the written judgements, while ensuring the quality of the decisions, are summarised below.

#### **Predisposition memorandum (PDM)**

Once a case is assigned to a judge for drafting, the judge prepares a “predisposition memorandum” (PDM) for the other two panel members. The judge, with the assistance of law clerks, drafts the PDM after reviewing the briefs, pertinent law and the record. Each PDM is typically written in draft opinion form with a proposed disposition of the case.

Each judge is responsible for drafting at least two PDMs per sitting, and the authoring judge circulates the PDM to the other division members no later than the Friday before the scheduled sitting. Generally, a Staff Attorney also drafts one case assigned to this sitting, and the judges take turns editing and announcing this case. Thus, each judge and his or her staff prepares two to three PDMs every two weeks. This means that each judge, after completing their PDMs, is also responsible for reading the briefs, pertinent law and, if necessary, portions of the record in four to five other cases every two weeks. When the judges prepare for oral argument, the PDM serves to provide insight and to focus questions for each division member. When oral argument is waived, the PDM serves a similar function for discussion in conference.

#### **Oral arguments**

Attorneys for either side may request an oral argument. These requests are routinely granted, although the panel may, at its discretion, deny such a request. The division may also order that a case is orally argued, even though a party did not request oral argument.

Before an oral argument, each judge usually formulates questions to ask the attorneys. In some cases, a division may send pre-argument questions to the attorneys.

#### **Conference**

On the day of the scheduled sitting, usually immediately after oral arguments, the panel meets in “conference” to discuss all the cases assigned for that sitting, including waived cases. If the panel reaches consensus on a case they confirm authorship, and the case continues towards announcement. If they cannot reach consensus, the judges may decide to discuss it again at a later panel conference. These cases may require additional research, further record review or supplemental discussion before the panel reaches a decision.

All PDMs are tentative, as is authorship. The PDM may form the basis of the majority opinion, but it may also represent a dissenting view if the other two judges disagree, in which case one of the remaining two division members will author the majority opinion. It is not uncommon for all division members to disagree with at least part of the PDM; the initial author-judge may then prepare one or more revised drafts before a draft is acceptable to the other members of the division.

### Division conference

Nearly every Wednesday, each division will meet to discuss staff attorney cases, cases held over from prior division conferences and any other outstanding issues.

During the conference, the panel also discusses whether a draft opinion merits publication. Colorado Appellate Rule 35(e) provides that a case should be published when the opinion: 1) lays down a new rule of law, alters or modifies an existing rule, or applies an established rule to novel facts; 2) involves a legal issue of continuing public interest; 3) directs attention to the shortcomings of existing common law or statutes; or (4) resolves an apparent conflict of authority.

If the opinion may merit publication, the author will indicate possible publication and state the grounds for such when they circulate the PDM to the other division members. If the division agrees that the opinion merits publication, the opinion will be circulated to the full court for a majority vote.

Draft opinions that do not meet the requirements for publication are announced as unpublished cases. For these cases, the authoring judge, incorporating the views of the other division members, submits the draft opinion to the Reporter and Assistant Reporter of Decisions. They review each opinion for style, form, language, punctuation and general readability. The authoring judge then reviews suggested edits from the Reporter and Assistant Reporter of Decisions, and if they are substantive the other division members will also review them. The authoring judge then finalises the draft opinion.

Source: (Colorado Judicial Branch, n.d.[5]), *Court of Appeals Protocols* (webpage), [https://www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Protocols.cfm](https://www.courts.state.co.us/Courts/Court_Of_Appeals/Protocols.cfm).

Introducing the new figure of Staff Attorneys, as outlined in Box 4.1, could be considered by Ireland, which could possibly be a meaningful addition to reduce judicial effort. Staff attorneys in the United States, the United Kingdom and other common law countries are generally well-qualified lawyers with sufficient legal expertise and experience to support several judges in screening of cases for legally insufficiently supported submissions and conduct in-depth legal research in complex cases. The creation of this new support role should be built on a clear understanding of judicial support needs for which the assessment recommended in this report can be pertinent.

#### **4.1.2. Improving how effectively cases are screened**

Many Courts of Appeal around the world must address increasing numbers of non-qualifying or frivolous appeals. To address this challenge, some courts have developed different approaches to assist lay litigants and legal practitioners via a range of information and decision-making support mechanisms. Equally important is a transparent screening process that enables case review before a matter advances to the appeals process, while also protects the right to appeal.

In Ireland, only appeals related to planning and immigrant cases, and a few other statutory appeals, can come to the Court of Appeal if Leave of Appeal is granted by the High Court. Leave of appeal in planning appeals and appeals related to asylum/immigration decisions is limited to a point of law and of exceptional public interest. This is an effective mechanism, but only applicable to a few cases, and may be better placed elsewhere than at the High Court.

This is similar to processes used in the United Kingdom for review processes at the appeal level. Here, the first step in any appeal process from the High Court to the Court of Appeal is obtaining permission to appeal from the lower court that made the decision. When such permission is denied, or in cases where it is not needed, the next step is to bring the matter before a single Court of Appeal judge who will typically decide the application for permission on paper, without a hearing. If permission to appeal is granted, the appellant may then file a new skeleton argument and all parties must agree to the content of the bundles, which are then lodged with the Court of Appeal ahead of the appeal hearing. A listing questionnaire must

also be filed by the appellant setting out practical matters relating to the substantive appeal. A court fee must be paid at each stage. More details about the process can be found in the comprehensive guidance for users provided by the HCMTS through their website (HM Courts and Tribunals Service, 2016<sup>[6]</sup>).

There is currently scope in Ireland to strengthen the effectiveness of the leave to appeal process to screen out cases that should not have come before the Court of Appeal. This may be either because the case is of too low value, seriousness or public interest, because there are no substantiated appeal reasons, or because of plainly fraudulent filings, which can happen in most countries. At the same time, these considerations must be balanced with the constitutional right to an appeal, constituting the appropriate safeguards to avoid blocking legitimate proceedings. This challenge has been addressed in some countries by introducing a review process at the Court of Appeal whereby a separate judge reviews and decides if a case qualifies for appeal. Other countries have created a screening unit, which is generally a unit of qualified lawyers (it can include a certain percentage of judges if needed) employed by the court to screen cases for these matters right after they are filed.

The proceedings at the Fourth Appellate District of the Court of Appeal of California, shown in Box 4.2, serves as an example of how several state level appeals courts in the United States screen cases before they are accepted.

#### **Box 4.2. Case screening at the Fourth Appellate District of the California Court of Appeal**

In civil cases, the California Rules of Court require an appellant to file a Civil Case Information Statement (Cal. Rules of Court, rule 8.100[g]). This is reviewed by a central staff attorney to determine if there are any issues with the timeliness of the appeal or the appealability of the challenged judgement or order, whether the case is entitled to calendar priority, whether there has been a previous writ or appeal in the same case or in a closely related case, or whether the appeal is affected by a pending bankruptcy. It is the court's practice to grant priority on its own motion to matters involving child custody or visitation. In all appeals, after the respondent's brief is filed, or the time for filing such a brief has lapsed, the managing attorney or a designated staff attorney screens the case and estimates the amount of time that the preparation of a draft opinion is likely to take. Criminal appeals involving issues that can be resolved with little difficulty based upon well-established law, and that do not present a likelihood of dispute as to how the law applies to the facts, are designated as "by the court" cases. In criminal appeals in which the appellant's counsel is unable to discern any reasonable arguable issues to raise, the court must independently review the record.

Source: (Fourth Appellate District, 2019<sup>[7]</sup>), *Internal Operating Practices and Procedures for the Fourth Appellate District, Division One*, [https://www.courts.ca.gov/documents/IOP\\_District4\\_division1.pdf](https://www.courts.ca.gov/documents/IOP_District4_division1.pdf).

One of the most evolved and interesting approaches to creating a full screening board can be found at the Supreme Court in Denmark with the Appeals Permission Board (see Box 4.3). If a similar solution is considered, independence of the Board should be safeguarded.



### Box 4.3. Appeals Permission Board in Denmark

The Appeals Permission Board was established on 1 January 1996, and since then has considered all petitions to appeal to the Supreme Court in civil and criminal cases. The Appeals Permission Board comes under the Danish Court Administration, which is the independent national council of the judiciary. It is otherwise independent of the judiciary and the government services, and there is no appeal against the board's decisions.

The Appeals Permission Board considers petitions to appeal to the Supreme Court. As the cases in question have already been tried and reviewed by the intermediate appeals court, those accepted are test cases, such as those that may have implications for rulings in other cases, or cases of special interest to the public. Since 2019, the board has also considered petitions to appeal family law cases to the Courts of Appeals. Certain other case types of importance may be considered but require permission by the Appeals Permission Board to be brought before a superior court.

As this board is not a direct part of the Supreme Court there is no opportunity, nor can the perception be created, that judges of the Supreme Court show preference to certain parties or have the opportunity to hear cases they select themselves.

Source: (Procesbevillingsnævnet, 2020<sup>[8]</sup>), *The Danish Appeals Permission Board – A short introduction (webpage)*, <https://www.domstol.dk/procesbevillingsnaevnet/in-english/?msclkid=ee120927b34111ec914f61fdb69f2352>

Irrespective of which approach is chosen, it is important to have an effective system in place that ensures only cases that truly qualify for appeal come before the court, and that those deciding the screening process do not then preside over the cases allowed to progress.

Any screening options would also require publishing the development of clear court rules, as well as having the resources to staff the screening process. An effective screening process can be supported by qualified non-judicial staff to assist the judge(s) making the screening decision. This can be a cost-effective approach to ensuring that cases handled by Court of Appeal judges are limited to those that qualify for appeal. As outlined above, this does require special attention and support for lay appellants so that they understand why an application to appeal is denied and have access to other available options to resolve their matters.

Some courts that aim to reduce unsubstantiated appeals make special efforts to publish detailed guidance for legal practitioners and others to help them in their decision-making process, and with preparing documents to be submitted. For example, the Florida Second District Court of Appeal sets out best practices from judges for each step of the appeals process, including documents and submission, as well as oral hearing practice (Florida Second District Court of Appeal, 2022<sup>[9]</sup>). Similarly, the Court of Appeal for England and Wales (Court of Appeal for England and Wales, 2018<sup>[10]</sup>) sets out detailed descriptions of each step in the appeals process, along with the forms to complete.

#### **4.1.3. Improving case management data to support the development of more effective case management options**

The Court of Appeal in Ireland applies a range of case management techniques to keep cases on schedule. Callover, directions, motions hearings and “mention only” events are generally effective pre-hearing activities. These can be used to ensure that all required documentation is ready and available for the main hearing, that parties are ready for the hearing date, and that any need for justified adjournments can be captured early and hearings rescheduled. When hearing dates are available, the court can also “fast track” short appeals. However, there appears to be some room for streamlining pre-hearing processes, and a

review would be useful. For example, it would be worth reviewing whether changes such as adjournment due to sickness or an application to take up the digital recording should be mentioned in court, or whether this requirement could be redistributed to a registrar or someone with a similar function. Such review would also need to consider when and if a judge needs to be involved. While active case management by judges and their direct communication with parties is important and good practice, some of these elements could be taken up by non-judicial staff, particularly if the court has its own well-structured support office, similar to those found in other jurisdictions (e.g. at the Court of Appeal in England and Wales and the Court of Appeal in Maryland, Box 4.5).

Insufficient data to effectively manage the entire process beyond scheduled hearings, however, appear to pose a particular challenge for the Court of Appeal in Ireland. This can impede a solid assessment and the development of process refinements. While the lack of in-depth case management data is an issue shared across all court levels, some of the data issues are specific to each court level, and their implications vary across court levels due to the different case types and complexities dealt with.

Data available from the Courts Service do not yet provide the information needed to guide court scheduling at all court levels. So far, the hearing date and approximate time needed is largely determined based on counsel/litigant estimates, combined with the experience of the judge responsible for listing hearings. The interviews for this report highlighted that this can pose fewer challenges for the Court of Appeal than for other courts, as significant pre-hearing case management activities lead to setting hearing dates that are rarely postponed. In lower-level courts, however, it is more of a challenge. Nevertheless, currently there are no data on the average hearing time needed or on the number of hearings that require one or more full days. Such data could be compiled regularly from the Court Lists and the Court Services internal online database. To provide additional information for this study, a Judicial Assistant from the Court of Appeal was able to manually hand-count data on hearings that lasted a full day or longer in 2020 and 2021 (the same information was provided by the High Court for select case categories). At other court levels, however, such efforts could be significantly more time consuming, or even impossible in lower courts, as these courts have many more cases. Nevertheless, creating automated court hearing lists and other internal databases that allow for digital inputs and could be mined for essential case management data could be an important initial investment for the Courts Service to help take stock of and compile available data. It would also support further work that builds on existing processes and capacities to develop meaningful case management data. This could be an important element for the Courts Service to address in collaboration with judges from each court level (see Chapter 6).

The collection of data to assess and plan the time needed to write judgements could also be strengthened. While this information is not often captured in detail in most countries, data about the time between hearings and issuing a judgement are frequently collected, which can provide some indication of the time needed for the judgement to be completed. This is important information for scheduling and resource planning for the Court of Appeal, and equally important for informing parties and the public about how long cases generally take to be completed. The Courts Service currently collects information about waiting times, generally defined as the time from indicated readiness for trial to the date a hearing is scheduled. It would be useful for Ireland to start collecting information about the dates when judgements are issued, i.e. concluded by the court, so that the Irish Courts can establish the length of time from filing to case disposition, one of the core performance indicators in well-managed courts. Solely reporting on waiting times, without providing information about time needed to deliver a judgement, may also create wrong expectations for litigants. This appears to be less of a challenge for the District Courts and even the Circuit Courts, as judgements are either provided at the end of the hearing or soon thereafter, but it can become a serious challenge for higher court levels where judgement writing can take weeks. Such data issues are discussed in more detail in Chapter 6.

The type of data needed to effectively manage cases depends on what the court aims to achieve. There is some overlap (but also differences) between the data needed to track case progression and the data needed to assess if timelines are kept, as well as resource needs. Additional data are frequently needed

to understand what contributes to delays or if the court pursues other goals, such as user access. While some of these data would be necessary for internal management purposes, they would not be needed or fit for publication.

In parallel, there are currently only a few performance measures that the court sets (not yet publishes) to manage its operations more effectively, for example the newly established timelines for judgement delivery. To be effective, the court would need a system that allows it to track judgement delivery status and, if timelines are adhered to, assess if certain case categories or other circumstances posed a threat to meeting timelines.

As the data needs of appeal courts differ to some extent from those of trial courts, so do performance measures to support effective and efficient court operations. In the United States, where courts have tracked case data for over 60 years, a range of guides and tools have been developed by lawyer and court organisations to assist the many state courts in their efforts to advance capacity to manage cases and performance. Standards for state level appellate courts were first proposed in 1977 (American Bar Association, 1994<sup>[11]</sup>) These early efforts were considered aspirational but not widely implemented. This changed when the Joint Court Management Committee of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA), in conjunction with the Conference of Chief Judges of the State Courts of Appeal (CCJSCA), the National Conference of Appellate Court Clerks (NCACC) and the American Bar Association (ABA), developed special model time standards designed to allow state appellate courts establish time standards based on their own circumstances (See Box 4.4). Such time standards are used today in most state courts of appeal in the United States, and similar measures have been applied in other countries (National Center for State Courts, 2014<sup>[12]</sup>). Some of the leading courts in the United States have advanced beyond the standards, applying broader performance measures such as CourTools that can be linked to automated case management systems and provide up-to-date management and performance information to court leadership and individual judges. CourTools were one of the bases for the development of the Global Measures of Court Performance that have evolved since 2012, and have been adopted by courts outside of the United States, such as in Australia and Moldova.<sup>2</sup> These internationally tested performance measures with specific implementation steps may be an option for the Irish courts to consider in the future, as further discussed in Chapter 6.

To prepare the ground for advancing case management and the development of time and other performance standards, it could be helpful to review what was initially considered the basis of setting time standards and the minimum data needed.<sup>3</sup>

#### Box 4.4. Minimum recommended features and methodology of appellate court time standards

Key data features that enable appellate courts to effectively monitor their actual appellate processing times on an ongoing basis and ensure the court is accountable for its performance are:

- Time standards should start from the case initiating event.
- Measure time within discrete interim stages, at minimum:
  - initial case filing to filing of record/transcript;
  - filing of record/transcript to close of briefing;
  - close of briefing to oral argument/submission;
  - oral argument/submission to disposition (judgement).
- Publish the results of measurements to time standards

The National Center for State Courts' 'Time to Disposition' methodology provides guidance on the design, calculation and practical application as a court performance measure that can be helpful for Ireland. The key steps include:

- Step 1: Compile a list of disposed cases
- Step 2: Calculate the total number of elapsed days
- Step 3: Apply the time standard
- Step 4: Analyse and interpret the results

Source: (National Center for State Courts, 2014<sup>[12]</sup>), *Model Time Standards for State Appellate Courts*, [https://www.courtools.org/data/assets/pdf\\_file/0015/9321/model\\_time\\_standards\\_for\\_state\\_appellate\\_courts.pdf](https://www.courtools.org/data/assets/pdf_file/0015/9321/model_time_standards_for_state_appellate_courts.pdf) and *Appellate Court Performance Measures – Measure 2 “Time to Disposition”*, [https://www.courtools.org/data/assets/pdf\\_file/0024/9672/courtools\\_appellate\\_measure2\\_time\\_to\\_disposition.pdf](https://www.courtools.org/data/assets/pdf_file/0024/9672/courtools_appellate_measure2_time_to_disposition.pdf)

In addition to case management data that supports the operations of the court and longer-term planning, well-managed courts also tend to provide individual judges with data to manage and keep track of their own caseload. Case listing information is helpful in this regard, but only to some extent. This could be less of a challenge at the Court of Appeal level when considering the lower volume of cases per judge in comparison to trial court levels. However, a lack of access to performance data could limit a judge's ability to review case progression and plan ahead, unless they keep their own data.

When performance-based case processing standards are introduced, such as delivery timelines for judgements at the Court of Appeal in Ireland, the need for actual data will become more pressing as judges will need to be able to track case progress towards set timelines. An example of the types of core information that individual judges would need in terms of case management data can be found in a nationwide Judicial Tools Work Group<sup>4</sup> in the United States (JTC, 2014<sup>[13]</sup>):

- The age of pending case status with information on essential case management steps for their own workload.
- Case management information relative to benchmarks and time standards related to their cases.
- Ticklers and alerts for upcoming case events.
- Timeline monitoring and achievement data for their own review and reporting.
- Early reminders for cases out of compliance with time standards.
- Data to monitor cases with no future scheduled court activities.

Judges at different jurisdictions and court levels often require additional data to manage their own caseload effectively and plan ahead. Further data are needed to effectively work with others and continuously assess workload and resource requirements, as well as identify potential processing issues and options to address these issues.

#### **4.1.4. Dealing with significant numbers of lay litigants**

The number of lay litigants is increasing at the Court of Appeal in Ireland, not unlike in other court levels and common law countries. To date, the Courts Service only collects data on the percentage of lay litigants at the Court of Appeal, indicating that 30% of cases are brought by lay litigants.

In the United States, close to 50% of all cases filed in courts of appeal since 1995 were filed by lay litigants, and the trend is increasing. For trial court levels, especially lower courts, these numbers tend to be even higher. In 2019, the National Center for State Courts reported anecdotal data that 75% or more of civil cases in state and local courts have at least one self-represented litigant (SLRN, 2019<sup>[14]</sup>).

These lay litigants need detailed information about their legal rights, how courts work, filing documents and handling their cases. This can create additional pressure for court resources that are already limited. The often significant legal complexity of appeals cases compounds these challenges.

In Ireland, the Access to Justice Civil Reform User Group was recently established to facilitate litigants who need more information when representing themselves. The Department of Justice in collaboration with the Courts Service envisioned that this would be the mechanism which would take forward the recommendations in the Kelly Review report regarding establishing a steering group to facilitate information provision to lay litigants. It was recognised that there is a need for guides to be made available covering proceedings in all court jurisdictions utilising audio-visual as well as textual formats, and efforts to this effect are being targeted to be completed by 2024 (Department of Justice of Ireland, May 2022<sup>[15]</sup>). At present, and as recognised by the authorities, there is scope to further increase the accessibility of information for lay litigants, especially regarding help in deciding to seek an appeal, and how to enhance the use of technology in resolving disputes. Additional plans to be implemented between 2022 and 2024 include the creation of a central on-line information hub through which dedicated legal and practical information is provided for those contemplating bringing proceedings without professional representation, and provision of “drop in” facilities in proximity to court buildings to enable unrepresented litigants to consult voluntary legal advice centres (Department of Justice of Ireland, May 2022<sup>[15]</sup>). Box 4.5 outlines ways that different countries provide support to lay litigants.

### Box 4.5. Increasing support for lay litigants

The information provided on the website of the **UK Courts and Tribunals** provides an example of guiding lay litigants through the different decision-making, preparation and presentation steps required at all court levels, including the Court of Appeal. There are helpful links to needed forms and organisations to turn to for free assistance (Courts and Tribunals Judiciary, 2022<sup>[16]</sup>).

At the **Maryland Court of Special Appeal**, in addition to a broad range of self-help and information options already available to lay litigants, the court developed a booklet to specifically assist lay litigants in their decision to file an appeal, as well as how to proceed with an appeal or application for leave. It provides easy to understand overviews and step-by-step guidance, links to required court forms, and options for further assistance (Court of Special Appeals Maryland, 2018<sup>[17]</sup>).

The clerk of the **Wisconsin Supreme Court and Court of Appeals** has produced a guide on the appeals process and types of cases heard by these courts. It is drafted in question-and-answer format and provides contact information, website links and checklists to assist in preparing documents (Wisconsin Supreme Court and Court of Appeals, 2021<sup>[18]</sup>).

In higher tech environments, **artificial intelligence (AI)-driven software** aids lay litigants and other court users. For example, legal navigators such as Florida Law Help and the Colorado Resource Network help *pro se* litigants in identifying legal issues, drafting and answering complaints, and filing court documents (La Roque-Doherty, 2021<sup>[19]</sup>). The New Jersey Courts launched a chatbot in 2019, the Judiciary Information Assistant, that uses AI to answer commonly asked questions by guiding users to specific court and legal topics. By clicking on the related icon on the right side of the court's extensive self-help page, the user can choose from a list of common questions (New Jersey Courts, n.d.<sup>[20]</sup>). Another icon links a selected page or paragraph to google translate for an approximate translation in a wide range of languages. Similarly, a special online self-help resource centre was created for the California Appellate Courts that is assisted by a chat bot and available in English and Spanish (California Appellate Courts, n.d.<sup>[21]</sup>).

Increasingly, courts in Australia, Canada, the Netherlands, the United Kingdom and the United States, among others, are offering online dispute resolution (ODR) options geared towards lay litigants. ODR refers to the resolution of disputes using technology, i.e. processes where a substantial part or all of the communication in the dispute resolution process takes place electronically (Mak, 2018<sup>[22]</sup>). So far, court offered ODR tends to be limited to disputes involving small claims traffic and family cases (Superior Court of California, 2021<sup>[23]</sup>). The COVID-19 pandemic has increased interest in expanding ODR offers at courts and appellate courts that already offer ADR, such as the Maryland Court of Special Appeal, which is well positioned to move to ODR if funding becomes available.

Source: (Courts and Tribunals Judiciary, 2022<sup>[16]</sup>), *Advice for Litigants in Person (webpage)*, <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/advice-for-litigants-in-person/>; (Court of Special Appeals Maryland, 2018<sup>[17]</sup>), *A Guide for Self-Representation*, <https://www.courts.state.md.us/sites/default/files/import/cosappeals/pdfs/cosaguideselfrepresentation.pdf>; (Wisconsin Supreme Court and Court of Appeals, 2021<sup>[18]</sup>), *Guide to Wisconsin Appellate Procedure for the Self-Represented Litigant*, <https://www.wicourts.gov/publications/guides/docs/proseappealsguide.pdf>; (La Roque-Doherty, 2021<sup>[19]</sup>), *Artificial intelligence has made great inroads, but hasn't yet increased access to civil justice*, <https://www.abajournal.com/magazine/article/artificial-intelligence-has-made-great-inroads-but-not-as-far-as-increasing-access-to-civil-justice>; (New Jersey Courts, n.d.<sup>[20]</sup>); (California Appellate Courts, n.d.<sup>[21]</sup>); (Superior Court of California, 2021<sup>[23]</sup>), *Presiding judge Eric C. Taylor announces new free online dispute resolution services for small claims litigants*, <https://www.lacba.org/docs/default-source/lasc-2021-court-news/21-nr-small-claims-odr.pdf>.

#### **4.1.5. The availability of qualified staff support**

The President of the Court of Appeal is assigned an Executive Legal Officer. Executive legal officers provide legal and administrative support to the Court Presidents of each jurisdiction in relation to their organisational and administrative functions and to international responsibilities and/or those of the court.

Each judge of the Court of Appeal (except the Court President) is assigned one judicial assistant when they do not have an usher/crier. Of the 15 ordinary judges, only 2 do not have a judicial assistant assigned directly to them. There is also a pool of four unassigned judicial assistants in the Court of Appeal who assist with legal research and provide additional support where the workload requires. Judicial assistants provide legal query assistance, administrative support, proofreading and judgement checking, and court work to the judge they are assigned to. They are hired on three-year contracts and assigned to a judge by the Chief Justice or President of the jurisdiction, based on their competencies and qualifications.

Court of Appeal judges also have access to research support associates, who are part of the Legal Research and Library Service (LRLS) available to judges across all levels. While most of the associates' work focuses on research and developing documents benchbooks and newsletters or support conferences, they are also available for special research tasks.

Administrative and management support is provided by the Office of the Court of Appeal – Civil, and the Office of the Court of Appeal – Criminal and Military. Both are overseen by the Registrar of the Court of Appeal (Principal Officer). For practical reasons, the Office of the Registrar of the Court of Appeal operates in two locations. The Civil Office is located in Aras Ui Dhalaigh and the Four Courts, and currently has the following staff:

- Three court going registrars (assistant principal officers)
- One office manager (higher executive officer)
- Three executive officers
- One clerical officer.

The Criminal Office is located in the CCJ and currently has the following staff:

- One court going registrar (assistant principal officer)
- One office manager (higher executive officer)
- Three executive officers.

Other administrative support, including IT support, facility management and management data, are provided by the Courts Service's Superior Court Directorate, which serves the Court of Appeal, the Supreme Court and the High Court. So far, most of the work of the administrative staff appears to be paper based, with limited automation to support tasks.

Much of the time-consuming work that staff and judges currently handle is undertaken manually and on paper. In comparison, these activities are routinely and quickly completed by case management systems in other courts. These paper-based activities can be inefficient and time consuming. For example scheduling, when an initial hearing date is allocated, that date is entered into several schedules by a member of staff in the Office of the Court of Appeal. Before the start of each new legal term, the executive legal officer (ELO) to the President uses this information to complete a document known as a "schedule of assignments". This document is essentially an Excel spreadsheet that sets out, among other things, the appeals listed for hearing that term, what each appeal entails, where and when each appeal is due to be heard, and by whom. Before panels of judges are assigned to appeals, the President circulates this partially completed document to members of the court to ascertain whether there are any appeals in which members of the court are conflicted. These data are then entered into the schedule and the President assigns the cases accordingly. Once the schedule of assignments has been completed, the finalised spreadsheet is circulated to the members of the court (for their own diaries) and the respective offices of

the Court of Appeal. The offices then update the legal diary accordingly and start distributing papers for hearings.

While an effective automated case management system would require real-time data entry, it could reduce the time required for this process and provide more accurate results. Information would be automatically merged into different schedules, allowing the system to automatically detect existing time and date conflicts and schedule the event as a “draft” in each judge’s electronic schedules for final verification. Combined with a well-developed judicial conflict database and content management system, potential conflict of interest situations could be flagged early on.

While a system such as this will take time, effort and investment, it has strong potential to achieve significant savings in staff and judicial time. Furthermore, it would free up resources for more effective and advanced court and case management tasks. To achieve results, there would need to be efforts to plan ahead by starting to streamline processes to the extent currently possible and begin to prepare staff for taking on significantly different roles.

The many planned case management, data needs and IT modernisation efforts will require adjustments in support staff levels, and likely in the way support is currently provided to the divisions, to individual courts, and to the Court President and other judges responsible for scheduling, case management and further planning needs. It will also likely trigger the need for greater involvement, responsibility and effort on the part of judges. A stronger judicial focus on individual case management and overall court performance may require the designation of one judge, full or part-time depending on the scope of responsibilities, to focus on management in addition to the Court President. As discussed later in this chapter and in Chapter 6, courts strongly committed to strong judicial case and court management tend to designate select judges to such functions. They may be Administration Judges, as in Maryland, or Vice Presidents.

Considering the significant effort and time that judges at the Court of Appeal must dedicate to ensure their decisions are well supported, reasoned and written, having access to qualified staff who help them with legal research and summary of findings would be useful, as well as cost-effective. Interviews with Court of Appeal judges indicated, however, that not all judicial assistants can provide the research and drafting support needed, and that judges tend to prefer to write their decisions from scratch.

Experience in other courts internationally could offer relevant insights. For example, at the Court of Appeal in England and Wales, every judge is assigned a clerk, which is engaged for one year and candidates must have graduated with excellent degrees and have some demonstrated legal research experience to be considered (Courts and Tribunals Judiciary, 2020<sup>[24]</sup>). Similarly, at state level courts of appeal in the United States, judges are supported by law clerks, who tend to be hired for a one-year period with the possibility of extension if the judge approves (Colorado Judicial Branch, n.d.<sup>[25]</sup>).

As court management responsibilities increase in Ireland and as the Courts Service modernisation programme evolves, this could be a good opportunity to review the entire administrative, management, legal support structures, operations and responsibilities currently in place at the Court of Appeal.

#### **4.1.6. Limiting the scope of submissions and oral hearings**

Beyond unsubstantiated cases, there appears to be a range of cases coming to the Court of Appeal with a large number of individual appeal pleadings and a large amount of supporting documentation.

Currently, the court limits the word count of initial submissions and, when the appeal commences, the time for oral submissions and closing reply (if not already agreed by the parties). Evidence is also limited to that adduced in the court below (so far as it is relevant and admissible) or additional evidence that a litigant has expressly been permitted by the court to present. On occasion (particularly where there has been a history of non-compliance), the court may use “unless” orders to automatically strike out or dismiss matters if there is non-compliance with procedure. With all its orders and case management, the court is very conscious



of its duty to be fair to both sides, including lay litigants, and of the right to a fair process within a reasonable time protected by Article 6 of the European Convention on Human Rights.

Submission requirements could be part of an early screening process, ensuring that those who do not comply are rejected and increasing incentives for compliance. Considering that appeal court judges in Ireland are regularly faced with reviewing several boxes of evidence for individual cases, there still appears room to review options to further streamline submissions and oral proceedings. Such adjustments may require revisions to legislation and supporting court rules that lay out limits to evidence and supporting documents that will be accepted for consideration at appeal.

In comparison to UK and Ireland approaches, the United States has a long tradition of limiting document submissions and oral argument time, and well as limiting appeals to the review of written documentation only. While the latter may not be an option in Ireland, stricter rules for evidence submission, time limits of oral arguments, and possibly the option for appellants together with respondents to waive oral hearings, are all alternatives that could be reviewed for adjustment to the Irish legal environment.

#### **4.1.7. IT solutions**

Courts of Appeal have special needs due to the nature of cases coming to them, the particular legal issues heard and their role as a precedent setting court. These needs extend beyond typical automation and other IT solutions used and necessary for all court operations and at all court levels across the country.

Cases at the Court of Appeal level focus on considerations and the application of the law in the lower courts. Litigants to an appeal may argue that there was an error in prior proceedings or in the lower court judge's application or interpretation of the law. The focus on legal questions and possible need to correct a lower court's error mean that appellants must submit both the supporting evidence of such errors and the legal research to support their arguments. Furthermore, considering that appeals tend to trigger additional legal costs, cases reaching the Court of Appeal tend to be serious, higher value cases. This generally translates into voluminous submissions (even if court rules outline tight limits) and requires additional legal research to support well-reasoned judgements that may not only point out errors in a lower court decision, but more importantly set precedent for future decisions of its kind.

Combined with the fact that the courts are still largely operating in a paper-based environment, judges at the Court of Appeal are often presented with submissions in various electronic and paper-based formats. Information currently available on the Courts Service website (Court of Appeal, 2020<sup>[26]</sup>), as well as interviews with Court of Appeal (and High Court) judges, indicate that court rules for electronic document submission appear to outline guidance for the electronic submission of documents mainly in PDF form (except initial notices and submissions) and follow rules for paper submission.

The incorporation of guidance on submitting electronic documents is a positive step towards automation and away from the use of paper in court. The COVID-19 pandemic generated an expansion of the use of virtual hearing options, and consequently, the Irish courts at all levels introduced a range of procedural changes to reduce the need for parties to appear in court that also resulted in greater processing efficiencies. In April 2020, the Court of Appeal authorised the e-filing of appeal papers. With great flexibility, the Court allowed parties to use various cloud-based sharing services such as Google Drive, DropBox, iCloud and OneDrive (all subject to agreement between the parties and the court). Moreover, the court authorised and encouraged, under the same conditions, the use of court document management platforms such TrialView, if the parties provided for them.

Building on these developments, there is scope for introducing further all-encompassing digital measures such as e-forms that automatically merge into an electronic case management system when submitted. This is preferred in comparison to e-forms that are simply e-mailed to case management staff and which require printing or manual data re-entry to transfer the information into the case management system. There is also scope for more advanced and environmentally friendly IT solutions that reduce the use of

paper and minimise the administrative staff time required for intensive document handling, retrieval and storage, or that can even help judges review documents and draft judgements. This should be coupled with efforts to strengthen digital skills and an increasingly paperless culture in Irish courts.

PDF files can be difficult to read if not transferred properly, and depending on the case may sometimes require additional tools to be searched and highlighted. These are essential functions for judges and well-qualified assistants. The Irish Court of Appeal (possibly along with one or two of the less busy but especially challenging lists at the High Court, such as the Commercial Court) could be a good location to pilot test more advanced document management systems and AI-driven software for content management that would assist judges write judgements and potentially reduce the time and effort of this all-important task (see Box 4.6 and Box 4.7 for examples from the Cyberjustice Laboratory in Canada and the Court of Appeal in England and Wales)

#### **Box 4.6. Artificial intelligence-driven software and technology in judgment-writing in Canada**

The use of artificial intelligence-driven software and technology in judgment-writing in Canada is a precursor in the development of cyberjustice. Since its creation in 2010, the Cyberjustice Laboratory of the Université de Montréal has been analysing the impact of technology on justice and develops concrete technological tools adapted to the reality of judicial systems.

The Cyberjustice Laboratory aims to empower justice stakeholders through the development of chatbots, online dispute resolution (ODR) platforms, predictive algorithms, etc. Some of these tools are already in use in Canadian provinces: in British Columbia, the Civil Resolution Tribunal (CRT) aims to offer an accessible, affordable way to resolve disputes without needing a lawyer or attending court, as Canada's first online tribunal. The Solution Explorer is the first step in the CRT dispute resolution process. It uses questions and answers to give people tailored, plain language legal information, as well as free self-help tools to resolve their dispute without having to file a CRT claim. The Solution Explorer uses a basic form of artificial intelligence called an expert system, which makes specialized legal knowledge widely available to the public. If the first step is unsuccessful and the parties do not manage to reach an agreement, the CRT assists the parties in preparation for adjudication by helping them narrow down issues and organise their claims. In turn, this lessens the extent of the judge's involvement in the case and promotes efficiency in dealing with small claims.

Similarly in Ontario, The Condominium Authority Tribunal (CAT), a fully virtual court, uses an online dispute resolution system (CAT-ODR) to analyse the given facts in a case and propose a solution. These tools aim at reducing judges' administrative burden, accelerating the judicial process and, where necessary, streamline judgment-writing.

Sources: Cyberjustice Laboratory, <https://www.cyberjustice.ca/en/logiciels-cyberjustice/nos-logiciels/>; Court Digital Transformation Strategy 2019-2023, British Columbia, Ministry of Attorney General <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/digital-transformation-strategy-bc-courts.pdf>; Civil Resolution Tribunal <https://civilresolutionbc.ca/>; Condominium Authority Tribunal <https://www.condoauthorityontario.ca/tribunal/>

The development of such pilot programmes, like any other efforts to enhance court IT solutions, requires judges and court support staff to be included early on. They must also be enabled to take leadership of these programmes, especially if directly impacted, and effective training programmes must be developed with their collaboration.

#### Box 4.7. Digital bundles in the Court of Appeal (Criminal Division) of England and Wales

Bundles refer to the compilation of all relevant documents and authorities that a litigant intends to present to the court. This practice is used by UK courts to ensure that judges can quickly and easily access information in one place. The Court of Appeal (Criminal Division) (CACD) provides an index to judges' bundles in Word format. Traditionally, bundles were completed in paper form with an index, but UK courts have increasingly been moving to an electronic format. In November 2021, the Courts and Tribunals Judiciary posted updated guidance on e-bundles to ensure consistency and the efficient management of court hearings (Courts and Tribunals Judiciary, 2021<sup>[27]</sup>; Ministry of Justice, n.d.<sup>[28]</sup>). Within this guidance there are ten rules, including the format, page numbering or pagination, hyperlinking, optical character recognition (OCR) requirements, page orientation, default view, resolution, and file size for e-bundles. There is also additional guidance on how e-bundles should correspond to any paper bundles, and what to do if supplemental documents must be added after submission. The guidance stipulates the file name format method of delivery, and links to two videos that illustrate how to create e-bundles for lay litigants (Logue, 2021<sup>[29]</sup>).

In a digital bundle, each item on the index is presented as a hyperlink to the relevant document on a document content system. Opening the hyperlink will take the user directly to the Crown Court Digital Case System (DCS). Once uploaded, the Criminal Appeal Office (CAO) is then able to produce digital bundles by creating an index with a hyperlink to each document. The court made full use of these bundles in DCS cases when it had to move to virtual hearing applications and appeals throughout the COVID-19 lockdowns. This is a system that appears to be working well and has been well received by the judiciary and court users. It has had a significant impact on the process of preparing bundles for the judiciary and has reduced the amount of paper used by the CAO (Court of Appeal UK, 2021<sup>[30]</sup>).

Source: (Courts and Tribunals Judiciary, 2021<sup>[27]</sup>), *General guidance on electronic court bundles*, <https://www.judiciary.uk/announcements/general-guidance-on-electronic-court-bundles/>; (Ministry of Justice, n.d.<sup>[28]</sup>), *Practice Direction 51O – The Electronic Working Pilot Scheme*, <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51o-the-electronic-working-pilot-scheme>; (Logue, 2021<sup>[29]</sup>), *Court e-bundle requirements [complete 2021 guide]*, <https://communities.lawsociety.org.uk/civil-litigation-features-and-comment/court-e-bundle-requirements-complete-2021-guide/6001815.article>; (Court of Appeal UK, 2021<sup>[30]</sup>), *In the Court of Appeal (Criminal Division), 2019-2020*, [https://www.judiciary.uk/wp-content/uploads/2021/05/6.7429\\_JO\\_Court\\_of\\_Appeal\\_Criminal\\_Division\\_2019\\_20\\_WEB-v2-with-tweak.pdf](https://www.judiciary.uk/wp-content/uploads/2021/05/6.7429_JO_Court_of_Appeal_Criminal_Division_2019_20_WEB-v2-with-tweak.pdf).

Today, standard document management software provides more than an organisational system to associate documents with case matters and limit access to certain court users. This software now regularly includes document versioning and audit trails that track user access to documents and a host of other features. It allows users to create, annotate and collaborate on legal documents and securely share and collaborate on documents with clients, co-counsel, experts and more. It also enables the conversion of scanned documents into optical character recognition format, which creates searchable, indexed PDFs. Other useful features include annotation tools, e-signature and customised security capabilities, including encryption. More advanced software also integrates AI tools and machine learning to search documents for information clusters, providing the ability to easily locate and extract key information previously marked (Black, 2020<sup>[31]</sup>).

### Box 4.8. Court of Appeal – Key recommendations

#### Short-term:

- **Collaboration for enhanced data collection and time standards:** Strengthen collaboration among the judiciary, the Courts Service and other relevant staff to collect data to track and assess the new judgement writing timelines, and with a view to inform the future implementation process of time standards and the related data tracking system.
- **Screening of cases:** Consider the creation of a team of judges, possibly supported by judicial assistants or other legal staff, to screen incoming cases to identify unsubstantiated cases, as well as to assess submission gaps and appellant trends to inform the development of support options for lay litigants and other screening options. Overtime, consider developing more sustainable options for case screening (e.g., via an independent board or other body).
- **Enhancing use of e-documents:** Continue efforts to develop and standardise the current guidelines for e-document submissions.
- **Pre-hearing processes:** review and consider ways to streamline pre-hearing processes with a view to rebalancing tasks between judges and non-judicial staff (e.g., to consider where, when and if a judge needs to be involved and what tasks could be administered by a registrar or someone with a similar function).
- **Data:** Ensure regular and systematic data collection on a wide range of issues affecting court performance, such as the average hearing time, or the number of hearings that require one or more full days.

#### Medium and longer term:

- **Procedural simplification and automation:** Identify options for streamlining and requirements for the automation of case processes, including e-forms, requirements and standards for full e-filing, as well as more detailed data tracking of case processes and timelines, in collaboration with the Courts Service.
- **Time standards:** consider introducing time standards, drawing from international practice.
- **Review of staff support:** To ensure that judges can work as efficiently as possible, especially as more advanced case management and timelines are introduced and as automation progresses, consider carrying out a review of the availability and the needed competencies of administrative and research support staff for Court of Appeal judges to ensure necessary qualifications and enhance cost-effectiveness, including the option of introducing Staff Attorneys to support complex legal research functions.
- **Use of IT tools:** Strengthen the use of IT tools to enhance efficiency, including testing document and content management software, including with artificial intelligence tools to facilitate documents search and analysis.
- **Online judgement banks:** Strengthen the availability of internal online judgement banks/ repositories to support judgement writing.
- **Case management support team:** Consider the creation of an initial case management support team, possibly led by a dedicated judge, to ensure proper judicial guidance, especially as case management advances.
- **Stakeholder engagement in automation processes:** Ensure the involvement of all relevant stakeholders, including the judiciary, to provide needed guidance for the planned phased automation of all processes to secure a system that facilitates the tracking of individual cases

effectively, and supports regular data-driven processes, staffing and user needs assessments in the long run.

- **Support for lay litigants:** Consider to further increase the accessibility of information for lay litigants, especially regarding help in deciding to seek an appeal, and how to enhance the use of technology in resolving disputes.

## 4.2. Modernisation opportunities at the High Court

In the High Court, the results of the time study underscore growing workloads and indicate the need for more judges and other court staff. At the same, they also point to several other issues that have led to the less effective use of human and other resources. The following sections explore potential efficiency improvements that can help ensure the optimal use of judicial resources and identifying cost-effective solutions.

### 4.2.1. Judgement writing

High Court judges spend a significant portion of their time writing judgements and carrying out the related research and reading. The High Court is a superior court of record, which means that it must deliver written judgements for resolved cases that will be published. Only in short and simple proceedings may a judge give an oral *ex tempore* judgement. As a precedent setting court, the High Court's decisions not only relate to the case at hand, but may provide direction for a range of future legal disputes. This places special demands on the task of judgement writing. During the Delphi study, participating judges discussed the average judgement writing times for different case types in their experience, and agreed that in many case categories an average of four hours writing time is required per hearing hour. The more complex and contested the matter, and the more involved the legal arguments and sources to be referenced, the longer the hearing will last, and therefore judgement writing will take longer. The challenges of setting aside appropriate time to research, draft and refine judgements for complex cases has already been addressed in the Court of Appeal section (Section 4.1), and applies in the same way to the High Court.

The High Court has made efforts to ensure that judgement writing is not delayed, but the increasing pressures to simultaneously ensure that hearings are not scheduled too far in the future has often been a challenge. For example, while judges in the Non-Jury/Judicial Review Division should currently be scheduled to have a four-day writing week every fifth week, in practice this is challenging and not always possible. Judges assigned to focus on reading and writing are regularly asked to cover hearings when another division is shorthanded, or if an emergency arises. Judges mostly do not have assigned break times during the week to write judgements, at most they are able to sketch a skeleton judgement and decision. One reason for this back-to-back scheduling of hearings is the court's effort to limit the waiting time for a hearing after a case is considered "ready to be heard." As this contributes to delays in judgement writing, an alternative strategy to maintain efficiency in both hearings and rulings may be required.

As the High Court President identified in her submission to the Judicial Planning Working Group, several other common and civil law jurisdictions provide writing time immediately after the conclusion of a case. This is efficient as it reduces the time judges need to revisit and familiarise themselves with the substance of the case, and ensures that a judgement can be delivered in a timely manner. Especially when courts hold themselves accountable for timely availability of judgements by setting delivery timelines, as has recently been introduced at the Court of Appeal, delaying judgement writing to handle other cases can impede such a goal.

Set judgement delivery timelines and scheduled writing times established in other jurisdictions do not always imply that the judge can devote the days following the hearing to full-time judgement writing.

Instead, they may have a limited hearing calendar to provide for at least half-day writing time for several days or longer, depending on the needs of the case and how much time can reasonably be set aside. Judgement delivery timelines are also frequently set as a percentage range to achieve, instead of a timeline. Box 4.9 illustrates how timelines are used in New Zealand and Norway.

#### Box 4.9. Timelines in New Zealand and Norway

The High Court of New Zealand set general judgement delivery timelines of three months for all reserved judgements; however, the court regularly reports on the percentage of judgements delivered within these timelines.

Similarly, the Nedre Romerike Tingrett Court in Norway regularly reports on judgement delivery timelines, along with other key time performance measures. The Chief Judge, each judge and the chief administrator receive monthly reports generated from the electronic case management system. The judges reported that the timelines and regular reports were useful, but were concerned that they stressed timeliness over the quality of the decision. To ensure that judges are not pushed to issue judgements too quickly, the Chief Judge has the power to intervene if needed.

Source: (Court of New Zealand, 2022<sup>[32]</sup>), *Judgment delivery expectations (webpage)*, <https://www.courtsofnz.govt.nz/the-courts/high-court/high-court-judgment-delivery-expectations-inquiry-process-and-recent-judgment-timeliness/>; (CEPEJ, 2012, p. 12<sup>[33]</sup>), *SATURN Guidelines for Judicial Time Management* <https://rm.coe.int/saturn-guidelines-comments-and-implementation-/16809ebb21>.

Timelines developed by a court need to consider court capacities to draft judgements accordingly and the needs of the case types handled, as well as remain linked to overall judicial performance expectations and provide flexibility for unusual cases. The creation of time scales could therefore be a sensible approach. To be effective, time scales can be combined with regular assessments to identify if and why timelines may not be adhered to, and some enforcement powers resting with a Court President or Chief Judge could be put in place.

Courts in other jurisdictions have also introduced style guides for judgement writing, along with training on more efficient judgement writing skills. Such guidelines are not just aimed at recently appointed lawyers coming to the bench, but address judges throughout their career to hone their skills in effective writing that is clear, concise and may save time (Cooper, 2015<sup>[34]</sup>). The Canadian Institute for the Administration of Justice, jointly with the National Judicial Institute of Justice, goes further by offering advanced judgement writing courses specifically aimed at experienced judges (Canadian Institute for the Administration of Justice, 2022<sup>[35]</sup>).

Many courts today are also exploring software solutions, such as those outlined in the Court of Appeal section, to assist judges in effective judgement writing by providing easily searchable access to both guiding decisions and to their own decision bank. Content management software could particularly be of use, especially when submissions are voluminous.

Well-trained legal staff to assist judges with research and provide drafting support are employed as “court clerks” in some jurisdictions. In the United States, clerks are assigned directly to a judge in the higher courts in many state courts (Sheppard, 2008<sup>[36]</sup>). Similarly, judges in the Netherlands’ Commercial Court, created in 2019 and consisting of a District Court (that hears the kind of matters handled at the High Court in Ireland), a Court in Summary Proceedings and a Court of Appeal, are supported by several law clerks to help with drafting judgements, etc (Rechtspraak, n.d.<sup>[37]</sup>). In Ireland, if this were implemented, it may require the adoption of more appealing conditions for highly qualified applicants, or even the creation of a new figure other than the current Judicial Assistants.

It was reported that no such support mechanisms for judgement writing exist at any court level in Ireland, and that except for the newly established judgement delivery timelines at the Court of Appeal, no processing timelines have been established for any of the major case process steps at the High Court or

other court levels. As mentioned, High Court judges are also currently experiencing limited administrative and research support.

#### **4.2.2. High number of interlocutory hearings and adjournments**

The time study and additional data collection efforts indicated that in civil and family law cases, High Court judges spend significant time on interlocutory hearings, some of which lead to settlement and others are essential for moving the case to conclusion; however, several result in adjournments without moving the case forward. Masters and County Registrars could be helpful figures to lead some of these case steps to avoid overloading judges with these hearings.

High settlement rates are common in most common law countries. Courts in the United States and the United Kingdom, for example, have developed different approaches to ensure that cases are generally brought to them after out-of-court settlement options have failed and where at least one party is ready to seek a judicial decision. Legislation has been adjusted in these jurisdictions to provide judges with the power to limit adjournments, require early disclosure, hold parties and their lawyers accountable for not meeting agreed-upon or generally established timelines for submissions, conduct case conferences to limit the number of contested issues, limit submissions to essentials only, and a range of other measures to efficiently move the case along while still providing settlement options as long as they do not delay the process. Similar recommendations, including the introduction of effective adjournment rules and discontinuance by default, were mentioned in the Kelly report (Kelly, 2020<sup>[38]</sup>). Some of these measures require additional judicial time to manage them, but not all and not for all cases. Furthermore, limiting contested issues early on can advance settlements and mean that they will not need to be addressed in detail if a full hearing is held, nor in the judgement, which saves judicial time towards the end of the process.

#### **Box 4.10. Settlement at the UK Commercial Court**

The court process at the Commercial Court in the United Kingdom encourages and promotes settlement by requiring the parties to define the issues at an early stage (before a first Case Management Conference). This facilitates the evaluation of the parties' positions following disclosure and/or exchange of witness statements and expert reports. Trial dates are also fixed with reasonable lead times, which focuses parties and lawyers on whether the impending trial is the best option to resolve the case (Judiciary of England and Wales, 2021, p. 25<sup>[39]</sup>). This does not mean that cases moving forward never settle after a few days of the hearing, but rather that events leading up to this stage are more controlled and streamlined by the court, making late settlements less frequent.

Well-designed and resourced court support for settlement is accepted nowadays as a part of the court process in the UK. For example, "Negotiated Dispute Resolution" (NDR) is often built into the Commercial Court's processes to facilitate settlement (Judiciary of England and Wales, 2021<sup>[39]</sup>). The Court and Tribunal Service provides the court with regular reports to assess settlement rates, including when matter listed for hearing settled before or during the hearing.

Source: (Judiciary of England and Wales, 2021<sup>[39]</sup>), *Business and Property Courts: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report)*,  
[https://www.judiciary.uk/wpcontent/uploads/2022/02/14.50\\_Commercial\\_Court\\_Annual\\_Report\\_2020\\_21\\_WEB.pdf/](https://www.judiciary.uk/wpcontent/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf/).

Settlements is an area where further and more detailed data collected regularly can provide insight into case trends beyond the basics (e.g. number of cases incoming, listed, and generally settled in and out of court) to further support the development of effective case management approaches and allow for tracking compliance with timelines. The Courts Service provides a general breakdown of cases settled after coming to the court, except for Commercial Court Cases.<sup>5</sup> These data indicate that the percentage of Commercial Court cases that settle at the substantive hearing, i.e. after significant judicial effort has been invested, has

increased to over 30% since 2016 (see Table 4.1). While settlement at the hearing saves the judge significant judgement writing time, it would be important to understand why these settlements come so late in the process, if the hearing delays limit the incentives for earlier settlement, and, most importantly, whether more judges to ensure cases are heard in a timelier manner are the most appropriate remedy. Without more information to address these questions, effective solutions remain challenging to develop.

**Table 4.1. Commercial cases settled and resolved by court, 2016-2019**

	2019	2018	2017	2016
Motion to dismiss	4	2	6	5
Settled after entry	10	7	9	7
Settled after directions hearing	10	18	10	21
Settled after hearing date set	11	12	15	12
Settled at hearing	14	19	11	12
Full hearing	44	58	72	58

Note: The cases resolved by the court are those resolved by a motion to dismiss or at full hearing, while the remaining categories cover those that settled at the stages specified in lines 2 to 5 of the table i.e. after entry, after the directions hearing, after the hearing date was set, or after the case was at hearing.

Source: (Courts Service, 2020, p. 50<sup>(40)</sup>), *Annual Report 2019*, <https://www.courts.ie/annual-report>.

As mentioned above, for most other case types, the data related to the number of interlocutory hearings, number and reasons for adjournment, and settlement rates at different stages are not regularly compiled and analysed. Data collected by the High Court to shed additional light on hearing length and the number of hearings held in Chancery cases (see Box 4.10 above) indicate a relatively high frequency of interlocutory hearings and adjournments for most case types reviewed. Additional data would allow clarification of whether judicial efforts to support settlements before the substantive hearing are effective or are enabling parties to extend the process or use it for negotiation actions that should have taken place before a case is listed. The small case sample review indicates a relatively high frequency of interlocutory hearings that result in adjournments that do not move the case forward, called “ineffective” hearings in the United Kingdom. There may be several reasons for a high number of ineffective hearings, such as potential gaps in the law, a need to revise certain court rules and case management to increase efficiency, resource gaps, or external influences that are difficult to control, such as the COVID-19 pandemic. Further information on the underlying reasons for these hearings would enable the development of targeted solutions.

High rates of adjournments are a major contributor to case delay and eventual case backlog. The High Court identified areas where delay and backlog occur for most case categories and some key case events, which provide valuable insights. However, detailed data to understand the frequency of interlocutory hearings and their outcomes are not regularly available. Neither are data to establish the extent and length of delay across the key events generally collected in other courts that reflect what users tend to be most impacted by, i.e. filing to substantive hearing, and hearing to judgement delivery. Establishing an agreed definition of “backlog” would make it easier to establish whether any of the identified periods are within a range of acceptable delay or have reached the “backlog status”, which would require a different response and level of attention.<sup>6</sup> Some of the reported delays may have serious consequences for the parties and for the broader justice system. The currently reported 18 months delay to get a hearing date when the accused is in custody, for example, is not just a long time for the person still considered innocent and for victims, their families, and the relevant witnesses, it also triggers significant costs for the State. It would be key to define what is an acceptable time period until a hearing is held considering the seriousness of the cases handled at the High Court. At the same time, the Court President in her submission to the Working Group also referred to a number of serious cases that were filed in the courts in 2019 and earlier (and will have been investigated for some time before). These significant delays in criminal cases negatively impact



the victims, witnesses, the accused, and the state, and therefore the reasons for the delay would be important to assess. At the same time, the system capabilities need to be able to meet timeline goals.

#### **Box 4.11. Good practices in data collection**

Good practices of case data collection and reports for the courts to use and build into their management approaches are available (and to some extent published) in the United Kingdom.

The England and Wales Commercial Court report, for example, provides:

- Data on the number of hearings listed and heard.
- Length of hearings.
- Number of paper applications (an option for parties to choose instead of an oral hearing, which speeds up the process).
- Number and percentage of hearings listed that were “not effective”, i.e. hearings vacated, adjourned, or settled on the day and/or in advance of the hearing date.

The European Commission for the Efficiency of Justice (CEPEJ) has suggested data dashboards that outline core data needs for courts across all EU jurisdictions, and has recently provided an action plan for court digitalisation, including the creation of data dashboards that allow for backlog tracking.

Source: (Judiciary of England and Wales, 2021<sup>[39]</sup>), *Business and Property Courts: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report)*, <https://www.judiciary.uk/wp-content/uploads/2022/02/14.50-Commercial-Court-Annual-Report-2020-21-WEB.pdf>; (Csúri, 2022<sup>[41]</sup>), *CEPEJ: Action Plan on the Digitalisation of Justice*, <https://eucrim.eu/news/cepej-action-plan-on-the-digitalisation-of-justice/>.

Responses to the backlog in Ireland, after defining “backlog” for each case category, requires more concerted responses. This may include creating teams of legal staff at the court to assist with compiling all backlogged cases, reviewing them to screen out cases that settled but were not reported as such, compiling issues lists, and frequently bringing in additional temporary judges to develop solid case management plans with the parties to resolve these cases.

The significant delays and backlog that continue to develop as a result of the COVID-19 pandemic, despite all efforts to curb them, pose challenges around the world. Technology tools developed in the United States systematically and regularly identify, track and respond to case backlog situations (National Center for State Courts, 2022<sup>[42]</sup>). Courts in Ontario, Canada created special Intensive Case Management Courts in several locations (Ontario Court of Justice, 2021<sup>[43]</sup>), and detailed reviews of the backlog situation and experiences with online hearings were conducted in the United Kingdom to develop response recommendations (Byrom, Beardon and Kendrick, 2020<sup>[44]</sup>).

Generally, all backlog reduction options outlined above and used in many courts require additional temporary staff and judicial resources, along with solid case assessments, case management techniques and data.

#### **4.2.3. Personal injury cases**

Of all cases handled at the High Court, personal injury cases by far account for the highest number of judicial hours needed to process all cases. The time study indicated that together with medical negligence cases they account for over 19% of the time judges at the High Court require. Currently, six judges are assigned to the Personal Injuries Division. Similar to other divisions, the judges are working on both personal injury cases and handling other case types.

Considering the significant impact these cases have on judicial workload overall, improving case processing would help enhance efficiency at the High Court. As the time study and additional data

collection has shown, these cases can take anything from half a day to many weeks, depending on their complexity. The number of medical negligence cases, which tend to be particularly complex, are reportedly increasing. In addition, as mentioned earlier, growing numbers of cases that were envisioned to be handled by the Cervical Check Tribunal are instead being handled by the High Court. The more complex personal injury cases and all medical negligence cases tend to require expert witness assessments and submissions, which prolong the period between hearings and can delay scheduled hearings if expert submissions are not submitted in time. Difficulties with getting expert witnesses to provide opinions or be ready to testify in a timely manner is a common cause of delay in many countries. There is no information currently available to understand if this is an issue in Ireland.

The High Court reported that the use of pre-action protocols and new rules of court were proposed to manage these cases more efficiently and expeditiously. The new rules were submitted in draft form in 2010. However, to implement them, Section 32 A of the Civil Liability and Courts Act 2004, as inserted by the Legal Services Regulation Act 2015, must be commenced. This highlights a special challenge the High Court faces when implementing enhanced case management processes. Reviewing the mechanisms in place to communicate and collaborate with others responsible for ensuring the needed legislative changes are implemented, or that other options to respond are developed, could be a consideration.

On occasion, cases listed to be heard on a particular day cannot be covered as envisioned and must be postponed. A “lottery” system is applied to assign the remaining few hearing slots, which can cause delays. The High Court President suggested that the main reason for parties to personal injury cases settling their cases is due to the limited hearing times available, although it may also be for other reasons, such as the pressure of the judicial proceedings. Improvements in the efficiency of procedures, coupled with additional resources, may help avoid these situations.

The time study data indicate that more judges would be needed to handle both personal injury and medical negligence cases if no adjustments to current processes are made. It is likely that more efficient processes and better case management, supported by better technology, would reduce the need to increase the numbers of judges significantly. Notwithstanding the need to address resource issues, personal injury and medical negligence cases may lend themselves to first be the focus of new case management efforts. This would require a collaborative, joint effort by the Courts Service, High Court judges and others, including the Department of Justice, to develop better case management options, including better regulations and data. The court and Courts Service would need to be supported by appropriate resources to engage in such an effort.

#### **4.2.4. Case management, case management data and court performance measures**

##### *Case management*

The High Court continues to explore and revise its practices and procedures to create efficiencies wherever possible. This is especially the case in the Commercial Division. Established in 2004, this Division can be chosen by litigants as an expedited option for certain high-value disputes, although court fees are higher. The Commercial Division rigorously case manages all cases in its list; however, there are reports that even the processes at this special division could be delayed. Although litigants in Commercial Court proceedings have an expectation that their hearing dates are fixed, occasionally hearings must be postponed because no judge is available. A particular challenge is that many judgements are delayed for several months after the hearing. Current case management approaches may require updates to accommodate the wide range of cases handled at the court. In addition, there is room to simplify and streamline case processes that remain complex. The development of time standards and data collection efforts would enable assessments of bottlenecks and causes of delay.

As the Court President noted in her submission to the Working Group, 172 cases commenced in the Commercial Court in 2019, increasing to 185 in 2020, despite court closures due to the pandemic. These

figures, together with the results of the time study, suggest the need for improvements in judicial processes and resources to be able to handle growing caseloads.

Given that litigants are willing to pay much higher fees to have their cases heard in the Commercial Division, the increasing numbers of filings are a positive sign of confidence in the court, and show that an appropriate response is needed to ensure that these demands can be accommodated efficiently and effectively. Investing in this division would tie in with the government's aim to grow Ireland's potential to become a hub for international litigation. After Brexit, Ireland is the only common law, English language jurisdiction in the EU, creating some extra challenges when it comes to ensuring EU recommendations, guidelines and standards leave room to acknowledge this difference, not just for the courts. At the same time, this also creates opportunities for the legal and other sectors. Other European nations have recognised the need for English language courts for commercial matters. There are English language courts focusing on commercial matters in Paris and the Netherlands, and legislation to allow the creation of such courts in Germany and Belgium has been pending for a few years (Moseley, 2018<sup>[45]</sup>; Tucker, 2017<sup>[46]</sup>).

There is significant room for more effective case management across the High Court divisions, with the legislation in force limiting the options and effectiveness of applicable case management techniques. Litigants and their representatives still largely control how cases can move through the courts' processes. Until the courts can take greater control after a case is brought to them, effective case management will remain a challenge. In the United Kingdom, reforms of the civil procedures that modified existing dynamics were implemented following the Lord Woolf report of 1996. In Ireland, the most recent effort outlined in the Review of the Administration of Civil Justice report, the Kelly Report, aims to introduce similar approaches (Kelly, 2020<sup>[38]</sup>). While it is beyond the scope of this study to conduct an extensive legislative review, an initial reading of this report identified a range of recommendations that would help the courts manage their cases more efficiently. However, the Irish courts' powers to control the case process is limited. Addressing this would require a co-ordinated effort along the whole justice chain, potentially involving a reform of legislation, creating awareness and incentives for upgrades in the business models of private law firms that further efficiency, and the education of potential court users and the general public of the benefits of certain court process reforms.

The development of meaningful approaches supported by those engaging with the courts is one reason behind the creation of a Commercial Court User Group in Ireland. This type of User Group also exists in the United Kingdom (Judiciary of England and Wales, 2021<sup>[39]</sup>). The Scottish Civil Justice Council provides a similar forum to address civil law matters, including civil law cases in the courts (Scottish Civil Justice Council, 2021<sup>[47]</sup>). A less involved approach with similar intention was created in 2006 by the Danish Court Administration when it established a collaborative forum where court representatives meet twice annually with representatives of professional users of the courts and public authorities who provide particulars to legal proceedings. This forum seeks to identify specific problem areas and considers proposals for improved quality, efficiency and service, with special reference to case administration time (Stockholm Institute for Scandianvian Law, 2010<sup>[48]</sup>).

Beyond a change in legislation, some court rules may also require updating, especially as they relate to interlocutory hearings. Again, without a more detailed review of all processes, it is challenging to suggest adjustments, but the relatively high numbers of interlocutory hearings that do not effectively move the case towards resolution point to a need for change. Currently, several types of pre-trial applications heard at the High Court on Mondays, such as requests for access to certain documents (discovery), are being heard remotely, and the intent is to continue this practice. It may also be feasible to test the use of a paper application as used at the Commercial Court in England and Wales, for example,<sup>7</sup> possibly as a combined online submission to be read by a judge who then either issues the decision on the same platform or via video link. Forms currently in use for streamlining and reduction could also be reviewed (Kelly, 2020, p. 136<sup>[38]</sup>). The introduction of detailed and stricter standards for the submission of documents may also be helpful, and could limit submissions to the essentials and establish format and style rules, including

standards for acceptable digital documents (the latter would also be a requirement for further efforts to automate all court processes and facilitate effective e-filing and e-processes).

“Case management” is the all-encompassing term for the application of various techniques to manage cases, depending on the court and case needs. Each court assesses the best option to effectively manage different cases and will generally apply different tools across different case types and court levels. Since case management has evolved, starting in the 1970s in the United States, volumes of literature and tools have been created globally to capture experiences and help courts choose and adapt approaches to their own needs. A concise summary of key case management principles was published by the Standing International Forum of Commercial Courts in 2020 (SIFoCC, 2020<sup>[49]</sup>). A similar overview was published in Australia, where a National Court Framework was developed (Federal Courts of Australia, n.d.<sup>[50]</sup>). A more detailed overview of different case management approaches developed for different court levels was published by the Florida State Courts (OPPAGA, 2009<sup>[51]</sup>). Drawing inspiration from these practices, Ireland may wish to develop a similar overview of key case management principles and approaches that is appropriate and targeted to the Irish context.

Most court systems also require the development of several approaches and techniques tailored to different case types. Often, as appears the case in Ireland, case management is understood as a process that involves a judge (occasionally court staff) managing each case at each step of the process, regularly involving more than one intensive case management conference. Such active case management, if well designed, can be very effective, but is also resource intensive, and is generally only meaningful for more complex cases. For simpler cases, especially those handled at high-volume courts, different case management tools must be applied that are tailored for the cases’ particular characteristics. For those cases, fast-track processing with less complicated, more streamlined processes that follow a set of general timelines for all cases of this type are a better fit. Courts that handle a broad range of cases, even for case types that include a broad range of complexity, benefit especially from the development of a multi-track approach: a fast track for simple cases; a regular track, also with set timelines and other case management rules, for the bulk of cases of medium complexity and judicial time requirements; and a complex track that involves more intensive case management by a judge. These are all supported by adequate processing rules and overall time standards. In this sense, strict enforcement of the applicable rules by the judiciary would be particularly relevant to ensure that court time resources are used in the most appropriate manner, especially to avoid delaying tactics and procedural mistakes by private parties that affect overall efficiency.

The introduction of a new Order 63C in the Rules of Superior Courts, introduced in 2016 (“the case management rules”), provided for a comprehensive regime for case management in chancery and non-jury cases. By court direction, these rules were paused pending the provision of the appropriate and necessary resources (Kelly, 2020, p. 91<sup>[38]</sup>). It may also be considered whether the case management processes envisioned in the rules were the best fit considering the mixed complexity of these cases. The time study and additional data collected by the court indicated a significant range of cases, from those resolved quickly to others that continue through several interlocutory hearings until they settle late or are resolved in a long substantive hearing. This also highlights the difficulties faced when the needed detailed case process data are not available. This does not mean that the data needed to begin developing effective case management options must be available for multiple years, as a solid sample case file review can provide much of the needed data to begin designing case management techniques to fit the case type targeted. Pilot testing the new design, measuring and analysing the results to fine tune the new approach before it is applied more broadly, and continued monitoring of results tends to lead to meaningful case management options that work over time.

The High Court President has suggested a root-to-branch review of judicial and other resources available at the court. For this, building on and implementing the suggested process changes included in the Kelly report will be crucial. In addition, especially after such changes have happened, there will likely still be need for a detailed mapping of the civil, criminal and family law processes at the High Court, as envisioned by the law and court rules. Such a detailed assessment and the process map can provide a solid

understanding of bottlenecks and process inefficiencies, and their causes. It would need to be developed for the design of an effective case management system, and therefore can be designed to serve both purposes.

### *Data*

Equally important to developing and effectively implementing case management techniques specific to different case types is the availability of reliable case data to track how cases of different types are progressing from filing through to the delivery of judgements, as well as appeal rates and outcomes. In this regard, while this study was not focused on Courts Service operations, the results highlighted the existing limitations in justice data, limited staff to do analytical work and insufficient use of modern court management approaches. This indicates that a wider organisational review of the whole of Courts Service, including the necessary skills and structures, could be beneficial. Improvements in these areas would generate efficiencies in other areas, as well as enable automation.

What data exactly must be collected and analysed will depend on what other elements tend to influence the movement of cases and the related system needs, such as judicial and court staff time, availability of resources at the DPP or An Garda, legal aid providers, and family and other social services. Experiences in other countries have also shown that the availability of local lawyers is another element to consider when assessing various resource needs for the effective handling of cases in more rural areas. This may be more important for the District and Circuit Courts, but could also influence how well High Court cases heard outside of Dublin move to resolution. The data must align with any time and other performance standards the court sets for itself. This would facilitate targeted data collection that serves evidence-based planning and efficiency.

The IT systems currently used by the Courts Service provide some data to build upon. Looking ahead, what data the judiciary requires will need to be defined, and current and future data collection systems will need to be (re)designed accordingly. The Courts Service in turn would need to work towards ensuring that any data to be collected are clearly defined, data collection standards are established, staff are trained to properly collect data and related user manuals are available. The Courts Service would also need to have the staff and resources available to develop the needed analytical reports for the Court Presidents, the Chief Justice, individual judges, Courts Service managers, registrars and the Board of Courts Service. Such data collection efforts would help support the courts in functioning more efficiently, in line with the Courts Service mandate. In addition, other institutions may find specific parts of these datasets useful for policy making and planning, such as the Department of Justice, the DPP, An Garda, TUSLA and many others. If full support in this field could not be established within the Courts Service, the court itself may also employ staff to support its case management functions and conduct the related data collection and analytical work.

### *Performance standards*

For the High Court, steps would need to be taken towards data driven case management and developing a more comprehensive set of court performance standards. For this purpose, judges would need to define what data they need for what purposes, with sufficient time and information to do so. To ensure the court operates as efficiently as possible, it would be helpful for data to be available to not only assess trends in incoming and resolved cases by overall case types, but also by complexity, and data must be available to support effective scheduling, tracking timelines and adjournments, understanding settlement trends, and the need to track changes in resource needs. Similarly, it is recommended that the High Court develop meaningful time standards for key process steps, such as those the High Court President identified as likely locations for delays and backlog, and define backlog for different case types.

Many resources for the development of effective time standards, other performance measures and needed resources are available from organisations such as the CEPEJ (CEPEJ, 2012<sup>[33]</sup>), the National Center for State Courts (NCSC) (Duizend, Steelman and Suskin, 2011<sup>[52]</sup>; National Center for State Courts, 2017<sup>[53]</sup>),

as well as courts such as those in Scotland, the Commercial Court in England and Wales (Judiciary of England and Wales, 2021, pp. 22-32<sup>[39]</sup>) and the Netherlands Commercial Court in Amsterdam (Netherlands Commercial Court, n.d.<sup>[54]</sup>). These courts already have several years of experience in working with data for effective case management and overall court performance. The High Court and other courts in Ireland can build upon this experience to develop approaches that fit their environments. More details on data-driven case and court management are provided in Chapter 6.

To ensure that High Court judges have the required capacities to develop, implement and consistently adjust any case management approaches implemented, they need case management training, as well as the time to lead the development of better case management approaches and implement and track their effect. Considering the variety of case types and broad range of complexity of cases handled at the High Court, case management requires special attention on a daily basis, especially when existing IT systems do not provide much case management support.

The main management responsibility rests with the High Court President, who also has a significant case load and belongs to several important committees. This is in line with the internationally recognised principle that it is essential for presiding judges to carry a certain workload to ensure that they continue to understand the demands of litigation (Council of Europe, 2016<sup>[55]</sup>). List judges share some of this responsibility for the management of select case types. Considering the need for greater and more systemic attention to case management, as well as defining and tracking timelines and performance measures, the introduction of specialised personnel mainly responsible for court-encompassing case management tasks (a judge or lawyer) to support case management functions could be considered. Such positions are common in courts in the United States. In Europe, the position of Vice President of the Court shares management responsibilities, but is generally found in apex courts. The Commercial Court in England and Wales has an experienced a lawyer to help judges triage applications (Judiciary of England and Wales, 2021<sup>[39]</sup>).

The need for training and the increased allocation of specialised case and court management staff also applies to other courts staff and Courts Service managers. It may be helpful to further clarify the roles and responsibilities of the judges and Courts Service Staff regarding keeping track of data, developing analytical reports and developing resulting recommendations.

The Commercial Court in England and Wales provides examples of effective case management approaches and data used to inform management and planning decisions. The court's annual report and detailed commercial court guide are useful sources of information that may be considered in Ireland – see Box 4.11 and (Judiciary of England and Wales, 2021<sup>[39]</sup>). One important feature that enables this court to develop effective case management approaches that are applied as envisioned is the Commercial Court Users Committee. The court's ability to resolve commercial disputes in a way that serves the interests of national and international commerce depends in part upon a steady exchange of information and constructive suggestions between the court, litigants and professional advisers. There are separate user committees for the Admiralty Court and for the financial list (Judiciary of England and Wales, 2021, p. 5<sup>[39]</sup>). In Ireland there is a Commercial Court Users' Group, and a User Group that covers all areas of the work of the High Court. There are also separate engagement forums concerning the modernisation programme. Box 4.12 illustrates recent case management enhancements at the Commercial and Admiralty Courts in England and Wales.

### Box 4.12. Recent case management enhancements at the Commercial and Admiralty Courts in England and Wales

The Commercial Court in England and Wales and its Admiralty Court handle claims generally valued above GBP 5 million, and many cases worth considerably more, including several valued over GBP 1 billion every year. The number of complex and very high-value cases reaching the court has increased in recent years, and with it the time demands on the judges due to greater efforts to prepare, longer hearings and more time for judgement writing. Informed by regular data reports, the court continues to develop options to address new challenges, usually beginning with a pilot project to test if the envisioned response option will achieve the desired results.

#### Auditing of claims

During the 2020/21 court year, the court piloted auditing claims brought before it with the aim to divert select smaller and less complex claims to the London Circuit Commercial Court, Circuit Commercial Courts in a location convenient to the claim or the parties, or an appropriate County Court. From 2022, all claims issued in the Commercial Court will be audited before a Case Management Conference is scheduled to ensure that the court's resources are focused on cases requiring its expertise, and that smaller cases can benefit from the shorter lead times in the Circuit Commercial Courts.

#### More effective scheduling for pre-reading and judgement writing time

Court rules ensure that judicial time spent dealing with evidence from witnesses and oral submissions in court is kept to a minimum. Nevertheless, the complex nature of commercial cases requires judges to pre-read a large amount of material from a "pre-reading list" supplied by advocates who are also responsible for providing an estimate of the required pre-reading time and of the required hearing time (Judiciary of England and Wales, 2020<sup>[56]</sup>). These estimates, combined with the court's estimates for judgement writing time, are then built into the court's timetable. The judges rely on realistic reading lists, accurate estimates of pre-reading time and on the parties updating the Listing Office if the estimate changes as trial approaches. The court is regularly provided with case data trends by the Courts and Tribunals Judiciary Service to identify potential bottlenecks and delay issues. In early 2020, such data indicated increasing inaccuracies in time estimates for hearings and pre-reading time. In response, the Judge in Charge, together with the Judge in Charge of the London Circuit Commercial Court, issued specific guidance to the advocates that also outlined consequences of repeat and significant inaccuracies in these estimates. Meetings with the Commercial Court Users Committee are used to explain the new guidance in detail and to stress that cases submitted with gross inaccuracies in the estimates will be taken off the hearing list, are likely to be relisted without any expedition, and the costs of the second hearing disallowed (Judiciary of England and Wales, 2020<sup>[56]</sup>).

Other approaches to improve the effectiveness of case management in the Commercial Court in England and Wales include:

- **Submission of a list of common ground and issues.** The solicitors and counsel for each party must produce a list of the key issues in the case, specify any common ground between the parties, and any disagreements as to the relevant features of the factual matrix (HM Courts and Tribunals Service, 2022, p. 25<sup>[57]</sup>).
- **Case Management Conference (CMC) or Costs and Case Management Conference (CCMC).** This is a very streamlined hearing to set a timetable until trial. The hearing will also consider the parties' budgets, if applicable, the Disclosure Review Document (DRD), and, where possible, the resolution of any connected outstanding contested matters. The parties are

required to co-operate. The court generally expects to be able to approve the DRD in no more than one hour as part of the hearing (HM Courts and Tribunals Service, 2022, pp. 45-46<sup>[57]</sup>).

- **Shorter and flexible trials.** The Shorter Trials Scheme is designed for cases that can be heard in less than four court days. It includes a timetable that aims at resolution of the dispute within a year. The Flexible Trials Scheme was designed to allow parties to adapt trial procedures to their specific case. It aims to limit disclosure and to confine oral evidence at trial to the minimum necessary. It includes the option to choose solely written evidence and submissions for select steps, and thus shorten the time to a final resolution (HM Courts and Tribunals Service, 2022, p. 46<sup>[57]</sup>).
- **The Disclosure Pilot Scheme.** This was designed in response to concerns of court users that the existing disclosure process did not sufficiently engage parties, may not use technology as efficiently as possible and can distract from the principal issues in a case.<sup>8</sup>
- **Less complex claims.** Such claims are determined by their nature, value, complexity and the likely volume of extended disclosure. If the value is less than GBP 500 000, the claim should normally be treated as a less complex claim. The regime provides clear guidance about defining issues for disclosure (drafted at a high level of abstraction and normally no more than five in number), and provides a simplified form of the DRD, among others. Parties to every case, independent of financial value or complexity, are to consider if the case may be treated as a less complex claim.
- **Lead times.** The court aims to keep the lead times, the time between the date a hearing is fixed and the date on which the hearing will take place, within certain targets. These lead times are regularly updated.
- **CE-File.** Since 2017, all court documents are required to be filed electronically via the CE-File system. This system is also used extensively for applications on paper, ranging from consent orders, applications for permission to serve out of the jurisdiction, and contested applications where the parties have chosen to deal with the matter on paper. Applications made via CE-File must include all the relevant documents, and all documents must be appropriately labelled when uploaded to CE-File. Non-compliant applications will be rejected (Courts and Tribunals Judiciary, 2021<sup>[58]</sup>).
- **Working electronically.** Generally, the court has shifted towards requiring the submission of “paperless” bundles, with limited exceptions when requested by the judge. Electronic submission is the default position in the new Commercial Court Guide. Parties are now required to file electronic bundles in accordance with the latest directions (Courts and Tribunals Judiciary, 2021<sup>[27]</sup>).

Source: (Judiciary of England and Wales, 2021<sup>[39]</sup>), *Business and Property Courts: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report)*, <https://www.judiciary.uk/wp-content/uploads/2022/02/14.50-Commercial-Court-Annual-Report-2020-21-WEB.pdf>; (Judiciary of England and Wales, 2020<sup>[56]</sup>), *Notice from the Judges in Charge of the Commercial Court*, <https://www.judiciary.uk/wp-content/uploads/2020/10/Time-estimates-Notice-2020-1.pdf>.

#### 4.2.5. Hearings in provincial venues

As outlined earlier, the High Court sits at several provincial venues throughout the year. Hearings at provincial venues are important for access to justice throughout the country. The workload calculations for the High Court therefore needs to take into account the work done in Dublin together with the manpower needed to service its sittings around the country. Travel time and cost for the judges who sit in those venues must be taken into account, as well as the fact that for at least half of the legal year two judges are



away from their assigned principal civil divisions in Dublin, in particular the Non-Jury/Judicial Review List and the Chancery List.

There seem to be relevant backlogs and delays at provincial venues. Table 4.2 shows the delay in obtaining a trial date for a personal injuries case when ready for hearing at venues outside of Dublin. Moving forward, new ways to enhance the efficiency of provincial court hearings could be considered to ensure effective access to justice for litigants across Ireland, while maintaining an appropriate workload for the High Court.

**Table 4.2. Waiting times for high court hearings in personal injury cases in provincial venues**

Venue	2020	2019
Cork	24 months	17 months
Galway	2 months	2 months
Kilkenny/Waterford	7 months	7 months
Limerick	36 months	25 months
Sligo	12 months	5 months

Source: (Courts Service, 2021<sup>[59]</sup>) [https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts\\_Service\\_Annual\\_Report\\_2020.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH)

To understand what triggers these delays and to develop response options, the operations of the High Court in provincial locations should be reviewed closely. Delays reportedly relate to the length of time that elapses between the date a case is set down for trial and the date when it secures a hearing. Therefore, enhancements in case scheduling, notifications and other issues that may contribute to delays may be beneficial. In addition, the increased use of written procedures and online tools to process interlocutory events and more options for virtual hearings may be viable alternatives.

#### **4.2.6. Review of Circuit Court appeals**

Appeals to the High Court from the Circuit Court are determined on a full re-hearing of the case, and the appellant is not obliged to identify the grounds of appeal in the notice of appeal (Kelly, 2020, p. 81<sup>[38]</sup>). Depending on the subject matter, these appeals are generally included in the common law non-jury list, the personal insolvency list and the family list. Together they account for over 500 cases, most of which require full hearings and significant judicial time.

In line with international standards, the constitutionally guaranteed right to an appeal most often requires a justification for the appeal established by law. The unmitigated acceptance of all appeals could encourage frivolous appeals and undermine public confidence in the lower courts, while not utilising judicial resources in the most efficient manner. To better understand the impact of Circuit Court appeals, and cases stated from the District Court, collecting data on the percentage of appeals overturned, and why, could be considered.

A significant number of unjustified appeals does not mean that the appellants aim to prolong the process, as lay litigants in particular may not always be aware of appeal justification requirements or may not understand the appeals process. It is important to screen appeals early on to identify those that are not substantiated and to develop support systems, especially for those who are unrepresented. Options for

screening appeals and assistance options created in other jurisdictions have already been outlined in the Court of Appeal section earlier in this Chapter and apply here as well.

#### **4.2.7. Lay litigants and the need for more effective support structures**

As mentioned earlier, the percentage of lay litigants appearing in the High Court is not available. Given that Courts Service data indicate a 30% lay litigant rate for the Court of Appeal, the percentage may be similar or higher at the High Court. Experiences in other countries have shown that the percentage of lay litigants coming to a court and the challenges they face tend to vary by case type (see [Box 4.13](#)). Building on existing structures and by engaging through the Service Access to Justice Civil Reform User Group, more effective support could be envisioned for lay litigants.

##### **Box 4.13. Support for lay litigants in England and Wales**

In England and Wales, data indicate that litigants in person (i.e. lay litigants) appear less often in the Commercial Court than in some other courts (Judiciary of England and Wales, 2021<sup>[39]</sup>). Nevertheless, the Commercial Court has special filing and other procedural options for such litigants, along with other assistance mechanisms, and the courts can adjust procedural requirements if appropriate:

- The Commercial Court and the London Circuit Commercial Court, in conjunction with COMBAR and Advocate (an access to justice charity), facilitate access to assistance and representation free of charge when applications with a time estimate of one day or less are submitted.<sup>1</sup>
- The Bar Council of England and Wales publishes an online, free of charge “Guide to Representing Yourself in Court”.
- The RCJ Advice Bureau publishes a free series of “Going to Court” Guides available online through the Advice Now website.<sup>2</sup>

Court rules also specify that the court expects solicitors and counsel for other parties to do what they reasonably can to ensure that the litigant in person has a fair opportunity to prepare and bring forward their case. The court bases its rules and expectations on related guidelines published in 2015 by the Bar Council, the Law Society and the Chartered Institute of Legal Executives.<sup>3</sup> If the claimant is a litigant in person, the Judge at the Case Management Conference will normally direct which of the parties have responsibility for the preparation and upkeep of the case management bundle.

Note: <sup>1</sup>See the Commercial Court and London Circuit Commercial Pro Bono Scheme Protocol, <https://www.combar.com/wp-content/uploads/2020/07/Scheme-Protocol-July-2020-Final.pdf> (last visit 30/03/2022); See Advice Now website at [www.advicenow.org.uk](http://www.advicenow.org.uk) (last visit 30/03/2022); <sup>3</sup>See “Litigants in Person: Guidelines for Lawyers”, June 2015, [Litigants-in-person-guidelines-lawyers-June-2015.pdf](https://www.civiljustice.org/~/media/RCJPublications/Reports-and-Research/Litigants-in-person-guidelines-lawyers-june-2015.pdf) (last visit 30/03/2022).

Source: (Judiciary of England and Wales, 2021<sup>[39]</sup>), Business and Property Courts: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report), <https://www.judiciary.uk/wp-content/uploads/2022/02/14.50-Commercial-Court-Annual-Report-2020-21-WEB.pdf>.

#### **4.2.8. Staff support and alternative judicial resources**

In Ireland, it may be useful for adjustments to be made to support staff resources, including lawyers to support judgement writing, secretarial staff, sufficient numbers of qualified registrars, and staff to support enhanced case management approaches and related data tracking. Embedding these investments in a longer-term strategy would ensure their sustainability and cost-effectiveness. As electronic processes and IT solutions expand, additional support to effectively use such solutions will also grow in importance. There may also be options to shift certain case events for several case types away from judges to the High Court

Masters (who will then likely need to be increased in number, subject to the governance changes mentioned). The High Court President has suggested that a significant amount of the work done in the Monday motion lists could be handled by Masters. It was also pointed out that such a shift in work would require more detailed review, especially considering that the parties have a right of appeal, a Master's decision to a High Court judge which could result in delay and extra costs instead of procedural efficiency and savings.

Any such shift in workload would need to involve a review and possible adjustment of co-ordination, direction and oversight responsibilities to ensure that established processes are streamlined and connect smoothly to High Court directions and operations. Currently, there is only one master in the High Court, a civil servant outside the managerial oversight of the President of the High Court. The effective and smooth co-ordination of operations and decisions could be arranged under the current structure if the High Court President is provided with the appropriate mandate to oversee this work. The removal of these decisions from the court without the required control mechanisms can lead to lack of litigant confidence in the master's decisions and render such a process ineffective.

The proposed consolidated Courts Act published by the Law Reform Commission in 2010 suggested that "The Master of the High Court shall, in respect of the discharge generally of his or her functions and exercise generally of his or her powers of a judicial nature be subject to the general direction of the President of the High Court" (Law Reform Commission, 2010<sup>[60]</sup>). The enactment of this provision, or a similar provision, could potentially address the issues outlined.

Adjusting the operations and structure of the Master of the High Court to facilitate an effective shift of parts of the current workload of judges to this position appears to be a promising efficiency option. The development of a pilot project to assess the impact of moving parts of the Monday motions lists for select case types to the master would be helpful to understand what is needed in terms of procedural and structural adjustments, human resources (including administrative support, data and IT support), as well as outreach to court users to develop the needed support for such a shift.

Another option to provide needed judicial resources to address temporary shortcomings due to long-term illness, or as a result of unforeseen circumstances such as the COVID-19 pandemic, is the use of temporary judges, taking into account all due safeguards for judges' independence. The options to bring in retired judges or judges for temporary assignments are currently unavailable in Ireland. It is relevant that new appointments to replace judges leaving the High Court (and other courts) are completed by the time the incumbent leaves to enable a seamless transition and avoid additional strain on the court. This is crucial at the High Court, as judges scheduled to retire are not assigned cases that require longer processes given that they are not allowed to deliver judgements after retirement. These overarching human resource management issues will be addressed in more detail in the Chapter 5.

### Box 4.14. High Court – Key recommendations

#### Short-term:

- **Judgement writing schedules:** Consider developing judgement writing schedules for different case types, including timelines and a non-binding Style Guide, and review options for staff and IT support for judgement drafting.
- **Case management options:** Strengthen collaboration with the Courts Service to review case management options, taking into account that personal injury and medical negligence cases may lend themselves to be an initial focus of new case management efforts. Consider using a solid sample case file review as the basis for the needed data to begin designing case management techniques to fit the case type targeted.
- **Reducing backlogs:** Develop an initial strategy for involving back-up judges and/or considering the creation of backlog teams, including legal and Courts Service staff, with a view to implementing backlog reduction strategies (e.g., compiling backlogged cases, and developing solid case management plans with the parties to resolve these cases, reviewing the operations of the High Court in provincial locations in order to identify enhancements in case scheduling, notifications and other issues, and exploring opportunities for the increased use of written procedures and online tools to process interlocutory events and more options for virtual hearings).
- **Data needs:** Determine necessary case process data to begin the development of time standards, backlog definitions and eventually broader performance measures through a collaborative effort among the judiciary, the Department of Justice and the Courts Service. In collaboration with the Judicial Studies Director, ensure advanced case management training for judges and any case management teams and consider further clarification of the roles and responsibilities of the judges and Courts Service Staff regarding keeping track of data, developing analytical reports and developing resulting recommendations.
- **Court rules:** In advance of legislative changes resulting from the Kelly Report, judges may want to consider prioritising the immediate development of early court rule changes and directions, especially those that could be introduced before laws are changed to streamline case flow and enhance court control, for example, options to encourage early discovery, creating adjournment rules, clearer submission requirements and timelines that can be enforced, and e-document submission rules.

#### Mid-term:

- **Case management pilots and leadership:** Continue efforts to review and develop case management advancements for different case types, ensuring that judges have the information needed and by beefing up data collection efforts by case-type. Consider the development of differentiated case management pilots can be considered, possibly starting with personal injury cases. Consider the creation of a lead case management judge position to focus on court performance.
- **Quasi-judicial staff:** Consider reviewing the role of and reporting structures for the High Court Masters and related quasi-judicial staff, including to support more effective case management and possibly handling interlocutory hearings and other relatively simple matters (e.g., Monday motions).
- **Support staff:** Review the availability and the needed competencies of administrative and research support staff for High Court judges, including lawyers to support judgement writing, secretarial staff, sufficient numbers of qualified registrars, and staff to support enhanced case

management approaches and related data tracking, which could support sustainability and cost-effectiveness of judicial operations in the long-term.

- **Judicial engagement:** As the Courts Service's IT division continues the development of more advanced case management systems, ensure that judges remain engaged to provide their insights on the detailed process mapping.
- **Lay litigants:** Building on existing structures and by engaging through the Access to Justice Civil Reform User Group, consider providing more effective support for lay litigants, including special filing and other procedural options.

**Long-term:**

- **Provincial sittings:** Identify potential alternatives to support provincial sittings, appeals processes screening and the current overlapping jurisdiction with the Circuit Courts, including by leveraging online tools and virtual trials.

### 4.3. Modernisation opportunities at the Circuit Courts

The Circuit Courts face a range of challenges beyond the limited judicial resources that tend to add to its workload and delay the timely resolution of cases. As mentioned, there is scope to update and streamline the current processes by reviewing the multiplicity of often lengthy and complex paper forms<sup>9</sup> that litigants and the court need to complete, submit and distribute. Local variations in operations by the County Registrar and Courts Service staff also impact judicial efficiency for all case types, depending on the cooperation mechanisms existing between local Court Registrars and assigned judges.

The below section addresses key elements identified as contributing to longer processes and increasing the judges' workload at the Circuit Courts, and potential options to address them.

#### 4.3.1. Addressing case backlog and adjournments at the Circuit Courts

The International Covenant on Civil and Political Rights (Article 14) and various other regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6), the American Convention on Human Rights (Article 8), and the African Charter on Human and Peoples' Rights (Article 7), require that cases are disposed by courts without undue delay and within a reasonable time.

Excessive backlog of cases can thus be seen as undermining these rights, which can also affect litigants' businesses' and public trust in the courts. Backlog can also place an additional burden on judges and court staff as it can trigger or result in multiple changes in timelines, and cause multiple notifications, or even hearings. This could generate duplication of tasks and additional work, possibly resulting in long delayed cases.<sup>10</sup>

Backlogs in criminal cases seem to be growing due to the pandemic despite joint efforts to reduce the flow into the system. Reports from Ireland, the United Kingdom and the United States indicate, for example, efforts by law enforcement to postpone arrests and citations if possible, prosecutors limiting filing charges for low-level offenses, a reduction in the issuance of warrants or the suspension of existing warrants, increases in release without bail to reduce pre-trial detention, and settlements of pending cases through plea bargaining (Jackson et al., 2021<sup>[61]</sup>; Desroches, 2020<sup>[62]</sup>). Equally important is the need to provide special victim support during backlog situations to keep victims informed and engaged to ensure that they are not discouraged to appear in court, virtually or otherwise, when the time comes (Victims Commissioner, 2021<sup>[63]</sup>).

In Ireland, there appears to be a need to strengthen case and process data to assess bottlenecks, inefficiencies and their causes in order to support creating better processes that can help reduce the burden on judges and court personnel, and to better serve the Irish people, especially the most vulnerable. Access to meaningful case processing and management information can help alert the Court President and individual judges to potential delays and processing issues. Similarly, County Registrars or court registrars could use this information to screen submissions for adjournment requests and alert the judges. Such a co-ordinated, data informed approach is usually applied in jurisdictions where case management is well established and understood, and considered a collective responsibility for moving cases along.

This challenge was highlighted over a decade ago in Ireland, when the Reform and Development Directorate of the Courts Service supported the development of court rules to reduce delay for the Circuit Courts, specifically reducing the many interlocutory applications. A revision of first instance court rules was introduced in 2014, which, among others, shifted some pre-hearing actions to the County Registrar (Kelly, 2020, p. 45<sup>[38]</sup>). Nevertheless, Circuit Courts are still receiving repeated interlocutory applications, sometimes stretching matters over years, particularly in family law cases. This may not only be due to process inefficiencies, but also other reasons, some outside the control of the courts. If family support agencies are overwhelmed and experts to provide needed assessments are scarce, matters will be adjourned more frequently. When access to mediation services and counselling is limited, the courts become the one place people rely on, especially those with limited means who mostly appear in court without representation.

To address backlogs more effectively (and more holistically), the Circuit Courts would need accurate case processing data that show per case type how many, and ideally which cases, are waiting to be heard by the court, and since when. It would also be important for courts to know “the age of pending” caseloads to understand how many cases are backlogged and for how long. Without better data to track the number of adjournments and why they occur in what type of cases, developing reasonable adjournment rules can be a challenge.

Generally, case backlog refers to the proportion of cases in a court’s inventory of pending cases that have exceeded established timeframes or time standards (International Consortium for Court Excellence, 2020<sup>[64]</sup>). What that exactly means would need to be defined by each court for different case types. Not every case pending at the end of the year has been waiting to be heard for a long time, and every case requires a reasonable time to get ready before it can be heard by the court. The definition of this “reasonable time from filing to the actual hearing” (not just listing to be heard) depends on the case type, possibly the additional complexity of select cases, reasonable preparation time for both parties, procedural requirements, availability of staff and judicial resources at the court and, to some extent, the local legal environment. Currently, there are few time standards for case processing in Ireland beyond the limited time frames prescribed in the law.<sup>11</sup>

As different case types require a range of times to disposition, different courts must apply their own definitions of backlog. For example, Federal Immigration Courts in the United States define backlog for immigration cases as “cases pending from previous years that remain open at the start of a new fiscal year” (Governmental Accountability Office, 2017<sup>[65]</sup>). Local courts in New South Wales, Australia have set time standards for civil and criminal cases, aiming to complete 90% of civil cases in 9 months and 100% in 12 months (Local Court New South Wales, n.d.<sup>[66]</sup>). The State Courts in Massachusetts regularly update and publish very detailed time standards for all court levels on their website. In Massachusetts, the Probate and Family Courts have a limited jurisdiction otherwise comparable to the Circuit Courts. All probate, equity and domestic relations (including paternity) cases (except joint petitions for divorce, joint petitions for modification of child support and complaints for contempt) are assigned to be processed on three different tracks, based on their complexity. The time standards for track one aim for case completion within 3-6 months, track 2 is within 8 months and track 3 is within 14 months (Commonwealth of Massachusetts, 2006<sup>[67]</sup>). A description of the process other courts have used to establish such time standards and backlog

definitions is included in the latest edition of the Global Measures for Court Excellence (International Consortium for Court Excellence, 2020<sup>[68]</sup>).

Maryland in the United States can provide a model to consider both for developing meaningful backlog definitions and adjournment rules, and for creating effective processes for family cases. The Baltimore County Circuit Courts have a well-designed family court system that is widely recognised as a good model (see Box 4.15). The courts serve the suburbs of Baltimore city with a population of over 800 000, comparable to counties surrounding Dublin. The court has a long history of good case management, is well resourced and is effectively supported by the Administrative Office of the Courts. Importantly the court can also draw upon a range of good family support services.

#### **Box 4.15. Family Differentiated Case Management (DCM) Plan: Circuit Court for Baltimore County, Maryland Circuit**

The Family Differentiated Case Management (DCM) Plan in the Circuit Court of Baltimore County is consistent with case time standards adopted by the court's Judicial Council and constitutional requirements. The goal of this DCM plan is to ensure that 98% of family cases, except for a group of contested divorce cases, are concluded within 12 months (365 days) of the filing date, and that 98% of contested divorce cases are concluded within 24 months (730 days) of the filing date. A concluded disposition can be by judgement or dismissal. For simpler cases, the warranted time frame may be shorter than 12 months.

Source: Circuit Court of Baltimore County, Maryland <https://mdcourts.gov/html/courtoperations/pdf/dcmfamilybaltimorecounty.pdf>

The OECD team shared detailed case management information from the Maryland Circuit Courts with Irish Circuit judges and a member of Courts Service's Family Law Reform Program group. The judges considered if and how this approach could be implemented in the Irish Circuit Courts. Their initial reflections are shown in Box 4.16 and highlight options that could be tried at the planned pilot court in Limerick.

#### **Box 4.16. Applying Baltimore's differentiated case management model to an Irish court: Preliminary reflections by the judiciary**

##### **Improvements to case progression approaches:**

- According to the judiciary, for a new case management approach for family cases to be effective it would benefit from being led by judges to ensure options to sanction failure to engage. An expansion of the current case progression approach is not necessarily viewed as effective for more complex and contested cases.
- Case progression conducted by the Irish County Registrars is reportedly efficient at identifying family cases similar to those assigned to track 1 cases in Baltimore. This is especially the case if they reach agreement before the "defence" or "answer" is filed (these were categorised in the Irish time study as Uncontested Status Cases). Once a defence is filed, all cases are treated as medium conflict in Irish Circuit Courts (track 2 in Baltimore).
- There appears to be room to better identify high conflict cases in Ireland (track 3 cases in Baltimore). Recommended international good practice is that the most contested cases are identified early and tightly case managed by the assigned judge (O'Mahony et al., 2016<sup>[69]</sup>). Involving judges in the early stages of these cases may help address concerns that many high conflict cases seem to be in case progression lists for lengthy periods. This may add to delay, expense for the parties and additional emotional damage to children. At the same time, implementing tight control of high conflict cases in Ireland would require efficient procedures,

tools and sufficient staff support. Assigning such cases to unassigned judges may be challenging unless virtual hearing capacities exist.

#### **Settlements:**

While judges can encourage settlements where possible in the Circuit Courts, there is currently no court involvement in settlement. There is no equivalent for the Settlement Conference used in Baltimore, carried out by a magistrate judge (the equivalent to a District Judge in Ireland). This tool may be considered as part of a well-integrated case management approach.

#### **Family support programmes:**

In Ireland, there is access to a free Family Mediation Service, which is co-located in some court houses, but independent. Further awareness in the judiciary about this service may enable further use by family dispute parties.

At present, social, psychological and child welfare support needed is privately sourced and paid for by the parties in Ireland. Drawing inspiration from the Baltimore system, social worker and other professional support in the courts could enable the screening of cases and identification of appropriate services for families, insofar as possible. Options to connect courts to offers of parenting courses could be explored. In the United States, local universities are often willing to conduct such assessments, and some may even have their own offers of parenting classes.

A court-run access supervision service, as available in Baltimore, could be effective, although it would require significant resources. There is currently one private access supervision service in Ireland, which has a good reputation but is reported to be expensive.

#### **Good causes for postponement:**

The list of the Postponement Good Cause Requirements used in Maryland could be considered in Ireland. Currently, individual judges use similar criteria and find it effective, but this is not yet a shared and published set of requirements. A challenge to be considered is that where is good cause for postponement, the case may be moved to the end of the list, which could mean an 18-month delay or more.

Source: (O'Mahony et al., 2016<sup>[69]</sup>), *Child Care Proceedings in Non-Specialist Courts: The Experience in Ireland*, <https://doi.org/10.1093/lawfam/ebw001>.

In early 2022, the COVID-19 pandemic continued to lead to some delays and backlog in Ireland. Jury trials, for example, temporarily stopped for the Circuit Courts in January 2022. Criminal trial dates are currently generally set for 2024. There appear to be insufficient courtrooms to hold jury trials under regular conditions, with health and safety measures requiring social distancing reducing the number of usable court rooms. There also seem to be an insufficient number of registrars to support hearings, which can have an impact on the operations of courts and prosecutors.

Rising backlog is a challenge for most case types, but can have particularly serious implications for criminal cases. In this context, several countries (Canada, the United Kingdom and the United States) have introduced significant additional efforts to more holistically address the urgent backlog situation in criminal case processing. These initiatives focus both on increasing prosecutorial, judicial and court staff resources (including through temporary staffing options), and on increasing victim and witness services, as well as the availability of alternative sentencing options, such as restorative and community justice alternatives (Government of Ontario, 2021<sup>[70]</sup>; National Audit Office, 2021<sup>[71]</sup>).



How best to respond to case backlog depends on the case types involved and other issues, such as available alternative processes and resources. Again, access to reliable data to project backlog development and the impact of different solutions are needed.

As an example, in July 2020, the Lord Chancellor in England and Wales announced the creation of 10 Nightingale Courts to tackle the impact of coronavirus on the justice system (UK Government, 2020<sup>[72]</sup>). Their role was to hear civil and family cases, tribunal work, and non-custodial criminal cases. The aim was to provide more room in existing court buildings for hearings where cells and secure dock facilities are needed, including jury trials where the defendant is in custody. To accommodate these temporary courts, sports arenas, hotels and conference centres were rapidly transformed.

To ensure that these additional courts could hold the envisioned number of additional hearings, the Courts Service of the United Kingdom (HMCTS) hired 870 additional court staff, including 121 part-time and 53 circuit judges by 2021 (National Audit Office, 2021, p. 41<sup>[71]</sup>). Up to 72 temporary courts were created at the height of the pandemic, eventually triggering push back after a National Audit Office review indicated the significantly higher costs of running hearings at these alternative court venues. After a while, the extended hearing hours established at these extra courts also triggered significant resistance, especially from solicitors and barristers. In early 2022, some 30 Nightingale courts were expected to continue to address the continued high backlog, especially in criminal cases (UK Government, 2022<sup>[73]</sup>) (National Audit Office, 2021, pp. 8, 33<sup>[71]</sup>).

In 2021, the Scottish Courts and Tribunals Service developed and published the document, COVID-19 Modelling High Court Jury Trials (Scottish Courts and Tribunals Service, 2021<sup>[74]</sup>). This modelling approach looked at six different scenarios to determine their potential impact on the courts' ability to hold timely jury trials:

1. Use of multiple courtrooms to accommodate juries under physically distancing rules.
2. Creation of smaller juries, reducing the number of jurors from 15 to 7, maintaining physical distancing and reducing the accommodation requirements from three court rooms to two.
3. Increasing Solemn Sentencing Powers in Sheriff Courts.
4. Trial Without Jury but with a sitting with any combination of two sheriffs, two Justices of the Peace and two or more professional lay jurors on the bench.
5. Introduction of remote jury centres, where the jury is in an external non-court facility but linked and participating by live video and audio.
6. The "Remote Jury Centres Plus" model, with jury arrangements external and using additional trial court rooms in other sheriff courts.

Such modelling results would indicate impact on the courts, resource requirements, time expected to be required to return to pre-COVID hearing levels and when such model could begin to be implemented. While not necessarily taking into account the same variables and adapting it to the local Irish context, this evidence-based approach to forward planning of judicial resources may be relevant in Ireland.

With a similar aim, the US-based National Center for State Courts recently announced the development of a new automated tool that would assist courts in developing data models to understand the impact and resource needs of different backlog reduction options for courts in general. This tool is being designed to model different options and to assist the courts in thinking through the process of developing these options (Box 4.17).

### Box 4.17. New tool to help state courts address backlogs

The National Center for State Courts (NCSC) is in the process of launching a tool to help courts identify, measure and reduce case backlogs. This tool will help courts of all types identify the number and types of pending cases, while also projecting potential backlog trends with and without interventions. This backlog reduction simulator helps courts explore the potential benefits of different interventions using strong data visualisation capabilities so that courts can effectively share the information with partners and funding bodies. To help quantify the future caseload impact of potential backlog reduction interventions, the simulator creates projections based on the following data:

- number of active pending cases
- number of monthly filings and dispositions
- “typical” number of backlogged cases.

Other factors such as estimated clearance rates, time standards and the number of cases disposed of in the last year may also be considered. The simulator results can help courts identify trouble spots and provide a starting point for troubleshooting. Interventions may range from additional bench time to hearing notice reminders, depending on where the backlog is occurring.

Source: (National Center for State Courts, 2022<sup>[42]</sup>), *Case Management Elevated: Backlog Simulator Tool*, [https://www.ncsc.org/data/assets/pdf\\_file/0027/71856/CTC2021-Backlog.pdf](https://www.ncsc.org/data/assets/pdf_file/0027/71856/CTC2021-Backlog.pdf).

Multiple adjournments of hearings may be a significant contributor to case delay and backlog in the Circuit Courts and at other court levels in Ireland. Generally, making adjournment orders is an integral part of case management and necessary to ensure that parties have fair and equal access to justice. Procedural codes and court rules for granting adjournments therefore need to be developed with a clear understanding of what timelines are meaningful for each case type and action, and how to enforce them for all parties. Such rules need to clearly state when and why adjournments can be granted, and how often. Justified requests for adjournments, such as sickness, require a substantiated amount of time to gather evidence and are valid reasons that legislation and rules can provide for (Royal Commission into Family Violence, 2016<sup>[75]</sup>). Adjournments may also be ordered to synchronise a civil matter with an associated criminal matter, to clarify child and parenting arrangements, or to provide more information about the matter before the court (Gelb, 2015<sup>[76]</sup>).

However, there are also cases where a party does not (or no longer) have a legitimate reason for seeking to delay proceedings, as well as cases where adjournments are made because the court is not ready. To avoid these types of delays, the court would need to have a good system in place to track granted adjournments and their reasoning for the entire process, not just when the case comes to the judge. Furthermore, a system would need to be in place to remind parties, judges and others of deadlines, and to hold them accountable for delays without justification.

A study in Scotland to better understand the pattern of adjournments in lower-level courts highlighted the importance of tracking frequency and adjournment reasons to better manage the entire case process (Leverick and Duff, 2001<sup>[77]</sup>). An interesting example of such data tracking is provided by the Scottish Courts and Tribunals Service (SCTS), which publishes easy to read quarterly reports on case numbers and processes, including adjournments for all court levels (Scottish Courts and Tribunals Service, n.d.<sup>[78]</sup>).

Since the start of the pandemic, it has been reported that adjournments have significantly increased globally, which could be a result of both difficulties to hold hearings, individuals getting sick or being quarantined, and possibly current directions that relax adjournment rules.

Adjournment rules exist in Ireland, but interviewees indicated that they often have limited detail and may not always be applied by judges. Without sufficient data and no system to track adjournment requests and orders by type and per case, it can be difficult for judges to check if adjournments have been granted before and for which reasons. It can also be difficult to encourage greater adherence to procedural rules. In 2013, a call was made by the Expert Group on Art. 13 of the EU Convention on Human Rights to create more effective rules that limit the number of adjournments in Irish courts. The 2020 Review of the Administration of Civil Justice also suggested that adjusting rules and developing a tracking system would be in the interest of justice. It was suggested that this tracking system should require judges (and/or registrars) to review the reasons for adjournment, and not grant them unless there are sufficient reasons (Kelly, 2020, p. 42<sup>[38]</sup>).

Interviewees also reported that there is a limited threat of dismissal of cases if information is not provided in time, for example, as parties can re-issue cases without effective limits.

Given that most preliminary case management decisions at the Circuit Court level are made by the independent County Registrar who, among others, holds case progression hearings, they also have the power to grant adjournments of case progression hearings that should not last longer than 28 days (Kelly, 2020, p. 104<sup>[38]</sup>). As mentioned, data to track adjournments that occur before a case comes to a judge are not collected. With the County Registrar not part of the Courts Service, nor the judiciary, proper information tracking and co-ordination could be a challenge as the related accountability structures are missing. Investing in a well-designed automated system that encompasses the entire process could help resolve part of this issue. In the short term, changes to forms that require these entries as part of the case file for registrars' and judges' access could be introduced.

At the same time and as mentioned elsewhere, such efforts can be supported by the use of digital tools to enhance efficiency of procedures. At the Circuit Courts, the online licensing system piloted during 2019 was ready to be scaled up and was fully operational in mid-2020. This enabled law firms to lodge, pay and track licensing applications without having to go to court. As a result, from July and October 2020, close to 44% of licensing applications were received online (Courts Service, n.d.<sup>[79]</sup>), presumably implying less intensive use of judicial resources, although further data would be needed to draw conclusions.

#### **4.3.2. Other case management and alternative settlement options**

The case management processes conducted by the County Registrar were reported as another important area for potential efficiency options. County Registrars are independent office holders and not answerable to the judiciary, the Courts Service or each other. They control the workflow and fix the hearing lists, and judges reported experiencing very different operations across locations. While some have experience in specific areas of law (i.e. family law) and thus can better assist with monitoring workflow and court procedures, others may be less engaged, which can lead to differences in how well cases are prepared. Similarly, while Court Registrars in some locations co-ordinate well with the judiciary, in others there is scope to improve co-ordination. Efficient list management by Country Registrars can enable a judge to devote a maximum amount of time to hearing and determining cases, which leads to faster disposals and better access to and quality of justice for litigants. Initial case management actions conducted by County Registrar are also opportunities for alternative settlement options, except mediation, to be explored first.<sup>12</sup> Sufficient data are not currently available to fully understand if and how often mediation is offered and applied in different case types, or at what point in the process.

In Ireland, mediation and the use of other settlement options in the commercial sector is high and growing (Taddia, 2021<sup>[80]</sup>). However, a 2018 review of mediation in divorce cases, conducted after changes to the law were made, indicated a generally low uptake of mediation, partially due to the lack of access to mediation services (McGowan, 2018<sup>[81]</sup>) (Legal Aid Board, 2021<sup>[82]</sup>).

To ensure that litigants are offered early opportunities to choose a non-litigation route, it would be important for those responsible for facilitating this decision to have the training, time and standing to be accepted by both parties. Information about the needed time and capacities of County Registrars, court registrars and judges to deliver other settlement options is not available in Ireland. Particularly where public funding is scarce, commercially available options are often costly, and courts should find alternatives. What is developed depends on what is needed most to divert cases from appearing on judges' hearing lists, and what outside resources may be built upon. Legislative developments may also be required to ensure that judicial diversion to mediation is a legal option and that judges have the authority to direct parties to such solutions. One such option has been developed in two counties in Virginia, United States. The Neutral Case Evaluation Program is primarily a targeted case management approach towards settlement options, but it also directs actions to reduce hearing time if a case continues to a hearing despite all efforts (see Box 4.18). In Ireland, however, civil legal aid is not available in the majority of cases, including for ADR. One possible approach would be for judges to direct parties to a negotiation between representatives ahead of the trial, without the need for a third person's involvement.

Concerning criminal cases, procedural reforms focusing on early disclosure and early plea enters may be beneficial for more efficient processing. Useful guidance may be drawn from the lessons learnt of the United States' Effective Criminal Case Management project, a national initiative designed to discover and document effective practices that drive high performance in handling felony and misdemeanour cases in the US state courts. The project concluded in 2020 and considered a very large dataset of nearly 1.2 million cases from over 130 state courts in 21 states (NCSC, 2020a<sup>[83]</sup>).

#### Box 4.18. Neutral case evaluations in Virginia

To facilitate settlement in cases seeking monetary damages, the Circuit Courts of Fairfax and Fauquier counties in the State of Virginia have established Neutral Case Evaluation (NCE) Programs. These programmes involve judges and experienced pro-bono senior-level attorneys acting as neutral case evaluators and meeting with parties and their counsels in settlement conferences to provide an honest evaluation of the case potential and correct any misconceptions parties may have about the value of the case. The programmes focus on case categories such as personal injury, contract cases with liquidated damages, and medical and legal malpractice. Formal rules of evidence do not bind conferences, their conduction is left to the evaluator's discretion, and they usually take place four weeks before trial, with counsels required to go in with full settlement authority. Within conferences, evaluators may give an estimate of jury awards, assess oral presentations by self-represented parties or counsels, explore areas of agreement, develop discovery plans to expedite settlement discussion, and determine follow-up measures that could contribute to case development. Almost ten years after its inception, only 8-15% of over 1 000 cases referred to NCE conferences have ended in a trial.

Source: (Virginia's Judicial System, n.d.<sup>[84]</sup>), *Local ADR Programs*, [https://www.vacourts.gov/courtadmin/aoc/djs/programs/drs/local\\_adr\\_prgms.html](https://www.vacourts.gov/courtadmin/aoc/djs/programs/drs/local_adr_prgms.html).

An effective system to notify parties of hearings dates and remind them of document submission deadlines and any changes to such dates is essential to ensure that timelines are adhered to and hearings can proceed. This has grown in importance since the pandemic, with increasing uncertainties and greater frequency of shifts in deadlines and hearing dates. The current notification system is largely paper-based and does not include an automated appointment or reminder system for parties. The ability to contact parties is reported to be challenging, particularly because the current forms to collect necessary contact information do not capture cell phone numbers and email addresses. Even when this information is collected, it is written on a separate note, which may be misplaced. Strengthening the notification system and amending the information forms could be a useful consideration.

There is also scope to strengthen effective case management approaches that link the entire process. Interviewees supported a widely held view, also stated in the 2020 Kelly review, that across all courts, with varying degrees by case type, court level, location, judge, Country Registrar, County Registrar and court registrar, there is a “leisurely approach to court management” (Kelly, 2020, p. 111<sup>[38]</sup>). Reportedly, there is a need to strengthen a general level of understanding of what case management means among registrars, Courts Service staff and judges. It was also noted that some judges may resist seeing case management expanded, which could be overcome once they have been exposed to good case management examples that match their jurisdiction and courts.

### 4.3.3. Enhanced case management for family law cases

Considering that Circuit Court judges spend most of their time dealing with family law cases, the ineffective processing of these cases has a significant impact on their workload. During the pandemic, virtual hearings were not used in contested family law cases, except occasionally to hear witnesses in locations when possible. As a result, backlog and delay increased during the pandemic. Without clear backlog data it is challenging to quantify the extent of the problem, despite it being recognised for some time. For example, a 2014 study of separation and divorce cases found that 18% of the contested divorce and separation cases were filed three or four years before the case was heard in court (O’Shea, 2014<sup>[85]</sup>).

More recently, there appears to be some progress made in relation to backlog. For example, on 28 January 2022 the OECD team conducted a sample review of all family law cases listed for hearings to gain a better overview of the current situation. This included all family law cases listed on the Courts Service website for February 2022, across all Districts Courts.<sup>13</sup> The review showed that except for two daily lists, all lists included cases originally filed before 2020, with some going back to 2017 or 2015, which shows progress compared to 2014. This is a better result than the 2014 study, in which 10-58% of separation and divorce cases were six years or older (O’Shea, 2014, p. 10<sup>[85]</sup>), although further improvements could be made.

#### Box 4.19. Impact of limited judicial resources and inefficient case processes on child abuse and neglect cases

The combined impact of inefficient, delayed processes and limited judicial resources on child abuse and neglect cases was highlighted in a 2005 study conducted in the United States. The study showed the following main impacts:

- Increased time between filing and scheduling contested hearings due to decreased judicial time for hearings.
- Delayed contested hearings due to insufficient time to list hearings.
- Insufficient time during hearings to focus on the safety, permanency, health and well-being needs of the individual child.
- Lack of time to adequately prepare for and conduct hearings, which may result in more errors and impact safety and timely permanency for children.
- Inadequate time for off-the-bench judicial activities resulting in a lack of necessary collaboration with child welfare and other agencies and service providers.

Source: (Flango, Gatowski and Harding, 2004<sup>[86]</sup>), *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/building-better-court-measuring-and-improving-court-performance-and>.

Difficulties in addressing systemic inefficiency considerations for family law processes appear to have persisted for some time in Ireland. A 1994 Law Reform Committee Report on Family Courts (Law Reform Commission, 1994<sup>[87]</sup>) focused particularly on:

- The organisation of the family law business of the courts (including the issue of a possible unified jurisdiction) and court accommodation.
- Pre-trial and trial procedures, and court atmosphere.
- The selection and training of personnel, including judges and legal practitioners.
- Support services and the link between judicial and other mechanisms for resolving family disputes.
- The desirability and feasibility of a specialised family court.

Some changes have been implemented since then, but many of the recommendations remain to be addressed. There also appears to be a need to further monitor progress made on the basis of the Kelly Report, which, for example, indicated that more solid case management approaches were applied by the Courts Service in family law cases, but not in others (Kelly, 2020, p. 105<sup>[38]</sup>). The Family Law Reform Program launched by Courts Service in 2021 identified a list of issues to address, including the adjournment of 70% of cases in some courts, a need for greater clarity of responsibilities for administration, significant disparity of listing and scheduling practices across different venues, and needed improvements to notification systems (Courts Service, 2021<sup>[88]</sup>).<sup>14</sup>

As mentioned, there appears to be some overlap of jurisdiction between court levels. Reportedly, this appears to be a particular issue in family law cases, where jurisdiction is concurrent and overlapping between the High Court, Circuit Court and District Court, and where a number of different proceedings can be initiated arising out of the same events. In these situations, the applicant chooses the court in which proceedings are commenced, with the result that the same family law case could have proceedings in two District Courts, two Circuit Courts and the High Court at the same time. These trends may not be detected by the courts as there is no connected case management system. Data on the frequency of these cases to quantify this observation would enable an assessment of whether any changes are needed and if legislative action is required. It would be useful to consider this matter in detail to ensure that parties follow new rules or approaches to facilitate dispute resolution and case management. This might be particularly relevant for high-conflict family matters. These issues are covered by the draft Family Courts Bill, which will aim to address these challenges with emphasis on resolving the matter of jurisdiction overlap.

Limited mediation services are available for family cases. The Legal Aid Board currently provides court-based Family Mediation offices in Dolphin House Dublin, Limerick, Letterkenny, Nenagh, Cork, Carlow, Ennis, Tralee and Mullingar, and non-court-based family mediation is offered in some other city locations and counties. A 2 February 2022 website check of available current waiting times for these services indicated a range from two weeks in Ennis to 26 weeks in Mayo, with an average of 12.8 weeks (although waiting times were not indicated for some locations).<sup>15</sup> Building on existing practices, the Department of Justice in collaboration with other entities is leading on drafting a strategy in the context of family legislative reforms which will include actions regarding further use of ADR in family cases.

#### **4.3.4. Support for lay litigants**

Providing more effective support structures for lay litigants can be especially important at the two lower court levels. While no data are available, the number of lay litigants is reported to be high and rising in Ireland. The 2014 O'Shea study about separation and divorce cases in the Circuit Courts identified that lay litigants represented 22% of cases at that time (O'Shea, 2014<sup>[85]</sup>). In California, the caseload of most judges now consists primarily of cases in which at least one party is self-represented (IAALS, 2019<sup>[89]</sup>). The same has been observed over the past ten years in court systems across many countries, especially common law countries, where the role of the judge differs significantly from that of a judge in a civil law country (which is also one for the reasons the number of judges in civil law countries is generally higher than in common law countries) (Legal Aid Board, 2021<sup>[82]</sup>).<sup>16</sup> Self-represented litigants often have difficulty preparing complete pleadings, meeting procedural requirements and clearly articulating their cases to the judge (or County Registrar). This shift in court parties offers both opportunities and challenges for judges,

highlighting the crucial role they play in making sure that those self-represented obtain access to justice. One initial step has been the establishment of the Access to Justice Civil Reform User Group, as mentioned, to engage with lay litigants and provide them with useful information.

Most support options available to lay litigants in other countries are in the form of detailed and easy to understand web-based information, forms, help options and online dispute resolution (ODR) options. Ireland is currently taking steps in this direction, as highlighted in the Court of Appeal section (Section 8.1), which also apply to the lower courts. These tools may also be developed for victims and witnesses in the context of criminal trials, who would also benefit from clear and accessible guidelines to participate in legal proceedings. The Scottish Court of Session has created a guide for lay litigants on basic information about the courts and what to expect, how to file or oppose motions, relevant offices, fees, contact information and hours (Scottish Court of Session, 2017<sup>[90]</sup>). Some European countries, such as the Netherlands, have put in place the provision of legal aid in civil matters, leading to a reduced number of self-representing litigants. Nevertheless, options for assistance to reduce the significant cost to the state and to ensure that litigants can access the courts when needed are available. The Dutch legal aid system encompasses three tiers for providing legal aid that combines a range of public and private sources of assistance (see Box 4.20).

#### Box 4.20. The Dutch three-tier legal aid system

Established under the competence of the Ministry of Justice and Security, the independent Legal Aid Board (Raad voor Rechtsbijstand, LAB) is entrusted with the administration, supervision, expenditure and implementation of the Legal Aid System in the Netherlands. This includes matching the supply of legal experts with the demand for legal aid, and the supervision and quality control of services provided. A three-tier system has been developed to provide different levels of support needed, with the aim of being cost-effective and involving private sources when appropriate.

**Tier 1:** Legal aid online self-help, information and support available is on the Rechtwijzer website (Rechtwijzer means Roadmap to Justice, [www.rechtwijzer.nl](http://www.rechtwijzer.nl)), and on the website of the Legal Services Counter. Rechtwijzer offers interactive “decision trees” that help people assess their situation. It also provides easy-to-understand information and guidance on possible solutions for the most common legal problems. It combines publicly run guided pathways for common legal problems with online products and services from private service providers. In 2020, Rechtwijzer was supplemented with Rechtwijzer EHBO (“first aid for solutions”), aimed at the early identification of multiple legal problems.

**Tier 2:** Legal Services Counters (LSCs) act as the “front office” (primary help). Financed by the Ministry of Justice and Security, LSCs run 30 offices and 13 service points around the country. These offices share a website and call centre. Legal matters are clarified to clients and information and advice is given. Clients may be referred to a private lawyer or mediator, who act as the secondary tier of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. If necessary, clients can also be referred to other professionals or support agencies, such as legal advisors or Consumer and Rent Tribunals.

**Tier 3:** Private lawyers and mediators provide legal aid in more complicated or time-consuming matters (secondary help) in the form of certificates. A lawyer (or mediator) submits an application to the LAB on behalf of the client. If legal aid is granted, a certificate is issued that allows the lawyer to deal with the case. Lawyers and mediators are paid by the LAB to provide their services to clients of limited means. Generally, they are paid a fixed fee according to the type of case (with fixed surcharges if applicable), although exceptions can be made for more time-consuming cases.

Source: (Netherlands Legal Aid Board, 2021<sup>[91]</sup>), *Legal Aid in the Netherlands*, [https://www.rvr.org/publish/pages/4883/brochure\\_legal\\_aid\\_in\\_the\\_netherlands\\_june\\_2021.pdf](https://www.rvr.org/publish/pages/4883/brochure_legal_aid_in_the_netherlands_june_2021.pdf).

Increasing offers for remote hearings, especially in the more outlying provinces, could be useful to reduce the time, effort and cost involved with court appearances for lay litigants in Ireland. There are benefits and drawbacks to remote hearings for lay litigants that must be considered. The pandemic has advanced the use of remote hearings in Ireland, where the courts can also draw on years of studies conducted in the United States and other countries to assess the impact of this option on different case outcomes and litigants. In 2017, the US-based Self-Represented Litigation Network published a detailed study, *Serving Self-Represented Litigants ('SRL') Remotely – A Resource Guide* (SRLN, 2017<sup>[92]</sup>). The report describes how eight US state-level jurisdictions use remote service delivery technologies to help self-represented litigants, allowing them to access information, forms and other assistance without having to travel to a courthouse. The data collected for that publication showed that the provision of services remotely was of benefit to both the court and the self-represented litigant. With even more advanced technology available today, and more people exposed to remote conversations and services, remote hearings may provide a viable option to better serve lay litigants in Ireland.

In Ireland, there is an option to use a “McKenzie friend”, which is a lay person who can help with preparing forms and accompany the litigant in the court room to take notes, but can not to speak for them in court. Initially established in the United Kingdom in the 1970s, many common law countries now use this option, with varying rules. A 2017 article published in the Irish Judicial Studies Journey indicated that requests by lay litigants to be accompanied by a McKenzie friend had increased (Baker, 2017<sup>[93]</sup>). At the same time, consultations and studies undertaken in Canada, New Zealand and the United Kingdom, among others, highlighted concerns around the use of McKenzie friends, including incorrect advice, hidden self-interests, and lack of quality and accountability measures (Lord Chief Justice of England and Wales, 2016<sup>[94]</sup>; Law Commission of New Zealand, 2012<sup>[95]</sup>; NSRLP, 2020<sup>[96]</sup>). These reports indicate that a better option is access to pro-bono attorneys or support from law school legal aid programmes, such as in the United States.

With growing numbers of lay litigants, judges in many countries may need to take a more active role in the case if one or both parties are self-represented. Until recently, there has been limited guidance for judges on how to meet the challenges of ensuring access to justice for all litigants while running an efficient calendar. Assisting litigants presenting their cases themselves, while remaining neutral, may require targeted approaches (Carpenter, 2017<sup>[97]</sup>).

Courts in the United States have recognised that judges could benefit from more detailed guidance, information and training to be able to better respond to lay litigants appearing in front of them. In some US states, the courts have provided more detailed directions, especially for trial court judges, and California, have gone further and developed a complete bench book for judges on the topic, as highlighted in Box 4.21 (Judicial Council of California, 2019<sup>[98]</sup>). The US-based Self-Represented Litigation Network, together with the National Judicial College, National Council of Juvenile and Family Court Judges (NCJFCJ), NCSC and individual state judicial education programmes, offer judicial training curricula on presiding over cases involving self-represented litigants, including video examples of effective judicial practices, and have provided a detailed guide for judges (IAALS, 2019<sup>[99]</sup>). This could be considered for adaptation by the Irish Judicial Council and the Judicial Training Institute.



### Box 4.21. California Benchbook for judges dealing with lay litigants

In 2019, the California Judicial Council developed a benchbook for judges to address many of the questions and issues judges face with when dealing with lay litigants. The main issues the benchbook focuses on are:

- Who are the lay litigants coming to court and what are the main issues they face?
- Expanding access to the court without compromising neutrality.
- The law applicable to a judge's duties in dealing with lay litigants.
- Solutions for evidentiary challenges.
- Caseload management.
- Courtroom and hearing management.
- Settling cases.
- Appeals by lay litigants.
- Special due process considerations.
- Communication tools.
- Avoiding unintended bias.
- Addressing litigant mental health issues in the courtroom.

Source: (Judicial Council of California, 2019<sup>[98]</sup>), *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers*, [https://www.courts.ca.gov/documents/benchguide\\_self\\_rep\\_litigants.pdf](https://www.courts.ca.gov/documents/benchguide_self_rep_litigants.pdf); (IAALS, 2019<sup>[99]</sup>), *Ensuring the right to be heard: Guidance for trial judges in cases involving self-represented litigants*, [https://iaals.du.edu/sites/default/files/documents/publications/ensuring\\_the\\_right\\_to\\_be\\_heard\\_guidance\\_for\\_trial\\_judges.pdf](https://iaals.du.edu/sites/default/files/documents/publications/ensuring_the_right_to_be_heard_guidance_for_trial_judges.pdf).

Appeals against District Court decisions can be a particular challenge. It appears that when lay litigants are involved, appeals cases are prone to adjournments as they may not be ready when listed, a lawyer may not have been secured, or the date was not confirmed with all parties. These matters could require full re-hearings and may take a full morning during a sitting day, which means additional Circuit Court cases would not be heard that morning. Reportedly, a significant number of appeals made by lay litigants are often legally unsubstantiated. As at the higher court levels, Ireland may benefit from considering the development of a mechanism to screen appeals without substance. If better information and other help is easily accessible, fewer litigants may want to go through with an appeal.

#### 4.3.5. Staff support for judges

There are currently 20 judicial assistants (JAs) and 18 clerks supporting the Circuit Courts. Both clerks and JAs are allocated by the Courts Service to a judge, and travel with them when needed. Initially, Circuit Court JAs were recruited on a similar basis as for Superior Courts, but this was changed to a separate competency-based exam and interview. JAs have an undergraduate law degree and are on a three-year non-renewable contract. They initially attend an induction programme, followed by an ongoing programme of training.

JAs keep the judge's court diary, and maintain and file the judge's minute books and private records of proceedings so that they are readily available when called upon in the event of adjourned proceedings or otherwise. Recently, JAs have taken on additional responsibilities in ensuring compliance with COVID-19 measures. JAs also provide the judge with necessary clerical/secretarial support, although in practice, judges also complete a large portion of secretarial work. Circuit judges must carry an extensive and bulky mobile library, which is maintained by the JA, who is also required to keep orderly files of precedents and

legal articles to ensure that they are available when required. IT skills are particularly useful, and will be more so in the future when automated systems are introduced and paper files are reduced.

Similar to other court levels, several Circuit Court judges interviewed suggested that the skillset of young lawyers who apply for support roles may not always necessarily match what judges require. It was also suggested that the standard three-year contract may not be ideal, as candidates receive alternative job offers and turnover is high.

The current JA job description states that candidates must have successfully completed a Diploma in Law from Kings Inns, have a good understanding of the work of the Irish courts system, a knowledge of modern legal research methods and materials, and some experience conducting legal research (this can include academic research or research during court case preparation).

More specifically, the job description is listed as:

- Conducting legal research (academic and case law).
- Summarising facts, legal submissions, case law and relevant material as directed by the judge for inclusion in draft judgements.
- Proofread draft judgements, assist in research for draft judgements.
- Assist the judge in the preparation of lectures, conference papers and speeches.
- Prepare case summaries, assist with legal drafting and proofing.
- Prepare conference papers and speeches as required.

Duties at the court are described as:

- Acting as liaison between the judge and the parties to litigation (if required).
- Collect the judge's books and papers for court.
- Remain in court during hearings if required.
- To note evidence and submissions as directed (IrishJobs, 2019<sup>[99]</sup>).

The type of support staff Circuit Court judges need differs depending on their assignment. Judges outside Dublin who need to travel may have different needs than those sitting permanently in Dublin. In addition, judges who travel to a restricted number of places may have different needs than those who travel to many different or remote places. There are also differences depending on the types of matters judges are assigned to, such as family cases. Judges themselves have varied IT skills and need different levels of support to make the best use of systems, software, equipment and for troubleshooting.

Generally, Circuit Court judges may benefit from greater support for legal research that applies to the court. Administrative and clerical support, support for case file management, communication with others at the courts as well as with litigants about hearing times, submission requirements and timelines are also important areas to consider to strengthen available support. This combination of research, organisational and interpersonal skills can be difficult to find among regular law school graduates. Considering the limited research range required, and the strong focus on administrative and logistic support needed, the requirements of this role could be a match for paralegals.

In view of the mixed experience of the support available reported by Circuit Court Judges, a review of actual needs, reflection on differences in support requirements, and how this might meet current JA job requirements could be beneficial. A first step would be to assess judicial needs, followed by an analysis of how that matches or not with current judicial assistant's skills as stated in the job descriptions. Job descriptions and hiring practices may then be reviewed as needed to attract the needed candidates.

Examples from other courts could also be explored. For example, Chancery and Circuit State Court judges in Mississippi are supported by a combination of legal staff with different skills sets and at different skill levels, namely, staff attorneys, law clerks, law student research assistants, paralegals and secretaries.<sup>17</sup>

Depending on the needs of a particular judicial position, this may involve a direct assignment to one judge or to a group of judges. Supervision is received from a judge or group of Judges at the Trial Court level, although the applicant would be an employee of the Administrative Office of Courts, which is responsible for the administration of the courts and provides the staff required for those responsibilities.

Even a solid assessment of position needs may not always provide the necessary detail if staff with similar positions support a range of judges operating in different locations and with different assignments (with varied requirements of support). A good approach to better understand what is actually needed and where would be to conduct a pilot study. The North Dakota State Courts, for example, are currently conducting a pilot study to assess options to replace positions that are no longer an appropriate match for the support District Court judges need today (see Box 4.22).

#### **Box 4.22. Judicial Support Pilot Project (JSPP) at the North Dakota Courts**

The Judicial Support Pilot Project (JSPP) gives the presiding judge in each district, in consultation with the district judges of the district, several options to find a judicial support model that fits the size, structure and depth of support desired by each district. The JSPP offers three optional positions in lieu of recruiting a court reporter, electronic court recorder or electronic court recorder/transcriptionist:

1. JSPP District Court Paralegal
2. JSPP Staff Attorney-District Court
3. JSPP Law Clerk A. Duties,

The pilot project ran for 18 months, from 1 September 2020 to 31 March 2022. Detailed job descriptions and other employment conditions were developed during this time. The status of employment for the duration of the project was laid out, as well as transition arrangements if the pilot project continues or becomes permanent. The JSPP positions are non-classified (at will) regular employee positions, and employees are entitled to state benefits.

Source: (State of North Dakota Courts, 2022<sup>[100]</sup>), *Judicial Support Pilot Project*, <https://www.ndcourts.gov/Media/Default/district-courts/Judicial%20Support%20Pilot%20Project%20impl%20guidelines%20as%20approved.pdf>.

The current selection and assignment process could be reviewed in Ireland, in particular from the standpoint of judicial participation. While some judges are part of the interview process, they do not always have the chance to interview those who will be assigned to them.

It may also be useful to review the supervision and reporting structures for staff directly supporting judges, who are employees of the Courts Service. While judges are their direct supervisors, the accountability, reporting and discipline lies with the Courts Service. Comparative models in this regard are varied. In the United States, judicial assistants are hired directly by courts, while in the United Kingdom it is the Her Majesty's Courts and Tribunals System (HMCTS), and it varies widely in continental Europe. Either structure could be suitable if the staff and work of Courts Service is well coordinated with the judiciary and follows its directions in hiring, assignments and staff management. Equally important is to ensure that judicial assistants are hired with a clear understanding of what is needed by the relevant judges, and for individual judges to be able to provide input into hiring and managing their support staff.

Circuit Court judges can also draw upon judicial research staff, who are part of the Research Department in Dublin, if they require more involved or academic research; however, it was reported that this currently does not happen often. Any review of Circuit Court support staff would also need to consider when and how often Circuit Court judges need this assistance, and how it can be best provided.

Courtroom and file management support during hearings is provided by Court Registrars, who are designated to provide support for the administration of the court list and court files, swear in juries and

witnesses, and draw up the formal court order after it has been pronounced in court by the judge. They do not provide support for non-case related administration or activities. OECD interviews revealed that registrars are not always available to schedule or handle hearings every week for a range of reasons, including hiring delays, lack of back-up options and less flexible work arrangements in some locations. The current number of registrars appears to be limited, and turnover is reported to be high, which may eventually affect the efficiency of judges.

#### Box 4.23. Circuit Courts – Key recommendations

##### Short-term:

- **Procedural mapping and simplification:** Consider reviewing, updating and streamlining the current processes (litigious and alternative pathways), including by reviewing the paper forms that litigants and the court need to complete, submit and distribute. Consider standardising operations by the County Registrar and Courts Service staff across different locations.
- **Data tracking for case management and court rules:** Put in place better data tracking processes (e.g., for case processing data, age of pending caseloads, number of adjournments) to inform the development of solid case management and court rules (and adjusted legislation) to control adjournments and require early discovery, including via streamlined cooperation efforts with the Courts Service.
- **Differentiated case management options for family cases:** Considering the complexity range of family law cases handled at the Circuit Courts, the development of an initial pilot test for introducing differentiated case management options for family cases could be assessed.
- **Support needs assessment.** Review the judicial support needs to ensure that judges have the staff support required, including quasi-judicial positions as well as the Judicial Assistant job requirements. This should be undertaken in collaboration with the Courts Service to collect the relevant information, assess the results and develop support staff options.
- **Backlog reduction teams:** Assess the creation of special backlog reduction teams to focus on backlogged cases only, underpinned by a clear definition of backlog and supported by additional resources.

##### Mid-term:

- **Lay litigants, victims and witnesses:** Strengthen collaboration with the Courts Service to provide better support for lay litigants, including through the creation of accessible, easy-to-understand legal information sources and additional ODR options in line with the actions foreseen by the Kelly Review Group report. Consider providing training to judicial and support staff to effectively deal with lay litigants in a manner that addresses their specific needs while remaining neutral and cost-effective. The development of similar tools and efforts may be helpful for victims and witnesses in the context of criminal cases.
- **Data tracking for family courts:** As the Family Court pilot is evolving, develop more streamlined processes and solid data tracking in collaboration with the Courts Service, along with mechanisms to assess what is being implemented and to strengthen collaboration with family service agencies.
- **Notification system:** Consider modernisation of the notification system to enable it to track notification outcomes, and pilot the automation of notifications.
- **Digital tools and virtual processes:** Benefiting from experiences throughout the pandemic, enhance the use of digital tools, including scaling up virtual processes in provincial venues and assessing the impact to inform additional implementation options.

- **Support for non-litigious pathways:** To ensure that litigants are offered early opportunities to choose a non-litigation route, consider putting in place the necessary support (e.g., training, time and standing to be accepted by both parties) for those responsible for facilitating this decision (e.g., County Registrars, court registrars and judges).

#### Long-term:

- **Provincial venue coverage:** Assess provincial venue coverage and consider online options to support a better understanding of resource implications and options to adjust in-person hearings.
- **County Registrars operations:** Enhance the efficiency of existing processes and collaboration mechanisms for County Registrar operations, especially to enhance cooperation between judges and County Registrars to facilitate judicial control of case lists; as well as continue efforts to better understand the potential and limits for expanding County Registrars' responsibilities over quasi-judicial decisions.
- **Sitting days:** Consider assessing court sitting days across provinces to ensure the ensure the capacity to respond to the growing population and caseload

## 4.4. Modernisation opportunities at the District Courts

The District Courts are very high-volume courts, which is the main reason for the specific issues they face. Studies from the United States have shown that high-volume court operations present significant and particular challenges to litigants, defendants, victims, witnesses, judges, court staff and those responsible for their effective administration (Hannaford-Agor, Graves and Miller, 2015<sup>[101]</sup>). The high number of cases brought to the court means that large numbers of people are coming to the courts, and large numbers of requests need to be accommodated, hundreds of forms processed, and large numbers of files prepared, reviewed and processed every day.

Many District Court events are short, lasting only a few minutes. This rapid pace can make it particularly difficult for litigants who are unaccustomed to court proceedings to follow which cases are heard, what the court has asked for, and when and what they should do next. Further, during interviews it was reported that following the number of calls and adjusting to the quick pace of the District Courts in Ireland could even be initially challenging for barristers. This pace may affect the right of litigants to follow the procedures they are involved in in a manner that is understandable to them.

The rapid sequence of cases is due to a variety of factors, one being the reportedly high number of adjournments, which can result in judges having to move quickly from one case to the next. Results from the Delphi study indicate that hearings for a large range of cases, from simple to more substantive, remain short, lasting 30 minutes to an hour. While this may be appropriate for uncontested issues, concerns were expressed that the high number of cases listed to be heard every day may cause extensions of the sitting day into off hours, or a need to rush through the process. In this context, judges reported increasing challenges to adequately consider all elements of a case.

The number of judicial positions at the District Courts have not been reviewed since 2008. At the same time, several venues reportedly require infrastructure repairs and better Internet connectivity to be able to accommodate virtual hearings. Therefore, this court level may particularly benefit from investments in infrastructure and automation, further staff support, and improved case management.

There appears room to strengthen co-ordination and standard operating procedures between the Courts Service and District Courts outside of Dublin. While efforts are underway to develop more unified approaches, operations appear to apply different models depending on location, and the co-ordination of case scheduling with judges is reported to be limited in some cases. In this regard, modernising and

unifying data collection systems to provide case management information could be considered. The Courts Service highlighted that data collection and case management used for civil and family cases is supported by around 35 separate systems for civil, criminal and family cases. These systems differ among localities and are based on the Lotus Notes software, which was put in place as a temporary solution when the Courts Service was created in 1999.

Overall, similar to other countries, in Ireland it would be relevant to strengthen the match between investment in court operations and the courts where most users are located. This may imply the re-balancing the allocation of resources to venues where they are most needed, while ensuring accessible justice throughout the country. While most cases resolved at District Courts tend to be less complicated, they still require effective support and management as they are important to people who are bringing them and often involve fundamental issues such as employment, housing and family matters, and in many cases criminal matters.

Following a 2012-13 study of ten state court systems in the United States, there was a growing recognition that courts need to refocus attention on lower courts. While this study (referred to as the Landscape Study) reviewed mostly civil state court operations (Hannaford-Agor, Graves and Miller, 2015<sup>[101]</sup>), it presented a different picture of civil caseloads to perceptions often held by civil trial lawyers and judges, and showed how much the civil workload had changed across all courts over the prior two decades. The key findings included that 80% of civil caseloads consisted of contract cases, small claims, and “other civil” cases involving agency appeals and domestic or criminal-related civil matters. Complex tort and real property cases comprised only 1% of civil caseloads. Most cases involved relatively modest monetary values, and litigants represented themselves in more than three-quarters of cases. These findings prompted the US Conference of Chief Justices to endorse recommendations that courts should refocus their attention on the lower-level courts with high-volume caseloads (Hannaford-Agor, Graves and Miller, 2015<sup>[101]</sup>).

The results of this study also indicated that due to the high costs of litigation in the United States, the fact that most litigants brought lower value cases to the courts meant that the costs of litigating a case through trial would greatly exceed the monetary value of the case. This explained the relatively low rate of cases going on to a formal substantive hearing.

The study also highlighted the changing nature of the adversarial system, which traditionally assumed the presence of competent attorneys representing both parties. The Landscape Study dataset showed that in a relatively large proportion of cases (76%), at least one party was unrepresented, usually the defendant. This often created an asymmetry in legal expertise that requires effective court oversight and more judicial time to avoid unjust case outcomes. Small claims case lists, on the other hand, had an unexpectedly high proportion (also 76%) of plaintiffs represented by attorneys. This suggested that small claims courts, which were originally developed for self-represented litigants to access courts through simplified procedures, have become a less costly forum of choice for attorney-represented plaintiffs in debt collection cases in the United States (Hannaford-Agor, Graves and Miller, 2015<sup>[101]</sup>).

Some of the findings of this study could be relevant for Ireland, notwithstanding the many differences in legal, historical and political context. As shown in Chapter 3, overall numbers of civil and criminal cases have increased at District Courts in the past ten years, while decreasing in the High Court.<sup>18</sup> While there are insufficient data to assess if the percentage of cases that go to trial instead of settling has changed at the District Court level over the past decade, judges reported experiencing similar trends to the United States. Increases in the number of lay litigants were also reported by District Court stakeholders.

A comparison between data reported by the Courts Service in 2000 and 2020 (Courts Service, 2022<sup>[102]</sup>) shows that the number of small claims cases heard has significantly declined, while the number of applications that did not qualify has increased. While this might be partially due to some legislative changes, there appears to be a significant interest in taking advantage of small claims processes that could be strengthened in Ireland.

With several parallels, some of the recommendations developed in the United States as a result of the Landscape Study (Hannaford-Agor, Graves and Miller, 2015<sup>[101]</sup>) may also be options to consider for the District Courts (and other court levels):

- Adjustments to the legislative framework and court rules support efforts to better streamline processes. The number and complexity of processes and forms are reduced to ensure that cases that should be heard by a judge are not forced to settle due to lack of litigant capacity and financial means.
- Litigants have access to accurate and easy to understand information about court processes and appropriate tools, such as standardised court forms and checklists for pleadings and discovery requests. A range of self-help options should be available for lay litigants, and court processes should be reviewed to prevent situations that can be confusing to them.
- Court administrators and judges ensure that the courtroom environment for proceedings on high-volume case lists minimises the risk that litigants will be confused or distracted by crowded court rooms, excessive noise or inadequate case calls.
- Case management options at the lower courts reflect the fact that while most cases can be handled in a relatively streamlined fast track manner, some cases may require more court involvement. For those cases, different case process options should be available either as a full track, if the caseload supports that, or as an option for the judge to choose when individual cases require more attention. Cases should be reviewed early on to identify if they require more time and scheduled accordingly.

The latter point may be particularly relevant for many of the family cases in the Irish District Courts. Judges also reported that increasing numbers of more complex cases in other case categories are coming to the court, which would require more time to be heard, including preparation time and decisions drafting. This situation may require consideration in case scheduling and resource allocations.

#### ***4.4.1. Enhanced assistance for lay litigants***

There is scope to strengthen support for lay litigants coming to the District Courts in Ireland, building on current efforts to address this growing need through the Modernisation Programme and the implementation of the Kelly Report. A range of examples of easy to understand and use information has been outlined in the sections addressing similar needs at the Court of Appeal and Circuit Court, and could be applicable, with appropriate adjustments, at District Courts.

#### ***4.4.2. Diverting select case types to online dispute resolution and other processing options***

District Courts currently handle certain case types that could potentially be handled through different processes or by other services. Using online dispute resolution (ODR) for select District Court cases, especially licensing and select road traffic cases, could be particularly promising.

Licensing cases in particular could be handled outside, or at least with less involvement of the courts. This would require a legislative reform that would need to take into account the implications for the funding structure of Courts Service, which benefits from payments of stamp duty from applicants. As noted, in most countries, review and approval for licences are fundamentally an administrative responsibility, not a judicial matter. Licensing decisions made by administrative agencies or serious violations of licensing requirements may require a judicial decision if appropriate review and appeals processes are not available within the related administration. In most civil law jurisdictions, complaints against licensing decisions issued by the relevant administrative agency are reviewed and decided by the agency's complaints division; only appeals against these decisions can be brought to administrative courts. Similar internal complaint review processes tend to be available in many common law countries, again leaving only

appeals against such decisions of the administration to potentially go to court, if at all (for an example of such a process handled by an administrative agency, with complaints handled by a special board.

While a range of other agencies are also responsible for specific licensing approval, review, complaint and enforcement decisions in Ireland, there are some types of licences (such as certain liquor licences) for which approval rests with the courts, mainly the District Courts. For example, initial requests to apply for an alcohol licence for a café or restaurant can be made online and are reviewed by the National Excise Licence Office. However, the complete application and all forms required are then “filed” at the local District Court, where it must remain in a waiting loop for a 30-day period during which others may file an objection. If no objection is filed, the licence may be issued (Government of Ireland, 2022<sup>[103]</sup>). This process could be a candidate for full automation, and any resulting objections could be dealt with through ODR mechanisms, regardless of whether this role remains at the District Court or is fully handled by another entity. Such an ODR process could also lend itself to centralisation, meaning that even if judges continue to be part of these licensing approval and complaint processes, they could be fully handled online, with a judge residing in a few locations depending on case numbers (to avoid judges needing to travel around the country to handle these matters), or possibly assigned on a rotating basis to handle such cases exclusively one day or more per week. The Delphi study results indicated that licensing cases on average take three minutes, which implies limited effort per event, but they still add to a full case list.

At the same time, diverting licensing cases away from the District Courts may not free up significant time for judges. The time study result indicated that the total time needed to handle all licensing cases takes a minimum average of about 1 264 hours per year, translating into 0.7 FTE positions. At the same time, these cases greatly contribute to administrative court staff time and traffic at court venues, and the rapid process could be confusing to lay litigants.

While a new e-Licensing process was launched by Court Service in the summer of 2020, it is currently only for applications and only to legal firms. This may be a good first step towards a full online licensing process as available in jurisdictions in the United States (see Box 4.24 below) and United Kingdom (see Box 4.25), for example. This possibility could be analysed further to consider the trade-offs, as it would likely entail a review of the legal framework applicable to licensing.

#### **Box 4.24. Applying for liquor licences in the US state of Virginia**

Application for, review and control of liquor licences in Virginia, similar to other US states, is the responsibility of the Virginia Alcoholic Beverage Control Authority (ABC). The ABC implemented an online system to make the licensing and permit process to sell or serve alcoholic beverages less complicated and replace traditional paper practices. Effective since January 2022, all applications will be processed using this system.

The online system, VAL (Virginia ABC Licensing), has two components. The first is an online back office where employees can review, process and approve licence applications or amendments, manage and track inspections, review and track educational components, and track investigations or adjudications and outcomes. The second is a public facing online portal where the public can submit and track applications or amendments, upload documents, and pay fees or penalties. The portal will give 24-hour online access and replaces the need for individuals to attend the ABC in person.

VAL is being implemented in phases, and the ABC is sending letters to individuals with personal identification numbers, along with guidance on how to create an account on the portal and link any historic applications or business activity. A production support team has been created to assist customers in using the portal (Virginia ABC, 2021<sup>[104]</sup>).



Complaints about liquor licence violations can also be submitted to the ABC online or via a toll-free phone number. The ABD has special agents that investigate complaints. Substantiated complaints are heard in administrative hearings before an ABC board served by administrative judges.

Source: (Virginia ABC, 2021<sup>[104]</sup>), *Licensing FAQs*, <https://www.abc.virginia.gov/licenses/license-faqs>.

### Box 4.25. Licensing system in the United Kingdom

In the United Kingdom, local authorities are responsible for managing licensing, including receiving applications, payments and approvals, as well as for creating their own licensing policy and review body. This can take the form of a division within a local staffing office or a formal review board. While some receive applications in person, in paper or via email, others have set up online portals to receive applications (Local Government Association, 2021<sup>[105]</sup>). Several licences, such as premises licences, can be applied for directly using the UK government's online application portal. When an individual submits an application, it is directed to the relevant local authority for review and evaluation. Filling out the form requires the user to download the form and use Adobe Reader, submit electronic copies of relevant documents, and pay the licensing fee electronically.<sup>1</sup> For businesses, the UK government has created a License Finder to help identify if a licence is needed and if so, which one.<sup>2</sup>

Many governing local authorities also have their own online portals or information for submitting applications. The City of Westminster, for example, receives 9 000 applications per year, making it the largest licensing authority in the United Kingdom. Its licensing department has a team of 14 practitioners who manage the licensing regime and review and issue licences (City of Westminster, 2021<sup>[106]</sup>). The city council has created a website where applications can be submitted, reviewed and commented on. The site is divided by type of application and allows for the electronic payment of any fees. An online register of licences is available where the public can search for relevant application notices or events. The city council even includes a link to its weekly newsletter, where interested parties can subscribe to be kept up to date on any approved or rejected licences in the area (City of Westminster, 2021<sup>[106]</sup>).

In Scotland, licensing is also handled by the local authority, although individuals must also receive a Scottish Personal Licence, which requires an element of payment and online training. Once a Scottish Certificate for Personal Licence Holder Qualification is received, an individual can make an application to their local authority. In Glasgow, this can be done in person by booking an appointment online or by post (Glasgow City Council, 2021<sup>[107]</sup>). In comparison, in Edinburgh individuals can upload their application and pay for it online. Licences are then reviewed by Edinburgh's Licensing Board, which consists of ten city councillors and meets monthly. If interested, individuals can subscribe to email updates from the city council's Licensing Service (The City of Edinburgh Council, 2021<sup>[108]</sup>).

Note: <sup>1</sup>See –for example an application for a premises license, available online at <https://www.gov.uk/apply-for-a-licence/premises-licence/city-of-london/apply-1> (Last visit 03/04/2022); <sup>2</sup> For reference, the UK's government licence finder is available online at <https://www.gov.uk/licence-finder/sectors> (Last visit 03/04/2022).

### 4.4.3. Road traffic cases

Simple traffic cases, but not all road traffic cases, could also be reviewed to move away from judges. At the moment, through the Fixed Charge Penalty system, simple cases that imply a fine only reach the courts if the offender fails to pay once they have received a fixed charge notice. More complex road traffic cases,

especially repeat offenders that endanger others or result in injuries, belong in the court. For these matters, enhanced scheduling and case management approaches are needed. The structure of an effective case management approach depends on the cases that will likely be handled in court, local circumstances and the number of cases of various degrees of complexity, which requires more detailed data about cases coming to District Court judges. Data needed include that which will enable distinguishing traffic (and other) cases by complexity and case process trends, i.e. if they are likely to plea early, shortly before a hearing or proceed to a full hearing. Based on this information, the court can decide if and what processing options would be meaningful.

Importantly, diverting smaller traffic court cases to Online Dispute Resolution (ODR) and other solutions may increase efficiency and free up judicial time to focus on the more serious matters. Currently, all road traffic cases require a minimum of approximately 15 813 hours annually, translating into approximately 8.8 FTE judicial positions. If all or most cases that end in a plea were handled via ODR (with possibly some going to a full hearing), it could free up to 4 FTE positions that could focus on more serious matters and other court work, especially family law cases. An example of how an ODR process is used by courts in the US state of Connecticut that could be beneficial in the Irish courts is shown in Box 4.26.

#### **Box 4.26. Connecticut Superior Court: Online Ticket Review for traffic offences**

The Connecticut Superior Court introduced an ODR process for traffic cases that combines filing and submissions with virtual review. The Online Ticket Review has reduced the number of days from citation to adjudication from more than 180 to less than 60. In addition, the online process allows the prosecutor to better tailor sanctions for defendants based on driver history, charged offences and other relevant factors. Connecticut's Online Ticket Review programme is "opt-in" and has a 76% acceptance rate. Participants can either plead guilty and pay the fine online or plead not guilty and use the website to tell their version of the incident, including uploading photos or other documentation. A prosecutor reviews the facts of the case using live data from the Connecticut Department of Motor Vehicle's licence and registration databases, the court's case management systems, and any crash report information uploaded by law enforcement. In approximately 16% of cases, the state chooses not to prosecute based on the information provided by the driver. Citizens appreciate that using the system means having their day in court without taking time away from work and family obligations. Before the online system was implemented, an average of 200 cases were decided during each three-hour court session, or an average of less than one minute per case. Because of time constraints in the face-to-face setting, it was not possible for the prosecutor or the judge to ensure the accuracy of information presented. Through the ODR platform, the prosecutor has ready access to driver history, licence and registration status, subsequent infractions, and pending cases, and can take whatever time necessary to gather and review relevant information. If the case qualifies, the prosecutor makes a settlement offer within two weeks. Some 80% of motorists/defendants accept the offer and are immediately directed to a payment page.

Source: (JTC, 2020<sup>[109]</sup>), *JTC Resource Bulletin: Case Studies in ODR for Courts*, [https://inns.innsforcourt.org/media/194295/2020-01-28\\_odr\\_case\\_studies\\_v2\\_final.pdf](https://inns.innsforcourt.org/media/194295/2020-01-28_odr_case_studies_v2_final.pdf).

Depending on the number of cases before the court, it may be efficient to set up a fast small claims track for simple cases that do not go to ODR, a general track for most cases, and a complex case track for serious cases such as intoxicated driving offences, repeat offenders and vehicular homicide. Such tracks require establishing meaningful time standards for different case steps and an allocation of adequate time for hearings, as applied by the registrars. Ideally, this would be supported by an effective case management system. A simplified version could be tested beforehand, as undertaken in the United States and other countries before automation reached its current level of sophistication.

While ODR solutions for traffic law cases may take longer to develop, solutions to more efficiently address traffic cases that are currently coming – and will always come – to the courts could be considered and

tested now. In locations where the case load allows, such as Dublin and possibly Cork, the creation of a special traffic court option may be considered. This would require an additional assessment of available data to have a better understanding of what would be meaningful and could deliver impact. If the data indicate, for example, that the caseload would support a special traffic court in Dublin or Cork (even if just for a day or a few days per week initially), then different processing tracks or scheduling bundles would need to be considered. The use of bundling different traffic case types to be heard in different sitting day time slots is in place in Arlington County, Virginia (see Box 4.27).

#### **Box 4.27. General District Courts: Traffic court schedule, Arlington Virginia**

The Arlington General District Court has three judges, including the Chief Judge, who handle all civil, criminal and traffic cases. They serve the jurisdiction of Arlington County, which has a population of about 233 500. The jurisdiction is served by several police departments responsible for the enforcement of traffic violations. The court schedule reflects efforts to increase hearing efficiency and limit adjournments:

##### **Monday to Friday**

9:00 a.m. Arlington County Police Department (ACPD) and Metro Traffic Cases

10:00 a.m. ACPD (M, Tu, Th, F)

10:00 a.m. Metro Washington Airport Authority (Wednesdays only)

11:00 a.m. Virginia State Police (Monday - Friday)

2:00 p.m. ACPD (M, W, F)

##### **1st Friday – Parking Ticket Case List**

9:00 a.m. Parking Tickets

10:00 a.m. Parking Tickets

11:00 a.m. Parking Tickets

2:00 p.m. Bus and Photo Red Lights

3:00 p.m. Parking Tickets

##### **4th Wednesday – Hot Lane Case List**

9:00 a.m. HOT Lane (VDOT)

10:30 a.m. HOT Lanes (VDOT)

Source: (Virginia's Judicial System, n.d.<sup>[110]</sup>), *Court Schedule: Traffic Court (webpage)*,  
<https://www.vacourts.gov/courts/gd/arlington/home.html>

#### **4.4.4. Creating more targeted case management approaches**

District Court judges apply a range of case management techniques. Court lists are monitored and registrars proactively indicate to judges when an adjourned date's list is full. Rules are also in place for the scheduling of new cases. Several new approaches were also introduced due to the COVID-19 pandemic. For example, Callover is now handled by using staggered daily timeslots for hearings. This is an important case management improvement that assists judges and litigants, and is planned to become a permanent approach. If the needed data are made available, they can be used to inform the design of new case management options that will result in more effective processes that are also easier for litigants.

Considering that the range of case types coming to the District Courts includes several that require higher levels of attention and support, case management is more involved at the District Court than might be expected. As mentioned, cases at this level are not all simple, fast to process cases. The limited data available point to the benefit of considering at least a two-track system, and possibly a separate track for select family cases and/or a traffic case track in Dublin and a few other locations with a significant case load. It may also be useful to review family cases early on, flag those likely to require different levels of attention and schedule them accordingly. More effective case management and more effective scheduling would be beneficial. Currently, judges seem to be faced with different scheduling approaches across different locations, driven by variations in estimates by registrars as to how many cases can be handled in a day and how much “overbooking” is appropriate. According to stakeholder interviews, this is partly why cases are adjourned when there is not enough time in the sitting day, or why sitting days are increasingly getting longer. Sitting day data show the continuous increase of special sittings and out of hours sittings.

Strengthening data availability can help courts develop more effective case management options and better human resource management plans. To date, judges can approximately estimate how many matters they can handle without compromising procedural requirements or quality of justice. For example, judges reported that based on their experience, depending on the case complexity mix a judge may be able to effectively handle 10,000, maybe up to 13,000 matters per year. Considering that the various case types handled at the District Court require very different attention from the judges, a targeted approach may enhance judicial resource management.

#### **4.4.5. Small claims and simplified, fast track proceedings**

National and EU small claims procedures are available in Ireland, and where they exist a special small claims registrar is assigned a significant role in early case management and the settlement of these cases. In 2020, a total of 3,231 Irish small claims cases were received. Of these, 626 were settled by a small claims registrar, 205 were resolved by default, and 202 were withdrawn or not proceeded otherwise before coming to a judge (these were all reported as “disposed out of court” in the 2020 annual report). Only 486 were left to be adjudicated by a judge.<sup>19</sup> This appears to be a relatively effective use of a process using an alternative non-judicial source – and could be applied more widely and uniformly. The current online process available for these cases appears to help, but may benefit from updating, especially if it can be adjusted to an ODR process, as outlined for traffic court cases in Box 4.28.

At the same time, out of all cases received, 1,169 (half of all cases) were not covered by the Irish small claims procedure. The number of small claims cases handled at the District Courts compared to the number of applications received has significantly declined over the years. The number of small claims cases received in 2000 (3 150) was only slightly lower than in 2020 (3 231). Of these, 36 were not covered by the Irish small claims procedures in 2000, compared to 1,169 not covered in 2020.<sup>20</sup> This may partly be due to the fact that claims valued up to EUR 2 000 qualified in 2020, compared to the equivalent of EUR 1 269 in 2000. The maximum value of EU small claims been increased to EUR 5 000,<sup>21</sup> which is the same as national small claims cases in Scotland.<sup>22</sup> A review of the reasons why claims submitted did not qualify could provide some insight to inform needed changes.

The small claims registrar tends to be the regular and only registrar working in a particular court location, given that the small claims registrar is linked to the local District Court. As a result, the use of small claims options varies across the country. Reportedly, registrars in some courts try to mediate, whereas in others they do not. In order to strengthen consistency, it may be beneficial to explore further coordination across the courts throughout the territory, the appointment of a central supervising entity or centralising this function. The 2020 data available from the Courts Service show that most small claims cases were received (1,374) and handled in Dublin. Over 50% of these cases did not qualify. The registrars settled 135 and judges adjudicated 72, which is rather low. In the next largest jurisdiction, Cork, 214 cases were received, 67 did not qualify, 60 were settled by registrar and 10 adjudicated by a judge. There is significant

potential to upscale the use of the registrars as mediators if they have the time and proper training, and if litigants receive the needed information ahead of time.

#### Box 4.28. Modern small claims and fast track options in Scotland and Canada

In **Scotland**, sheriffs or summary sheriffs can make decisions on matters in the Sheriff Court for claims that are GBP 5 000 or less. Typically, this includes matters around the payment of money, debt recovery, or similar orders.

This “Simple Procedure” replaced the small claims procedures in 2018 and deals with summary causes. Parties can track their progress online using this procedure, but must try to settle their dispute first. In 2018-19, 29 613 cases were disposed of (28 249 cases in), and in 2019-20, 28 250 cases were disposed of (32 345 cases in). During these two years, there was a 14% increase in the number of cases under the simple procedure, but disposals decreased by 5%.

Previously, small claims matters in **Ontario** were dealt with at the Superior Court of Justice, which is one of the busiest courts in the country. However, a small claims court was created for claims up to CAD 35 000 (Canadian dollar), and matters in this court are typically resolved in less than a year. The small claims court uses modern technology, including an e-filing and claim submissions portal. This court is presided by deputy justices – senior lawyers who are appointed for a term by the regional senior judge. There are 90 sites across Ontario.

Source: [https://www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---making-a-claim;\\_\\_](https://www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---making-a-claim;__) (Scottish Government, 2021<sup>[111]</sup>) *Civil justice statistics in Scotland: 2019-2020*, <https://www.gov.scot/publications/civil-justice-statistics-scotland-2019-20/pages/3/>; (Ontario Government, 2019<sup>[112]</sup>), *Ontario Making It Faster, Easier, More Affordable to Settle Small Claims*, <https://news.ontario.ca/en/release/54269/ontario-making-it-faster-easier-more-affordable-to-settle-small-claims>; (Ontario Superior Court of Justice, n.d.<sup>[113]</sup>), *Small Claims Court*, <https://www.ontariocourts.ca/scj/small-claims-court/>.

The small claims process in Ireland could be further modernised. A growing number of countries are changing optional small claims proceedings into an effectively structured lower value claims fast track case management process (comprised of simplified, streamlined submission requirements and processes). This process is primarily handled by non-judicial staff, similar to the Irish small claims registrar, by using ODR mechanisms. Processes used in Scotland and Canada could possibly be considered in Ireland (Box 4.28).

Some countries have also adopted more comprehensive court-based dispute resolution options adjusted to a range of different lower value and less serious cases, or other cases that may benefit from mediation and arbitration. The aim is generally to better serve those with less means, and to provide a range of more streamlined dispute resolution options to reduce courts’ workload. Washington DC, United States, provides one of the oldest examples of such a system. In 1985, the Intake and Referral Center was the first Multi-Door programme established in the Superior Courts of the District of Columbia (the DC Superior Courts are the general jurisdiction trial courts for the city). Trained Dispute Resolution Specialists were, and still are, available to assist those coming to the courts to help them consider options for the resolution of their disputes. If the Dispute Resolution Specialist is unable to conciliate the dispute, the citizen will be referred to an appropriate legal, social service or dispute resolution organisation (District of Columbia Courts, n.d.<sup>[114]</sup>).

In the same year, the Small Claims Program became the first dispute resolution programme offered to the public to enhance access to justice. Mediators are available daily to help parties reach a mutually satisfactory resolution of disputed claims of USD 10 000 or less. In 1991, small claims mediators began to take on collection cases with claims of USD 25 000 or less. In 2019, approximately 58% of the small claims cases entering mediation were resolved. Related to this, a Family Mediation Program began operation in late 1985. Initially, cases entering family mediation came to the programme on a voluntary basis and

involved issues of child support, custody, visitation, spousal support and property division. Mediation continues to be available prior to filing a formal complaint in court or at any time after filing a complaint, even on the day of trial or at the hearing. Specially trained family mediators also mediate cases with tax and pension issues. Cases ineligible for joint mediation are those involving the use of weapons, serious injury by one party to the other, a long history of repetitive violence, or child abuse. Court-annexed, non-binding arbitration was initiated in 1987. Over time, mediation has grown in popularity, but the option of arbitration remains open to clients of the Superior Court (Superior Court of the District of Columbia, n.d.<sup>[115]</sup>).

#### **4.4.6. Review of indictable criminal cases**

District Court judges could benefit from a review of criminal cases that are indictable and bound to the Circuit Court. Historically, all criminal cases, no matter how complex or severe, started at the District Court, and this is still the case today. While the Director of Public Prosecutions (DPP) and the District Court judge have some discretion in a range of case types, and the accused may choose an offered option, if a case should be heard at the District Court or the Circuit Court, the law designates select serious matters that must be heard at the Circuit Court or even the High Court level. In these types of cases, District Court judges reported having primarily an administrative role, with tasks including conducting a call for return for trial, providing information related to the book of evidence when it is served, explaining their rights to the defendants and then sending the case to the Circuit Court. Unless the District Court is needed for pre-trial custody or bail decisions, this apparently mainly administrative part of the process is possibly delaying scheduling at the Circuit Court. There were approximately 21,500 indictable cases sent forward for trial from the District Courts to the Circuit Courts in 2020.<sup>23</sup> While some of these actions take only a few minutes, they tend to trigger multiple adjournments. Therefore, additional data would be necessary to clarify if removing them from the DC court judges' calendar would have a significant impact on their workload. However, it could reduce a processing step for what are actually Circuit Court cases and, if an in-person event, reduce traffic at the District Court.

#### **4.4.7. Review of family law case processes**

As with the Circuit Court level, it may be useful to pay particular attention to the needs of different types of family law cases coming to the District Courts in Ireland. Not unlike for their Circuit Court colleagues, the workload data indicated that District Court judges spend large amounts of time handling family law cases, including some judges assigned exclusively to such cases. The range of contested and uncontested cases is large, making the appropriate scheduling of hearing slots relatively challenging. Recent family law changes are likely to divert a number of these matters from Circuit Courts to District Courts, shifting the challenges down. It is relevant to highlight that private family law cases differ from child care cases relying on public law (for instance, taking a child into state care), with the latter being significantly more complex and time-consuming.

Therefore, Ireland may consider reflecting on the ways to deal with these cases, including through possible diversion of complex child care cases to the Circuit Court. Experiences from other countries have shown that mediation could be an option for some types of private family law cases. Even in cases where the parties may disagree on some matters but are still willing to talk, mediation could be a better solution as it may be faster and less costly, and can even lower the conflict potential and help lay the groundwork for more amicable future communication. Special court-annexed family mediation programmes have evolved in many countries (see Box 4.29), and to some extent in Ireland; however, mediation sources, especially at the court, are limited. Ireland is currently working to strengthen the Legal Aid Board's family mediation service.

### Box 4.29. Western Australia: Family Court mediation pilot

The Family Court of Western Australia conducted a one-year mediation pilot from July 2019-20, whereby mediations were conducted by two senior registrars. During the pilot, litigants were offered the opportunity to participate in a one-day mediation to explore setting the dispute in whole or in part. During the pilot, 312 mediations were conducted, with 52% of completed mediations resolving all issues and 23% resolving partial issues. This activity saved 334 days of judicial sitting time.

Upon completion of the pilot, three additional registrars were appointed on a permanent basis to increase in-court mediation services. As a result, it was expected that in 2021 the court would have the additional capacity of 800 full and half day mediations.

In terms of training, the registrars must have extensive experience practicing family law, and complete training to become accredited mediators.

Source: (Family Court of Western Australia, 2020<sup>[116]</sup>), *Mediation Pilot: Final Report, July 2019 to June 2020*, [https://www.familycourt.wa.gov.au/files/Publications\\_Reports/Mediation-Pilot-Final-Report-Jul2019-Jun2020.pdf](https://www.familycourt.wa.gov.au/files/Publications_Reports/Mediation-Pilot-Final-Report-Jul2019-Jun2020.pdf);

See (Family Court of Western Australia, 2020<sup>[117]</sup>), *Annual Review 2020*, [https://www.familycourt.wa.gov.au/files/Publications\\_Reports/FCWA\\_Annual\\_Review\\_2020.pdf](https://www.familycourt.wa.gov.au/files/Publications_Reports/FCWA_Annual_Review_2020.pdf).

A significant number of family law cases trigger adjournments in Ireland, reportedly partly because the court schedule is too tight to handle all matters as needed. Without more solid data to assess adjournment frequency and reasons, it is difficult to develop and implement more effective adjournment rules. Furthermore, many of the family law cases involving children require continuous decisions on maintenance issues that could be eliminated or reduced to short online check-ins if legal requirements were better adjusted and sufficient family support agency services were available. As noted, the courts have increasingly taken on family case management responsibilities that might be better placed in family services. If separate family law courts are created, this would need to be reflected in their design.

Establishing the exact amount of time judges spend on family law cases, especially childcare cases, appears to be challenging, primarily due to limited data collected. Judges estimated spending, on average, a minimum of 10 to 15 minutes per hearing. Most of these cases are renewed on a monthly basis because parents do not agree on longer periods for payment or visitation schedules, and interim orders cannot be extended for more than 29 days. Some cases stay five years in the system without any final order. Judges estimated that on average, around 18 hearings are needed per case, more depending on the complexity of the case. Registrars estimated that the average number of hearings was ten, but that would imply that cases will be dealt with within a year, which seems rare. In order to go beyond estimates and understand true resource requirements, it would be important to collect data to identify how many individual hearings are held in a particular case. It would also be important to review data collection on “cases” (currently considered as numbers of applications incoming and handled) to present a clear picture of the caseload with a view to understanding workload, processing and resource requirements. More data are also needed to assess trends in case complexity, which can greatly impact judicial time requirements. Importantly, domestic violence was reported to be an increasingly time-consuming area, but the data to assess this are not yet available.

These are all areas that could be considered as part of the current family law changes being planned. Given that mediation and other services are more limited in provincial venues, designing a pilot for such locations could make a difference. One option could be to collaborate with Tusla and relevant service providers to arrange for mobile family service teams to be available when the court is sitting in a particular venue. As several of the smaller venues do not offer much space to accommodate other services, this may be an opportunity to explore if other public spaces not used regularly can accommodate IT supported

courtrooms and flexible family service centres, always taking into account the specific needs of complex family procedures where appropriate.

#### ***4.4.8. Development of a new court data collection process***

To develop more effective processes and case management options, the District Court (and other courts) would greatly benefit from better and more reliable case data. Better data are also a prerequisite for putting in place a more effective automated case management system to allow for more targeted scheduling, case tracking and resource allocation, etc. This workload study has created a set of case data and identified existing sources that could inform the development of a solid data collection system to support more effective case management approaches and other change needs in the future. While many cases come to the District Court, the range of case types, as well as their complexity, is less than in other court levels, with the exception of child care application cases which are often long and complex. This could position District Courts as an ideal place to pilot a new case data collection approach that could focus primarily on effective case and court management.

In addition to the software platform planned by the Courts Service to build a better case management system, it would be important to invest in defining the data needs of courts to better manage their cases, overall operations and resource allocation. This could begin with a review of District Court filings using case counts (not counts of applications, orders offences, etc., even though these should also be collected to understand case processes and flows) based on record numbers and definitions aligned with the court hearing lists. This could be followed by defining which further case process information by major case steps and decisions should be collected. This would provide essential information to better understand the processing needs of the different case types coming to the District Courts. Such a review would need to assess the percentage of more complex cases in each case category, frequency and reasons for adjournments, processing bottlenecks and backlog situations, frequency and timing of settlement and plea decisions, number of and types of cases being appealed to the Circuit Court and outcomes, and percentage of lay litigants by case types and role, and related case outcomes.

In addition to the core data elements that would need to be available for every court level, it would be important for District Courts to have information about specific case details. For example, data for incoming enforcement cases should distinguish between enforcement of fines and enforcement of judgements, as these can lead to differences in hearing time and decisions. Stakeholder interviews revealed a significant backlog in the enforcement of fines, although further information is unavailable. In view of this, Ireland may benefit from considering alternative solutions to the enforcement of fines, unless and until any issues arise. More broadly, investment in developing the detailed information elements about cases could help the development of more effective options to respond to inefficiencies and backlogs in the future. Data needs are further discussed in Chapter 10.



### Box 4.30. District Courts – Key recommendations

#### Short-term:

- **Piloting data collection and case management approaches:** Given their position, consider using District Courts as a suitable starting point to develop pilots for better data collection to inform the creation of more targeted, differentiated case management approaches, strengthen collaboration with the Courts Service to develop these initiatives including the ability to track backlog and adjournment frequencies and reasons by case type, in order to inform new rules and legislation. This could begin with a review of District Court filings using case counts based on record numbers and definitions aligned with the court hearing lists, and could be followed by defining which further case process information by major case steps and decisions should be collected.
- **Staff support options:** Ensure District Court judges receive effective staff support. For this purpose, consider developing an initial central support staff pilot team, and test online staff support options for judges in different assignments.
- **District boundaries and alternatives:** Assess district boundaries and consider alternatives for provincial coverage, possibly creating larger districts to allow for more flexibility in assigning judges across an area, and including court kiosks to access information, ODR and virtual options.
- **Consider reviewing citizen's justice pathways,** including their journey to access legal information and assistance, to access lawyers including legal aid, and to understand the existing legal mechanisms at their disposal such as the courts and ADR mechanisms. Building on this analysis, develop options to address gaps in this area. Consider adjustments to the legislative framework and court rules to support efforts to better streamline processes and forms to enable access to a judge to all litigants irrespective of their financial capacity or legal literacy, provide access to accurate and easy to understand information about court processes and appropriate tools (e.g., self-help options) and ensure appropriate courtroom environment for proceedings (to reduce the risk that litigants will be confused or distracted by crowded court rooms and excessive noise).

#### Mid-term:

- **Small claims and online dispute resolution:** Enhance collaboration with the Courts Service to test targeted online dispute resolution (ODR) and better small claims processing options for licensing and simple road traffic cases. If the needed data are available, consider creating a special traffic court in Dublin. In the longer-term, consider reviewing the cases that should come before a judge and those which may need to be diverted to non-judicial avenues or automation.
- **Data:** Strengthen the Courts Service's focus on collecting data to inform the development of enhanced information systems, and provide appropriate support for lay litigants.
- **Family law cases:** As the family law reform activities continue to evolve, they offer opportunities to pilot differentiated case management options and mediation for family law cases, as well as to explore co-location with family services for sittings in provincial venues or mobile venues to enhance access to and alignment with needed services. This may include collaboration with Tusla and relevant service providers. Consider optimal ways to deal with complex child care cases, possibly through possible diversion of to the Circuit Court.
- **Case management teams:** To support the growing focus on data-driven and more differentiated case processing (for simple and more complex cases), consider the creation of

case management teams, supported by a dedicated case management judge or senior legal staff.

- **Role of Court Presidents:** Consider expanding the capacities of the President of the District Court to draft practice directions or guidelines for the whole District Court or for particular districts in collaboration with their assigned judges as necessary, to facilitate coordination and coherence.
- **Inclusiveness:** Ensure the creation of spaces for judges in rural areas to receive adequate training and be able to attend exchanges with colleagues, both virtually and in-person.
- **Allocation of resources:** Strengthen the match between investment in court operations and the courts where most users are located, through possible re-balancing of the allocation of resources to venues where they are most needed, while ensuring accessible justice throughout the country.

**Long-term:**

- **Indictable criminal cases:** Consider reviewing the process currently used for indictable criminal cases bound for the Circuit Court, and assess options to shift responsibility from District Court judges. Promote a progressive upscaling of the use of Registrars as mediators by fostering allocated time and proper training, and providing litigants with the required information ahead of time.

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## Notes

<sup>1</sup> Internal document provided to the OECD by the Chief Justice of Ireland in November 2021.

<sup>2</sup> See the website of the International Consortium for Court Excellence at <https://www.courtexcellence.com/>.

<sup>3</sup> For appeals that require application for leave at a lower court, this guidance recommends that time standards start during this period and the two courts work jointly to ensure timely forwarding of the notice of appeal. Alternatively, this period could be designated as a discrete interim stage and measured separately.

<sup>4</sup> The group is comprised of members of the Conference of State Court Administrators, the National Association for Court Management and the Court Information Technology Officers Consortium.

<sup>5</sup> This does not mean that such data are not collected for the superior court, but that they are not regularly compiled to assess and track settlement trends.

<sup>6</sup> For a definition of backlog see for example, International Framework for Court Excellence p. 69, available at [https://www.courtexcellence.com/\\_data/assets/pdf\\_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf](https://www.courtexcellence.com/_data/assets/pdf_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf) (Last visit 29/03/2022); Langbroek, P. and M. Kleimann (2016), *Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries*, [https://www.rcc.int/download/docs/Court-Backlog-Study\\_FINAL\\_za%20web.pdf/f2bdb2ae4d27f8588034538cb54b6011.pdf](https://www.rcc.int/download/docs/Court-Backlog-Study_FINAL_za%20web.pdf/f2bdb2ae4d27f8588034538cb54b6011.pdf); and National Audit Office (2021), *Reducing the Backlog in Criminal Courts*, <https://www.nao.org.uk/wp-content/uploads/2021/10/Reducing-the-backlog-in-criminal-courts-Summary.pdf>. For the Norwegian experience, see Grendstad, G., W.R. Shaffer, J. Øyrehagen Sunde and E.N. Waltenburg (2020), *From Backlogs to Quality Assurance. The Development of Law Clerk Units at Norwegian Courts*, <https://doi.org/10.36745/ijca.352>.

<sup>7</sup> Paper applications are frequently used at the Commercial Court of England and Wales where the parties agree to resolve the whole or part of their dispute, and for minor adjustments to case management directions where the court can be satisfied that the change will not have an adverse impact on a trial date or other undesirable consequences. Paper applications are generally used where all parties agree that the matter can be dealt with on the papers, although certain types of paper applications are routinely made in the absence of such agreement (e.g. applications for permission to serve a skeleton argument or statement of case longer than the prescribed maximum, or applications made without notice for permission to serve proceedings out of the jurisdiction) (Judiciary of England and Wales, 2021, p. 36<sup>[39]</sup>).

<sup>8</sup> For initial results see section 10 of the Commercial Court Annual Report 2019 to 2020.

<sup>9</sup> Reportedly, most of these forms are statutory forms that cannot be changed by the courts alone but require related action from the Department of Justice. Generally, this also means that the Circuit Court Rules Committee submits a request that such changes are made. If any such actions have started is not confirmed yet.

<sup>10</sup> In the United Kingdom, for example, some cases are being set trial dates for 2023 and later, and the *Guardian* recently reported that solicitors involved are considering whether these matters could be submitted for violation review (Bowcott, 2021<sup>[118]</sup>). <https://www.theguardian.com/law/2021/jan/10/covid-leading-to-four-year-waits-for-england-and-wales-court-trials>

<sup>11</sup> The earlier mentioned recently introduced requirement for Court of Appeal judges to submit their judgments within a specified timeline are an example. However, they were not developed using data and systematic qualitative input from all involved. Their feasibility and effectiveness will be tested after judges have applied them in the coming months.

<sup>12</sup> See Circuit Court Rules (Mediation) 2018; 2(ii) <https://www.irishstatutebook.ie/eli/2018/si/11/made/en/print>

<sup>13</sup> Legal diary of the Irish courts can be found here: <http://legaldiary.courts.ie/>.

<sup>14</sup> (Courts Service, 2021<sup>[88]</sup>)– internal document shared by the Family Law Reform Programme Group to the OECD in December 2021.

<sup>15</sup> See <https://www.legalaidboard.ie/en/contact-us/find-a-mediation-office>.

<sup>16</sup> The legal aid landscape in many continental European jurisdictions is also quite different from what is found in many common law countries. The number of trade unions, associations and consumer organisations that also provide legal aid tends to be high, and in countries such as Germany and the Netherlands, legal aid insurance is bought by significant portions of the population. In the Netherlands, for example, the number of legal aid insurance policies has stabilised at around 42% of the Dutch households since 2010 (see (Legal Aid Board, 2021<sup>[82]</sup>) <https://www.legalaidboard.ie/en/>).

<sup>17</sup> For detailed job descriptions see Courts of Mississippi (2021), [https://courts.ms.gov/aoc/forms/aoc\\_jobdescriptions.pdf](https://courts.ms.gov/aoc/forms/aoc_jobdescriptions.pdf).

<sup>18</sup> This does not mean that the overall workload at the High Court declined, as the caseload there is likely to have shifted to even more complex cases that require more judicial time (there are just limited data to show this).

<sup>19</sup> This figure from the Courts Service special files provided in 2021 differs from what is reported in the 2020 Annual Report as it did not include the 172 cases adjudicated in a hearing.

<sup>20</sup> See Courts Service Annual Reports, 2000 and 2020 (Courts Service, 2022<sup>[102]</sup>).

<sup>21</sup> The maximum value of EU small claims is incorrectly stated as EUR 2 000 in the 2020 annual report. See <https://www.eccireland.ie/consumers-rights/european-small-claims-procedure/> (last visit 17/02/2022).

<sup>22</sup> See for example <https://www.scotcourts.gov.uk/taking-action/simple-procedure><https://www.scotcourts.gov.uk/taking-action/simple-procedure> (last visit 17/02/2022).

<sup>23</sup> Courts Service, special files shared with the OECD, 2021.

# 5

## Judicial governance and modern human resource management for judges and the courts in Ireland

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This Chapter explores the role of human resource management (HRM) in courts. In particular, based on the OECD analysis, this chapter explores key areas for the development and improvement of judicial HRM in Ireland, including regarding overall HRM methodologies and clarity of responsibilities, process modernisation and standardisation, data collection and analysis, retirement and temporary resources, judicial workforce planning, as well as learning and development.

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The role of human resource management in courts has evolved over time, as has the need to develop more comprehensive approaches. What began as purely an administrative function has increasingly developed into a complex activity that requires a strategic outlook. The sound management of human resources of the judiciary is increasingly viewed as a critical lever for the efficiency of the justice system overall. This chapter explores key areas for the development and improvement of judicial human resource management in Ireland.

## 5.1. Judicial human resources management: An overview

### 5.1.1. An evolving field of growing importance

Judiciaries generally have a special position among public sector organisations in Western democracies. In the past, their independent position shielded them from direct legislative and executive intervention, which also meant that they often remained insulated from public and political demands for more effectiveness, efficiency and transparency (Visser, Schouteten and Dijkers, 2019<sup>[11]</sup>). This started to change in the late 1980s and early 1990s, when courts in many countries were confronted with increasing caseloads, while economic downturns required budget cuts. Courts across Europe and elsewhere could no longer rely on the government to increase judicial positions, and had to focus on streamlining operations and finding other ways to reduce costs. This coincided with the rise of movements such as “Reinventing Government” (Ridley, 1995<sup>[122]</sup>; Osborne and Gaebler, 1992<sup>[123]</sup>) and “New Public Management” (NPM) (Ferlie, 2017<sup>[2]</sup>), suggesting that public sector organisations should become increasingly efficient, cost-effective and transparent. Especially when performance-based budgets were introduced, courts had to start thinking differently about how they measured their own performance to justify their budgets and especially requests for more judicial positions. Given the link between judicial efficiency and thriving economic and business activity, improvements in judicial staff performance can enhance efficiency of the system and of the country’s economy as a whole.

Some courts across the globe quickly embraced these ideas. Courts in Singapore, for example, were and continue to be early leaders in adjusting their operations to more cost-effective approaches, streamlining processes, introducing performance measures, and tracking and reporting on them. Court standards, along with different ways to assess judicial performance, were initially introduced in courts in the United States, as they were also organisationally separate from their governments and already fully responsible for all organisational matters. In the early 1990s, courts across Europe also began to rethink their own performance and what it meant for their operations and staffing needs.

The late 1980s and 1990s were also the time when increasing numbers of judiciaries created judicial councils or similar organisations within the court system to take on a broad range of responsibilities for the organisation of the judiciary, especially those related to judicial human resource management. Nevertheless, in many countries, judicial sector human resource management is still new, which is partly why elements such as general number of workdays, work hours, vacation and sick time for calculating full-time equivalent (FTE) positions are often not clearly established. Strategic and performance based workload planning is also therefore new in many jurisdictions. The establishment and acceptance of performance measures for judges is particularly sensitive, even when established by judges and when performance reviews rest completely in the hands of the judiciary, mainly due to concerns that such reviews and their consequences may be used to limit a judge’s independence. This is an important concern that must be safeguarded when such processes and related performance measures are introduced, with the Judicial Council playing a relevant role.

### 5.1.2. Characteristics of modern court performance management

As courts have increasingly introduced performance measures for their operations, the judiciary have had to ensure that it can deliver on the new standards set. Court performance and that of its judges go hand in hand, as do independence and accountability. Today, the general understanding of judicial independence encompasses not only control and authority over the legal decisions of individual judges, but also, depending on the jurisdiction, an array of administrative responsibilities, including authority over budgeting, information technology (IT), human resources, allocation of judicial services, judicial selection, retentions, assignments, and the education and training of judges and justice system staff (ENCJ, 2017<sup>[3]</sup>).

To support courts in these efforts, in 2013 the European Councils of the Judiciary (ENCJ), the organisation of national councils of judiciaries in EU member states, began to evaluate judicial independence and accountability across member states through the lens of performance measurement (Keilitz, 2018<sup>[4]</sup>). The ENCJ states that superior performance is the product of accountability. It recognises that judicial independence and performance accountability and transparency go hand in hand, the latter being a necessary condition of the former. In its 2017 report, the ENCJ asserts that a “Judiciary that does not want to be accountable to society and has no eye for societal needs will not gain the trust of society and will endanger its independence in the short or long run”. Conversely, it notes that “accountability without independence” reduces a judiciary to an agency of the executive or legislative branches (ENCJ, 2017, p. 11<sup>[3]</sup>).

The main human resource management responsibilities related to selection, hiring and disciplinary processes, including complaints against judges, are placed clearly with the judiciary by the ENCJ and other international standard-setting bodies (Venice Commission, 2010, p. 8<sup>[5]</sup>). The same generally applies to responsibility for training (ENCJ, 2021, p. 9<sup>[6]</sup>). As it is the judiciary’s ultimate responsibility to ensure the proper functioning of the courts, policy-making responsibility regarding performance measures for judges and the courts (ENCJ, 2019<sup>[7]</sup>), establishing measures for judicial and related staff distribution, and strategic direction for the human resource development of judges would also likely reside with the judiciary. The arrangements made for these purposes in each country will define where the responsibility for implementing these policies, managing the required procedures and creating the required administrative structures lies.

In the Netherlands, for example, the administrative management of the judiciary was under the Ministry of Justice until the creation of the Council for the Judiciary in 2002<sup>1</sup> (see Box 5.1).

#### Box 5.1. Council for the Judiciary: Evolution of judicial management in the Netherlands

Until the Council for the Judiciary was created in 2002, Dutch judges generally worked as independent professionals, with much autonomy in determining their individual judicial workload and little attention paid to management, organisation, budget or performance. Their working culture was described as combining “individual autonomy and administrative passivity... frequently justified by reference to the constitutional doctrine of the separation of powers” (Bunjevaca, 2017<sup>[8]</sup>; Langbroek, 2010<sup>[9]</sup>). Judges tended to form an informally operating “corps” of generally like-minded individuals with often comparable backgrounds, habits and interests, hierarchically on a different level from judicial assistants and law clerks (Leeuwen, 1991<sup>[10]</sup>). Internal court organisation, case assignment and work division were informally arranged on a collegial, consensual basis by all judges working in a particular court (Ingelse, 1996<sup>[11]</sup>). Court funding was input-based, with courts receiving yearly budgets from the Department of Justice based on departmental guidelines.

Much has changed in the past two decades, including the creation of the Council for the Judiciary. The transition was carried by judges who felt they had to take greater responsibility for the management



and control of their workload, and the needed different management and administrative adjustments and policies. The steadily increasing workloads required a greater control and professionalisation of how courts organised themselves. Today, selection, training and career development are managed internally by the judicial branch (Holvast and Doornbos, 2015<sup>[12]</sup>), (Langbroek, 2010<sup>[9]</sup>).

Source: (Bunjevac, 2017<sup>[8]</sup>); (Langbroek, 2010<sup>[9]</sup>), *Organization Development of the Dutch Judiciary, between Accountability and Judicial Independence*, <http://doi.org/10.18352/ijca.39>; (Leeuwen, 1991<sup>[10]</sup>), *The judiciary in the Netherlands. Composition and Ideas of the Sitting Standing Magistrates*; (Ingelse, 1996<sup>[11]</sup>), "Worthy of reference? A reflection on the position of the judge and the officer of justice", <https://ingel.home.xs4all.nl/publications/Rechterlijke%20onafhankelijkheid%20heeft%20haar%20prijs.pdf>; (Holvast and Doornbos, 2015<sup>[12]</sup>), *Exit, Voice, and Loyalty within the Judiciary: Judges' Responses to New Managerialism in the Netherlands*, <http://doi.org/10.18352/ulr.317>; (Sterk and Van Dijk, 2016<sup>[13]</sup>), "Financing the Judiciary in the Constitutional Framework", <https://www.rechtspraak.nl/Organisatie-en-contact/Contact/Documents/NJB.pdf>.

In Ireland, judicial selection and hiring is set to become the responsibility of the Judicial Appointments Commission, if its creation is approved by the *Oireachtas* and signed into by the President.<sup>2</sup> Complaints against judges and related disciplinary processes are now the responsibility of the Judicial Council created in 2019, as is the responsibility for judicial training in all its forms, such as on-boarding, continuing training, and in-house and external training. Leave and sick requests are dealt with by each Court President, as is a certain degree of "frontline" tracking of judges' ability to handle their workload in a timely manner. Court Presidents also establish when additional positions are needed. However, these tasks are yet to be supported by standardised guidance, relevant data and staff to assess them. In addition, there is no committee specifically dedicated to human resource management on the Courts Service Board. Looking ahead, examples from other countries could prove insightful in strengthening Ireland's approach to locating judicial human resource management responsibilities.

For example, the Scottish Courts and Tribunal Service Board has a "People Committee" that oversees human resource management policies and functions for the service,<sup>3</sup> while the Judicial Office for Scotland supports the Lord President in responsibilities related to judicial training, welfare, deployment and other management issues.<sup>4</sup> Similarly, the Council for the Judiciary in the Netherlands is responsible for human resource management for the judiciary.<sup>5</sup> Based on the analysis above, there appears to be a need for further clarification on where some of the human resource management responsibilities lie for the judiciary in Ireland, as well as additional specialisation in this area.

## 5.2. Strategic planning for judicial hiring, motivation and retention

Today, courts and their administrative organisations increasingly recognise the important role human resource management plays in achieving organisational goals and strategies. When efficiency and timeliness is understood as one important element for delivering fair and quality justice, it becomes crucial for the judiciary to have the necessary human resources, including judicial numbers and qualified support staff, and adequate organisational structures. Reportedly, demands on judges have grown in recent years, with judges increasingly expected to make fair and quality judgements, as well as manage their work efficiently, apply modern technology to deliver timely decisions, and enhance access to the courts. They are also called to relate to an increasingly diverse society and reflect diversity among their ranks.

At the same time, societal developments, technology advances and economic trends trigger changes in the law the judiciary must adapt to, which requires strategic forward-looking planning. Often, this can involve adaptations to workload changes, including through the incorporation of both temporary and permanent staff. Lack of effective planning for the future can pose particular challenges when numbers of positions for all court levels are anchored in the law, and when options for part-time and temporary hires are limited or non-existing, as is currently the case in Ireland.

Workload planning becomes especially challenging when government budgets are tight for longer periods of time, as it has been the case in many European countries, including Ireland. Needed investments in staffing and infrastructures in these cases often lag behind and further compound backlog (not just in the courts). In turn, the working conditions for judges become more challenging, and these positions become less attractive to a new generation. Particularly when larger internationally operating law firms enter the legal market in a country, as has been the case in Ireland and as promoted by the Irish Government, the range of attractive job options for bright dynamic lawyers changes.

A 2018 study developed in the United Kingdom outlined the challenges courts face when hiring and retaining judges, which could be relevant for Ireland. The conclusions of the report were that attracting the best candidates to the bench may require greater flexibility in working practices, greater support for judges and nuanced ways of measuring judicial workload (Turenne and Bell, 2018<sup>[14]</sup>).

Understanding how attractive the position of a judge is to well-qualified legal professionals in Ireland is an important element to plan for future hiring. Equally important is to both retain the judges who have served the Irish people well despite challenging conditions, and to ensure that they can and want to perform well in the future. The UK survey identifies what judges need to support more strategic workforce planning, with related studies in other countries pointing to similar results (Casaleiro, Relvas and Dias, 2021<sup>[15]</sup>).

Those responsible for supporting planning for an effective judiciary in Ireland, and for supporting Irish judges will find many helpful points to consider in the abovementioned studies. Looking forward, it might be helpful to collect similar information in regular increments in Ireland.

### 5.3. Data for understanding judicial positions and future support needs

The weighted caseload study conducted in Ireland provided for the first time data to understand judicial position needs, and created the basis for future workload planning. As mentioned, caseload studies have long been conducted in US courts, and increasingly across Europe (CEPEJ, 2020<sup>[16]</sup>) and other countries (see Box 5.2). Countries have also increasingly promoted sustainable approaches that are able to factor workload shifts in staffing practices throughout the years, such as periodic obligations for the judiciary to review the levels of the required judgeships.

#### Box 5.2. Selected approaches to workload studies

##### California

In jurisdictions such as California, where the first weighted workload study was conducted for the courts in 1963, the superior courts are required by law to submit a report to the legislature that provides an update on the need for new judgeships every two years (Judicial Council of California, 2020<sup>[17]</sup>). With almost 60 years of experience in using weighted workload data for workload planning, the courts have a fine-tuned system in place that continues to be adjusted as legislation and other conditions change. It provides the needed details to assess shifts in resource needs as changes in caseloads and processing requirements occur in individual locations, select case types, changes in complexity, differences among more rural and urban centres, or across the entire state. This data collection is supported by software, and case data come from an equally advanced automated case management system that is regularly updated.

##### Canada

A similar approach has evolved at the federal level in Canada. The Judicial Affairs, Courts and Tribunal Policy Section of the Ministry of Justice is tasked with assessing requests for additional judicial resources from the courts. A software-based simulation model informs evidence-based proposals for

new positions. The software is used to collect, analyse and forecast the effects of changes in workload (both in volume and complexity). One part of the information used by this system is similar to the information on case process steps included in the time study and Delphi estimation to assess judicial time requirements as part of the judicial workload study in Ireland. The needed case process data, such as incoming, interlocutory hearings and trials, is also entered. The software applies a standard Business Process Modelling Notation that allows a case path to be followed, showing the varying demand for judicial resources for different case types and in different locations. After detailed programming and time and case data development and entry, the system can pinpoint bottlenecks, delays and the time judges take for different aspects of the case flow, such as time to resolve motions, hearings, judgements and case conferences.

The system used in Canada currently tracks and analyses the following data (Bellis, McKinnon and Murchie, 2015<sup>[18]</sup>):

- Time cases take to arrive at certain milestones.
- Time by which cases may have been delayed at each milestone because of resource constraints (e.g. lack of judges).
- How long different tasks take to perform per case by case type.
- Event counts (motions, conferences, trials, etc.).
- Percentage utilisation of available resources.
- Number of judges needed to process cases in each period, accounting for expected absences due to non-case related work or other circumstances (travel, education, vacation, sick leave, retirement, etc.).

### **The Netherlands**

A slightly different approach is used by the courts in the Netherlands, which have been conducting workload studies since at least 2014 (CEPEJ, 2020<sup>[16]</sup>). A computer-supported work-sampling method is applied via a mobile app specifically designed for this purpose. A notification pops-up at 12 random times across the day (seven days a week) asking the respondent to record the current activity performed, without the need to record its duration or start and ending time (CEPEJ, 2020, p. 32<sup>[16]</sup>). Statistically, if a large enough number of respondents provide a sufficiently representative sample of random work moments, this methodology provides representative information on the different types of activities performed by the participants, and of the standard duration of the work of each respondent. In 2017, over a period of 61 weeks, 1 859 respondents were sampled out of a population of 5 100 justice officials that included judges, judicial officials, trainees and other legal support staff reporting on work related to different case categories and on non-case-related work. The results are vetted via Delphi study, as in traditional weighted workload studies. Such a system can be developed when needed case data are easily accessible in an automated manner, if such automated application can be used by all involved, and if the population is large enough to capture the ranges of actions for all different case types.

Ireland has already taken important steps in this journey, with the first set of base data available. A group of judges and Courts Service staff have been introduced to the methodology, understand the data needed and the collection processes better, have learned to analyse the results, and can continue to further develop and fine-tune the data and calculations with the needed support. This will be relevant for estimating the impact of new legislation, new case management practices and changes in caseload trends, as well as for informing the development of an effective automated case management and other IT solutions for the courts.

To ensure effective future workload planning, other data specific to human resource management may be relevant, such as upcoming and long-term retiring schedules, sick leave trends to plan for better back-up

options, and hiring data that provides information on applicant trends to understand if current needs in terms of skills and diversity can be met in the future. In combination with data to provide information on diversity gaps to meet diversity aims for the judiciary (which still may need to be defined), these data help to understand if current outreach and hiring practices must be adjusted to meet future workforce needs and goals. Data to understand what attracts potential applicants to the judiciary, and what precludes others from applying, may also prove insightful. These kinds of data are currently applied to human resource planning across other government sectors, and are used by the UK judiciary for these purposes.

Other workforce planning factors that could be considered are upcoming legislative changes, and the impact of changes in operations and staffing across the justice sector and related social service providers. An Garda Síochána, for example, registered a significant increase in the volume of white collar and cyber type crime in recent years, and created specialised units to be better able to respond to these crimes. The increase in this crime type raises the number of cases coming to the DPP and the courts, likely with increased complexity, as the investigative resources increase. Similarly, if judicial resources to respond more effectively to these and other cases are increased, the police, prosecution, probation, legal aid and others will be impacted, and there will be a need for changes in the numbers of registrars and other Courts Service staff.

Strategic workforce planning should occur within the context of the wider justice system. The increasing complexity of the legislation and wider justice system ultimately require workforce planning to be supported by more advanced software, such as that used in Canada and elsewhere. For instance the upcoming family law reform changes introduced by the Assisted Decision Making (Capacity) Act 2015, the Legal Services Regulation Act 2015 which provides for the introduction of a pre-action protocol for clinical negligence claims (the PAP), further EU law requirements and likely changes due to Brexit all trigger significant changes in workload at several court levels. Their likely impact can be forecasted relatively effectively when time data by process steps and detailed case process data are available for the different case types affected by new legislation. The workload study can provide the basis for developing such a system.

#### 5.4. Designing effective hiring practices

The responsibility for judicial appointments is set out in the Irish Constitution (articles 13.9 and 35.1), and implementation is further regulated by law (Court and Court Officers Act 1995), similar to many other common law and most civil law jurisdictions. The new Judicial Appointments Bill 2020 introduced a new nine-member Judicial Appointments Commission to address years of criticism of the current judicial appointments system. The new commission and its approach have also prompted scrutiny (Law Society of Ireland, 2021, p. 16<sub>[19]</sub>). Comments have related to the composition of the board, as well as the need for increased transparency in the selection process and a stronger focus on judicial diversity. While selection is to be based on merit only, how merit is defined seems to be not clearly stated (Irish Times, 2020<sub>[20]</sub>). Once the Commission is created, it will not hold the sole responsibility for judicial selection; the current proposal as of May 2022 is that three names for each vacancy will be submitted to the government, to allow recommendations for appointment by the government, and finally subject to appointment by the President under Article 35.1.

Qualification criteria for the selection of candidates is stated in a general manner by law, and is not targeted for different judicial positions published. The selection process was reported to be time consuming and lacking modern pre-screening of applications, leading to some delays when new positions were being filled. Box 5.3 outlines some standards for judicial selection developed by different countries and institutions, which could provide potential insights for Ireland in strengthening its hiring practices.

### Box 5.3. Standards for judicial selection

**The ENCJ:** The ENCJ has developed and published minimum standards for the selection of judges, including basic guidance for the publication of clearly defined selection criteria.

**The Commonwealth Latimer House Principles:** These principles recognise that “at a minimum, the public must be informed of the characteristics that qualify persons for judicial office and the procedures that are followed when an individual applies, or is considered for appointment”. The principles further stress that the criteria should be informed by the fundamental objectives of equality of opportunity, appointment on merit, and the need to address gender inequity and other historic factors of discrimination in the context of their particular jurisdiction.

**Judicial Appointment Committee (JAC) in England and Wales:** Published and detailed selection criteria, along with measures such as the use of independent assessor, as in England and Wales, would address some of the criticism of the Irish Judicial Appointments Commission. The website of the Judicial Appointment Committee of England and Wales provides potential applicants with a range of helpful information, and the information provided for each vacant position is detailed and clearly stated.

Source: (ENCJ, 2012, p. 10<sup>[21]</sup>), *Development of Minimal Judicial Standards II*, [https://www.encj.eu/images/stories/pdf/GA/Dublin/final\\_report\\_standards\\_ii.pdf](https://www.encj.eu/images/stories/pdf/GA/Dublin/final_report_standards_ii.pdf); (Smit, 2015<sup>[22]</sup>), *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice*, <https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/press-release/documents/Compendium%20on%20Judicial%20Appt%20Tenure%20and%20Removal%20in%20the%20Commonwealth.pdf>; (JAC, 2022<sup>[23]</sup>), *Senior Circuit Judge, Resident Judge (Snaresbrook and Nottingham)*, <https://apply.judicialappointments.digital/vacancy/EUW6VUFLwb57BM0b5wx/>.

## 5.5. Attracting and retaining a diverse group of quality lawyers

Understanding what well-qualified lawyers are looking for when applying for a new position, including in the judiciary, is essential for effective workforce planning, both in terms of effective hiring and to ensure that sitting judges continue to be engaged and remain on the bench.

Job satisfaction is directly linked to performance, and depends on factors often going beyond salaries or prestige (or personal satisfaction from work), such as reasonable working hours and working conditions, options to choose part-time work when needed or for a certain period of time; a promising career outlook; support for knowledge and skills development and professional growth; and a focus on ensuring the well-being of those employed.

An organisation striving to ensure the high quality, efficiency and effectiveness of its employees would need to invest in creating the conditions for high engagement and productivity. While many of the necessary elements are in place in Irish courts, some have been identified as requiring attention. In particular, there appears room to further ensure work-life balance and its associated well-being, adequate IT and support tools, and more flexibility options. A survey of judges and their support staff to better understand their needs, including a review of retention, combined with a study of applicant trends would be a good next step to better understand what is needed and what triggers applicants to enter the judiciary.

Effective planning can also strengthen diversity among the judiciary. Regarding the equal representation of women on the bench, Ireland is placed relatively well in comparison to other European countries. While the most recent data available from the CEPEJ indicate that around 40% of the Irish judiciary are women, which is in the lower-middle range across Europe, the 50% of women on the second instance courts and 40% on the Supreme Court are in the middle to upper range compared to other member states (CEPEJ,

n.d.<sup>[24]</sup>). Difficult working conditions, regular travel and limited flexibility might be reasons behind only 40% of women serving on the first instance courts, and may be one aspect to address to encourage a more diverse applicant pool.

Regarding ethnic diversity, 2021 civil society organisations' data indicate that the percentage of non-Irish nationals has been increasing to now almost 13%. The percentage of non-Irish nationals in Dublin is even higher, and religious diversity is also increasing (Pollak, 2022<sup>[25]</sup>). The fact that the oath judges swear when they join the bench does not include an optional secular alternative to the current form of judicial declaration contained in Article 34.5 may keep those who are agnostic or of a different faith from applying. In 2014, the UN Human Rights Committee suggested that this should be amended (UN Human Rights Committee, 2014<sup>[26]</sup>), with such proposals submitted to Parliament since 2012 (Department of Justice, 2012<sup>[27]</sup>). The pressures to diversify the judiciary indicate that it may be a good time to take this up again. Collecting data to understand whether lawyers from diverse ethnic and religious backgrounds apply for judicial positions would also enable the design of outreach programme to attract them in the future.

Calls for reviews have highlighted that most candidates joining the bench were barristers. All of these elements point to the need to better assess incoming applicants to judicial vacancies, who may be missing and why, and why do some groups appear to succeed disproportionately often.

The United Kingdom provides an example of efforts to reach potential future applicants of different backgrounds, including female lawyers and vulnerable groups. As shown in Box 5.4, the special Pre-Application Judicial Education (PAJE) programme initiated by the England and Wales Judicial Appointment Committee offers a range of options for lawyers of different backgrounds to gain greater exposure to the courts.

#### **Box 5.4. England and Wales Judicial Appointments Committee (JAC) PAJE Programme**

The JAC has included the importance of encouraging judicial diversity in its recent strategy. The JAC takes an equal merit approach, giving priority to candidates from underrepresented groups (gender or ethnicity) if they are of equal merit on selection. In 2020-21, the approach was applied to five shortlists, allowing 133 candidates to progress, and ultimately seven recommendations were made using this approach. At the same time, it is recognised that judicial turnover is low and demographic changes among the judiciary will be slow over time. Between 2014 and 2019, the number of women in judicial roles increased from 24-32%, but there was only a 2% increase in appointments from black and minority ethnic backgrounds. Comparatively, the increase in diversity within tribunals has been somewhat quicker.

To encourage diversity, the JAC also permits judicial shadowing, and in 2019 created a Pre-Application Judicial Education Programme to train lawyers from diverse backgrounds so that they can begin career planning early and feel more equipped to apply for judicial roles.

As part of the PAJE programme, the JAC hosted an online workshop in 2020, which was attended by approximately 200 people from underrepresented groups. The JAC publishes a diversity update twice a year, and launched a new research project in 2020 to look at how to target groups earlier in their career at qualifying test stage. It also created a Targeted Outreach and Research team to pilot outreach projects for court and tribunal roles, and to identify and work with potential candidates. For 2021, a special focus will be on projects to increase the ethnic diversity of selection panels and international judicial diversity.

Sources: (JAC, 2021<sup>[28]</sup>), *Annual report and accounts: 1 April 2020 to 31 March 2021*, <https://judicialappointments.gov.uk/wp-content/uploads/2021/07/Judicial-Appointments-Commission-Annual-Report-and-Accounts-2020-21-July.pdf>; (Courts and Tribunals Judiciary, 2019<sup>[29]</sup>), *Pre-Application Judicial Education Programme (PAJE)*, <https://www.judiciary.uk/diversity/pre-application-judicial-education-programme-paje/>; (Lord Chief Justice of England and Wales, 2019<sup>[30]</sup>), *Judicial Diversity Statistics 2019*, <https://www.judiciary.uk/wp-content/uploads/2019/07/Judicial-Diversity-Statistics-2019-1-2.pdf>.

## 5.6. Retirement, advanced succession planning and early onboarding

An important part of strategic workforce planning is considering the impact of retirement rules and retirement options, and tracking retirement schedules to ensure that hiring procedures start early enough. Effective succession planning requires data to track retirement dates, and recruitment should be planned in advance to accommodate hiring processes and potential delays. Succession planning becomes more multifaceted when positions with particular specialisation needs must be filled, and when aims to increase diversity among the judiciary have to be considered.

Part of the future planning may consider retirement schedules. The current retirement age for judges in Ireland is 70, in line with the judicial retirement age in many countries.<sup>6</sup> Early retirement is possible, but there can be no extension to the term. As in many other countries, the option to increase the retirement age has been debated for some time. In Ireland, as in most Western industrialised countries, average life-expectancy has increased steadily over the decades, and many in their late 60s are mentally and physically as fit as prior generations in their 50s. Many would prefer to continue working for longer, especially if temporary or part-time options are available as they grow older. Considering the existing resourcing pressures on the Irish Courts, options to work beyond 70 and to opt for part-time work could help retain useful expertise and offer greater work-life balance for those who seek to ease more slowly into retirement.

The approach to judicial retirement age varies across OECD membership. In England and Wales, for example, the Parliament is currently planning to revise judicial retirement ages from 70 to 75 (UK Parliament, 2021, p. 53<sup>[31]</sup>). This change has been driven by a shortage of judges, compounded by past recruitments failing to yield as many viable candidates as needed in a system that requires two years to complete a full recruitment and training process. In Northern Ireland, Supreme Court judges retire at 70. For judges in the High Court, the retirement age was increased to 75 in 2021, despite concerns over the diversity of judges, opportunities based on age or length of career (Department of Justice, 2021<sup>[32]</sup>). In Scotland, the government opened a consultation on increasing the mandatory retirement age for judges from 70 to 72 or 75 in 2020. The majority of responses (73%) were in favour of raising the minimum age to 75 to retain judicial skills and experience. Those who felt it would negatively impact judicial confidence raised concerns around judicial diversity and a slow rate of change (Scottish Government, 2021<sup>[33]</sup>).

Federal judges in Canada must retire at age 75. Judicial retirement ages for provincial courts vary by province but it is typically 70 years (Canadian Judicial Council, 2021<sup>[34]</sup>). In most US states, the average retirement age for judges is 72 years, but it can be as late as 90 in some states, such as Vermont (National Centre for State Courts, 2021<sup>[35]</sup>). In Australia, the retirement age for federal judges is 70. State mandatory retirement ages vary among the provinces between 70 and 75, and 65 for magistrates. In some Australian states, such as New South Wales, the established mandatory retirement age for judges is 72. However, judges serving as temporary officers can retire five years later, at 77 (Neilson, 2021<sup>[36]</sup>) (Appleby et al., 2018<sup>[37]</sup>). In New Zealand, judges are required to retire at age 70 although they may still be appointed for two further years on a part-time acting basis (see Box 5.5 for further details) (New Zealand Law Society, 2022<sup>[38]</sup>), (District Court of New Zealand, 2022<sup>[39]</sup>).

### Box 5.5. Employment of retired and senior judges: A comparative perspective

At the federal level in Canada, (Department of Justice Canada, 2021<sup>[40]</sup>) superior court judges must retire at age 75, but many retire when they reach 65. Judges can opt for supernumerary status, i.e. they continue to serve on the bench until they reach the maximum retirement age, but with a reduced workload (Government of Canada, 1985<sup>[41]</sup>). Supernumerary judges account for almost 20% of all active federally appointed judges (CSCJA, n.d.<sup>[42]</sup>).

At the provincial level, the Manitoba Courts created a senior judge programme in 2011 for retired judges to supplement judicial resources. These senior judges are subject to the authority of the Chief Judge, who has the power, authority and jurisdiction of a regularly appointed judge. Senior judges are prohibited from engaging in any remunerative occupation that is inconsistent with the office of judge. They are compensated pursuant to a legislative defined per diem scheme, and cease to hold the designation of senior judge when they advise the Chief Judge of non-availability (Province of Manitoba, 2011<sup>[43]</sup>). In response to backlogs created during the COVID-19 pandemic, the government in British Columbia reappointed three retired, senior provincial court judges, all of whom agreed to return to service to help reduce backlog (Burns, 2020<sup>[44]</sup>). The Alberta Provincial Courts use a mix of full and part-time judges and justices of the peace. Temporary judges may be regularly assigned to a city or to a fixed number of days per week in smaller courts (Alberta Courts, 2021<sup>[45]</sup>).

The use of retired judges is common in most US states. For example, Nevada has a formal programme, the Senior Judges Program, to recall retired judges to active service with the goal of improving access to justice. Retired judges are employed where sitting judges are unable to sit due to training, vacancies, illness or recusal (Supreme Court of Nevada, n.d.<sup>[46]</sup>). Some jurisdictions also have rules for the appointment of special judges, who are attorneys who may be appointed as temporary judges. In California, for example, a special Temporary Judge Program has been created, whereby the Presiding Judges of the trial courts may appoint qualified attorneys to serve as temporary judges. These judges assist the public by providing the court with a panel of trained, qualified and experienced attorneys who may serve as temporary judges if the court needs judicial assistance that it cannot provide using its full-time judicial officers (California Courts, 2021<sup>[47]</sup>).

Several civil law countries also allow judges eligible for retirement to be designated as substitute judges (e.g. Belgium, Denmark, Israel, Montenegro, Norway) to cope with difficulties related to vacancies due to absences or to a backlog affecting the efficiency of the courts (CEPEJ, 2018, p. 5<sup>[48]</sup>). In the Netherlands, lawyers, law professors and civil servants can be appointed as “Deputy Judges”, who are paid by session in a scheme that includes preparation, and can sit on a three-judge bench or handle small cases.<sup>7</sup> To manage backlog resulting from the COVID-19 pandemic, legislation was adjusted to enable courts to temporarily bring retired judges back during the pandemic; usually judges must retire at 70.

In Ireland, it is generally understood that most judges serve to retirement age (70), and it is not clear that those who have retired earlier would be interested in returning on a part time basis or temporarily. The comparative examples above, however, highlight that senior and retired judges with flexible options to make up for temporary staff needs may be interested in uptaking such options.

The wish to increase the retirement age primarily applies in countries where younger lawyers may not consider the judiciary a top career choice, or where select specialty positions cannot be filled within a few years. Otherwise, increased retirement ages limit the courts’ ability to renew, diversify and bring in younger generations. Loss of expertise can be partially avoided by offering options for phased retirements and serving on a temporary or part-time basis for select tasks after retirements. This could be considered in Ireland, especially as more recent research has pointed to some of the negative sides of increasing the



retirement age. For example, a 2020 US study found a drop in productivity when retirement ages are increased (Ash, 2021<sup>[49]</sup>).

Closely connected to retirement is the need for effective succession planning. This requires that retirement schedules for the coming years are established and that there is a process to assess the current judicial workforce, including evaluating current competencies and identifying gaps in competencies, both at a given point and considering forthcoming judicial departures. It would be important to assess future needs and develop strategies to meet them.

Effective succession planning also means that the hiring process is planned well in advance so that those coming newly to the bench ideally have some overlap with the retiring judges. This will ensure a smoother transition phase and allow sufficient time for onboarding and training. Such time for overlap would also address one of the current issues the courts face when judges from a lower bench are appointed to higher courts, and start while still having to spend time writing judgements. A more phased approach to retirement that allows judges to continue working could help address the issue that judges planning to retire cannot be assigned cases that require longer judgement writing as they are not allowed to continue handing down judgements after retirement. Options for a phased retirement to provide for late career flexibility would ensure that judicial expertise and experience continues to be available, while providing a better work-life balance.

Sound succession planning also helps ensure that new judges come to the court with a set workplace and needed support staff in place. Judges have reported that in their experience it is important to match new judges with experienced registrars at the beginning to ensure the effective handling of cases. For instance, US courts developed succession planning guides that may also have value for the Irish courts (Wagenknecht-Ivey and Zahnen Cruz, 2013<sup>[50]</sup>; Metcalf, 2011<sup>[51]</sup>).

## **5.7. Alternative work options: Part-time work, flexible workplace and early and phased retirement**

The employment of temporary, part-time and retired judges is currently not possible under Irish Law. Irish judges do not have an early minimum pension age and their compulsory retirement age is 70 in line with the Irish Government's policy on compulsory retirement in the public service.

The existing limitation to flexible work options could potentially create challenges at all court levels to accommodate judicial absences, such as long-term illnesses and maternity/paternity leave. The Irish judiciary at all levels has shown flexibility and willingness to fill in for absent colleagues. However, the COVID-19 experience has heightened these challenges. The significant inflow of cases expected to come to the courts in Autumn 2022 may lead to crisis situations for urgent cases, while adding to increasing backlogs across the court system. Such a situation can affect those coming to the courts, especially those seeking protection; impact business operations; and lead to stresses within the judicial system that can result in rushed decisions and burnout for judges and other court staff, with the related short- and long-term implications.

To address temporary shortages in judges due to longer-term illness and to tackle serious backlog issues, especially the expected initial post-pandemic case surge, engaging temporary judges may be an approach to consider. Especially when judges are appointed for life, as is the case in Ireland, additional judicial positions should only be created to address steadily growing workload trends that cannot be resolved otherwise, and be limited for a specific period of time.

### 5.7.1. Employment of temporary and part-time judges

Temporary and/or part-time judges are available in some countries around the world. Like in Ireland, life tenure for judges is anchored in many constitutions and statutes, often stating incompatibilities for judges to perform any other professional activities. These regulations are interpreted and structured to protect judicial independence and to exclude potential conflict of interest situations. At the same time, some regulations appear to have accommodated a certain degree of flexibility, while stressing the importance of appropriate safeguards to ensure judicial independence and impartiality. A 2017 study conducted in Australia aimed to capture these discussions and experiences, and could be relevant to further discussions on this topic in Ireland (Appleby et al., 2018<sup>[37]</sup>).

The aim of enabling temporary or part-time employment of judges in general, and specifically after they reach official retirement age, could be to 1) ensure that temporary resource gaps due to judicial conflict situations, illness and other absences can be effectively addressed without sacrificing quality of decisions or creating significant delay; 2) provide for an enhanced work-life balance and well-being for judges throughout their career; and 3) provide a post-retirement option that ensures judicial expertise continues to be available for special assignments, as a back-up, for backlog teams, and for training, mentoring, outreach, etc.

When considering temporary judicial appointments, their complex nature should be taken into account, as while they could deliver benefits for the efficient administration of justice, they may raise concerns about the independence of the judiciary. For this reason, such appointments should be used exceptionally and ensuring appropriate safeguards to avoid undue influences and conflicts of interest (Appleby et al., 2018<sup>[37]</sup>; Council of Europe, 2015<sup>[52]</sup>). Box 5.6 provides additional considerations on the employment of part-time and temporary judges.

#### Box 5.6. Considerations in the appointment of temporary and part-time judges

Experiences from other countries have provided information that could be relevant to consider if temporary or part-time judges are to be appointed in Ireland.

##### Relevant considerations

- Clear rules must be in place to avoid undue influences and conflict of interest to ensure that temporary and part-time judges can perform as envisioned. Maintaining the independence of the judiciary should be considered as the crucial value (Venice Commission, 2007<sup>[53]</sup>).
- The option to bring in temporary and part-time judges reduces opportunities to bring in younger and more diverse group of lawyers, can delay dealing with inefficient processes, and should not be seen as a permanent solution to staff shortages (see Appleby et al., 2017).

##### Potential benefits

- Support for backlog reduction, short-term fluctuations or coverage of absences: Appointing temporary judges could help deal with case backlogs, respond to unprecedented workload fluctuations or hear a case when the regular judge is absent.
- Retention of talented retirees: Being able to draw in experienced judges for special tasks, as back-up to cover shortfalls, as special backlog teams or for training can help ensure that skills and expertise are available when needed.
- Provision of flexible work options: When part-time assignments are available during the career of a judge it can assist in judges balancing family needs and can make these positions more attractive to a broader range of talented applicants.

Source: (Venice Commission, 2007<sup>[53]</sup>), Report on Judicial Appointments by the Venice Commission; (Appleby et al., 2018<sup>[37]</sup>), Contemporary challenges facing the Australian judiciary: An empirical interruption, [https://law.unimelb.edu.au/data/assets/pdf\\_file/0003/3159147/01-Appleby-et-al.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0003/3159147/01-Appleby-et-al.pdf).

Part-time work options could be important to ensure that those serving within the court can work effectively. It can also impact the courts' ability to attract the best candidates for judicial and other court positions, which in turn impacts others working at the court. According to Irish stakeholders, the courts are increasingly facing challenges to remain a top career option for young graduates, including in terms of recruiting registrars and judicial assistants.

Common law countries sometimes resort to professional judges sitting occasionally to address staffing shortages on the bench or for special projects, such as backlog reduction teams (see Box 5.7).

### Box 5.7. Temporary judge appointments in the United Kingdom

UK regulations allow for the appointment of temporary judges to some courts (such as the Supreme Court, the Crown Court and the High Court Scotland). These judges can be drawn from the Court of appeal of England and Wales, Court of Appeal of Northern Ireland, or the Inner House of the Court of Session (Appleby et al., 2018<sup>[37]</sup>). In addition, temporary officers can be drawn from a supplementary panel of retired judges from the Supreme Court and retired territorial judges – Constitutional Reform Act (CRA), section 39(4). These retired judges can become part of this list only if they have retired from judicial office no more than five years ago, and are younger than 75 (CRA, section 39[9]). With the mandatory retirement age at 70, this means that there is a window of five years to be part of this supplementary panel. For example, a number of retired Commercial Court judges and Queen's Counsel or other experienced practitioners who practice regularly in the Commercial Court are authorised to sit as Deputy High Court Judges in the Commercial Court. Deputy judges are used for applications and trials to ensure that the targets for lead times can be maintained. Deputies will only be used either when the parties agree that the matter may be dealt with by a deputy, or when the judge in charge of the Commercial Court considers it suitable for the matter to be dealt with by a deputy (Judiciary of England and Wales, 2021, p. 62<sup>[54]</sup>). Furthermore, appointed judges may request to work part-time work for a certain period, provided it will not adversely impact court and tribunal services (JAC, n.d.<sup>[55]</sup>).

Across the UK nations there are other options available to engage judges on a part-time basis that may be less applicable to Ireland, but that illustrate the range of options some jurisdictions require to cover increasing caseloads. For example, "recorders" are Crown Court judges sitting for 30 days a year and paid on a daily-fee basis. Appointed by the Queen in consultation with the Judicial Appointments Commission (CRA, section 21[1]), they can sit in some of the lower levels of the UK courts system: Crown and County courts. These positions are also considered as the first step on the judicial ladder, they hear and manage cases, determine claims, and help parties prepare for trials (Courts and Tribunals Judiciary, n.d.<sup>[56]</sup>). Appointments are for five years, and can be renewed (Appleby et al., 2018<sup>[37]</sup>).

Source: (Judiciary of England and Wales, 2021, p. 62<sup>[54]</sup>), Business and Property Courts: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report), [https://www.judiciary.uk/wp-content/uploads/2022/02/14.50\\_Commercial\\_Court\\_Annual\\_Report\\_2020\\_21\\_WEB.pdf](https://www.judiciary.uk/wp-content/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf); (JAC, n.d.<sup>[55]</sup>), Part-time judicial roles, (JAC, n.d.<sup>[55]</sup>) <https://judicialappointments.gov.uk/part-time-judicial-roles/>; (Courts and Tribunals Judiciary, n.d.<sup>[56]</sup>), Recorder, <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judges/recorder/>; (Appleby et al., 2018<sup>[37]</sup>).

## 5.8. Judicial performance management

Performance management, especially for judges, is a complex and sensitive issue that needs to be distinguished from court and case performance management, despite the necessary links.

There are different international standards in relation to judicial performance. For instance, the Bangalore Principles of Judicial Conduct outline core measures of judicial performance (UNODC, 2003<sup>[57]</sup>). At the national level, judiciaries often have some standards of performance that foster quality, accessibility and timeliness of decisions. National bar associations may also have their own codes of conduct that apply to judges. More challenging to resolve are the questions of how these principles, standards and guidelines can be applied in practice to a system that allows judges to perform accordingly, and how good performance can be measured and encouraged, and by whom.

Overall, it is important to recognise that modern performance management does not focus on exercising control or identifying shortcomings and disciplinary action. On the contrary, it focuses on matching employees' skills to the right positions, understanding the needs of a particular type of work and of the person assigned to it, creating the conditions that allow the individual to perform to the best of their ability, and tracking performance to understand where assistance may be needed.

Important steps have been taken in Ireland to enhance the clarity and transparency of its performance and accountability system through the Judicial Council Act of 2019, and the related creation of a Judicial Conduct Committee (JCC). The JCC's first task was to review the draft guidelines for judicial conduct, and it will be responsible for supporting judges in performing in accordance with these guidelines. It will also be responsible for reviewing complaints filed against judges.

Section 7 of the Judicial Council Act sets out a broader range of functions for the JCC to promote and maintain:

- a) Excellence in the exercise by judges of their judicial functions.
- b) High standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence, and to ensure equality of treatment to all persons before the courts.
- c) The effective and efficient use of resources made available to judges for the purposes of the exercise of their functions.
- d) Continuing education of judges.
- e) Respect for the independence of the judiciary.
- f) Public confidence in the judiciary and the administration of justice.

These functions outline a combination of issues that include support and resources to perform well (i.e. points c and d), expectations for judicial conduct and behaviour (points b and e), and measures of judicial performance (points a, c and f). All these elements would require further definition for the JCC to be able to support judges and the courts overall in achieving these elements.

At the same time, European institutions such as the CEPEJ and ENCJ are advancing efforts to create minimum comparators of performance for their member states. The ENCJ in particular continues to advance the development of minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary (ENCJ, 2021<sup>[58]</sup>). The 2020-21 ENCJ report includes on pages 50-53 a revised list of the minimum standards, and sets out detailed indicators for:

- timeliness and efficiency of procedures
- due process from the perspective of accessibility
- quality of judicial decisions
- public access to the law to guide society.

These measures are being tested by pilot courts, and initial rounds of surveys to collect this information in member countries have been conducted over the past ten years. These standards could be worth considering when reviewing and advancing Ireland's performance measurement and data collection goals. Most of the pilot courts are quite advanced in judicial performance management and measurement for judges, and have developed sophisticated systems to track performance. They are also testing and applying a range of performance review measures (see Box 5.8).

### Box 5.8. Peer review pilots in Denmark and the Netherlands

In 2004, the district court of Copenhagen carried out a pilot project on the quality of legal opinions and the conduct of court proceedings. A working group defined several quality indicators and conducted a survey measuring at what level these quality indicators were present in both legal opinions and during court proceedings. The survey was carried out by judges from the district court of Copenhagen. The judges set up quality groups, and a representative from one group then reviewed the legal opinions and attended the court hearings of judges from another group.

In the Netherlands, peer review primarily aims to improve the functioning of individual judges, and focuses on behavioural aspects rather than judicial aspects. It contributes to a more open culture within the profession, in which individual performance in the court room can be discussed and improved upon. Peer review can take place in different ways, one being the camera method where the court hearing is recorded and discussed with the judge afterwards.

Source: (ENCJ, 2021<sup>[58]</sup>) <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/ENCJ%20Rport%20IA%26Q%202020-%202021%20adopted%20GA%202%20June%202021.pdf>

The CEPEJ Working Group on Quality of Justice (CEPEJ-GT-QUAL) has studied the different means and tools used in Council of Europe member states to improve the quality of judges' work. The group compiled this information to provide judiciaries with further guidance to enhance judicial management. Building on lessons learned from studies on effective management in modern organisations, the latest work published by the group focuses on developing the elements that help judges perform well, and on identifying how challenges can be overcome (CEPEJ, 2019<sup>[59]</sup>).

The nature of judicial decision making as an individual exercise coupled with the tradition of judges working independently from undue influence and in a solitary way has led to solitary working habits, or even to the isolation of judges. Working in teams and exchanging views to learn from others is an important way to continue to evolve as a professional. It is also an effective means to identify potential performance issues and to divert behaviour early on. The group's report outlines a range of measures that judiciaries can put in place to reduce judicial isolation, such as online and in-person learning and engagement tools including peer exchanges, ways to build work teams around judges, support groups, and positive ethics guidelines, all ultimately geared towards enhancing the quality of judges' decisions and overall performance (CEPEJ, 2019<sup>[59]</sup>).

## 5.9. Judicial training and development

Until recently, judicial training in Ireland had been limited to basic on boarding training and an average two days of continued judicial education per year for sitting judges, which seems limited in comparison to other common law and European jurisdictions. The aim of the new Judicial Training Director within the Judicial Council is to provide an additional five days of training (not necessarily consecutive days), for which the judges will be given leave. The Judicial Institute for Scotland currently applies this practice (see Box 5.9).

### Box 5.9. Judicial Institute for Scotland

Established in 2013, the Institute is responsible for judicial training and education. Materials are managed through the Judicial Hub, an online learning platform, and includes online resources (such as briefing papers and jury manuals), as well as blended or face-to-face learning (such as new office holder inductions and core curriculum).

The Institute is also responsible for engagement with judicial stakeholders and third-party organisations to ensure that judicial training meets present day needs. The Institute has four strategic priorities under which its activities must align:

1. delivery of justice
2. judicial education model
3. excellence and relevance in course provision
4. excellence and relevance in online provision.

The Institute's board meets quarterly and produces an annual report. The Institute has also produced a variety of resources for judges on a broad range of issues, such as detailed guidance on selected complex legal issues, the impact of COVID-19, Brexit and the use of remote jury centres.

Source: (Judicial Institute for Scotland, n.d.<sup>[60]</sup>), *Strategic Plan 2019-2020*, [https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/strategic-plan-2019-2022.pdf?sfvrsn=82f71fd3\\_4<](https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/strategic-plan-2019-2022.pdf?sfvrsn=82f71fd3_4<); (Judicial Institute for Scotland, 2021<sup>[61]</sup>), *Annual Report 2020-2021*, [https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/jifs---annual-report-2021.pdf?sfvrsn=2df77a34\\_2.](https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/jifs---annual-report-2021.pdf?sfvrsn=2df77a34_2.)

Internationally, continued judicial education tends to be voluntary, but is frequently combined with a requirement to continue to develop legal and other judicial skills. Judges in Canada are entitled to 10-15 days of training over a four-year period. In England and Wales, at least one multi-day training per year offered by the Judicial College should be attended by each judge. In Australia, judges should be able to spend at least five days each year in professional development, with some flexibility to spend 15 days in training over a three-year period (Judicial Commission of New South Wales, n.d.<sup>[62]</sup>). In France, continued judicial education aims to provide subject matter expertise and to ensure that judges are trained to effectively manage courts. Each year, French judges must engage in five days of continuing training, selecting courses from across eight themes, one of which is administration of justice that teaches judges about change management, managing stress, measuring efficiency, etc. All courses are available to judges to self-select, and in 2013, 928 judges voluntarily enrolled in management courses (11.5% of serving judges) (European Commission, 2017<sup>[63]</sup>).

Across Europe, requirements for judicial training in EU law are increasing. A review of judicial participation in training in EU law indicated great variations across member states, and found a low rate for Ireland, with the percentage of judicial staff participating in EU law related education not reported (European Commission, 2019, pp. 8-12<sup>[64]</sup>). As a result of this report, and following further consultations, the European Commission presented a new strategy on European Judicial Training for 2021-2024 (European Commission, 2020<sup>[65]</sup>).

The new strategy sets ambitious targets both in terms of quantity and quality of training (see Box 5.10). Overall, more justice professionals should attend training on EU law, and training providers should improve the EU law training on offer. In terms of quantity, the strategy outlines that by 2024, continued training on EU law should reach the following percentages of professionals per year:

- 65% of judges and prosecutors
- 15% of court and prosecution office staff who need EU law competence
- 15% of lawyers
- 30% of notaries
- 20% of bailiffs.

### Box 5.10. Qualitative objectives of the new strategy on European judicial training for 2021-2024

On 2 December 2020, the European Commission presented its new strategy on European judicial training for 2021-2024. The new strategy established the following main qualitative objectives:

- Making sure that European *acquis* on the rule of law and fundamental rights is not only a standard component of basic judicial training, but also part of continuous training.
- Embedding “judgecraft”, non-legal knowledge and skills, in the national continuous training programmes, including improving digitalisation and artificial intelligence awareness and skills, and the efficient use of digitalised judicial procedures and registers.
- Making sure that every future or newly appointed judge and prosecutor takes part in a cross-border exchange during initial training.
- Organising cross-border training activities every year for at least 5% of all judges and prosecutors.
- Ensuring that training providers offer tailored e-learning, which is interactive, practical and accessible to all learners.
- Encouraging training providers to follow more closely the recommendations in the Advice for training providers (European Commission, 2015<sup>[66]</sup>) and the European Judicial Training Network (EJTN) Handbook on judicial training methodology in Europe (EJTN, 2016<sup>[67]</sup>).
- Promoting e-training to address justice professionals' immediate needs in the context of a concrete case.
- Exploiting the full potential of e-learning methodologies.
- Evaluating every training activity more uniformly.

Source: (Wahl, 2021<sup>[68]</sup>), *New Strategy on European Judicial Training for 2021-2024*, <https://eucrim.eu/news/new-strategy-european-judicial-training-2021-2024/>; (European Commission, 2015<sup>[66]</sup>), *Advice for training providers: European judicial training*, [https://ec.europa.eu/competition-policy/system/files/2021-04/practical\\_advice\\_for\\_training\\_providers.pdf](https://ec.europa.eu/competition-policy/system/files/2021-04/practical_advice_for_training_providers.pdf); (EJTN, 2016<sup>[67]</sup>), *EJTN Handbook on Judicial Training Methodology in Europe*, [https://www.ejtn.eu/Documents/EJTN\\_JTM\\_Handbook\\_2016.pdf](https://www.ejtn.eu/Documents/EJTN_JTM_Handbook_2016.pdf).

To meet these targets for EU law training, the provision of judicial training in Ireland will need to significantly increase (along with training for other justice sector professionals and staff). The EJTN provides many useful resources for EU member states to build upon, and offers a range of courses online and in person, including support for developing judicial trainers. To ensure that these efforts are effective, it would be useful to allocate appropriate dedicated time for judges and others to participate.

### **5.9.1. Looking ahead: Judicial training needs in Ireland**

The Director of Training at the Judicial Council, who is assigned to this position for 50% of working time, and the full-time Deputy Training Director reported extensive collaboration with the EJTN and others, and the aim to build on what is available as much as possible. The Judicial Research Division also reported great interest in supporting curriculum development for judicial training. There is a great need and desire for continued training across all levels, and the need for training of judges at the lower courts is especially high. Many judges from the District and Circuit Courts reportedly took courses during the court vacation given their high workloads and lack of back-up to cover cases during regular court terms, with some District Court judges not being able to attend given that the courses were scheduled during the court vacations of other court levels.

The vision for training delivery in Ireland seems to be moving towards the development of a small core education team and a body of judicial trainers drawn from all court levels through train-the-trainer courses, as well as the use of external judicial training experts and others when feasible. Judges who wish to become trainers themselves will require additional time away from hearing cases. Promoting the involvement of judges as trainers could be incentivised by linking this activity to recognition for future promotions.

The above considerations have important implications for the number of judicial FTE positions needed in the future. Assuming that every judge currently serving (176 judges) across all five court levels in Ireland attend five additional training days during official working hours, this would translate into 4.2 FTE positions needed,<sup>8</sup> not considering any time judges designated to become trainers will need.

The training needs across the different court levels will differ as a result of the number of judges who should receive training. A training needs assessment could be conducted as a first step to define priority training needs. As part of the needs assessment, there may also be an opportunity to reflect on the needed skills and competencies for judges and all court staff and how trainings can become a lever for increased efficiency and effectiveness of the justice system as a whole. For instance, one training topic reported as requiring attention is the creation of greater awareness of existing alternative sanctions to imprisonment, for example when dealing with the complex needs of people with mental health difficulties, addiction issues or homelessness. These may facilitate the effective implementation of ongoing policies in relation to community-based sanctions, restorative justice, etc. There are easily accessible resources to determine the training needs of judges available from the ENJC, and others. The training centre at the Judicial Council will require the human resources to use these resources, even while counting on support from others and co-operation with justice sector agencies.

### **5.9.2. Additional training to foster efficiency and job satisfaction in the judiciary**

Several topics will grow in importance to accommodate increasing demands for better court management, such as leadership training for judges, especially as case management and court performance measures, along with greater focus on user needs, are becoming more important in the delivery of justice. Leadership training is not just relevant for Court Presidents, but across all court levels. Strengthening judicial leadership capacities is essential to help prepare those who may be aiming for higher positions and to take on different types of leadership roles, such as list judges, trainers or members of various committees. It can provide judicial input and ensure that knowledge from the assignments is shared with the wider judiciary.

Given that promotion opportunities to higher courts are quite limited in Ireland, there is a need to ensure that there are other options for judges to strive for and to obtain recognition for good performance. This is important to maintain an engaged and satisfied judiciary, to attract new talent, and to ensure that the judiciary evolves as a profession. Becoming a training judge may be one of these options for judges.



Box 5.11 provides an example of specific leadership training provided to judges for court presidents in Israel.

### **Box 5.11. Training for Court Presidents in Israel**

The Israeli Center for Judicial Education and Training (CJET) has established a management and leadership development programme for judges serving in senior management positions in the judiciary. The main goal is to support the development of the leadership skills of these judges. The role of court presidents in Israel was officially extended in 2017 to include the responsibility of senior management. Presidents are expected to demonstrate the analytical, leadership and interpersonal skills necessary for routinely managing courts, for evaluating court performance and for long-term planning. For this reason, leadership development and other skills development are included in this programme's curriculum.

“Management” encompasses all activities carried out by the leadership of an organisation to fulfil the goals of the organisation. The Israeli judiciary has focused on improving judges' managerial skills for many years using personal managerial counselling, managerial coaching and judicial conferences focusing on management related issues. A recent review nevertheless pointed to a need to advance management training suited to the challenges faced by judges in Israel beyond what was available.

Source: (Mersel, 2018<sup>[69]</sup>), *Senior Management Development Program for Judges: Objectives, Principals and Curriculum*<sup>1</sup> Judge, [https://www.ejtn.eu/Documents/Senior\\_Management\\_Development\\_Program\\_Judges.pdf](https://www.ejtn.eu/Documents/Senior_Management_Development_Program_Judges.pdf).

With increased attention and the introduction of more advanced case management techniques across all courts in Ireland, case management training will become essential for all judges. How this training should look will depend on the court level and what will evolve across all courts. However, a general introduction to the range of case management tools will be beneficial. More details on the scope of this training is addressed in Chapter 6.

In addition, wellness training is important for judges and other court staff. The work of judges is taxing in several ways. The impact of criminal cases involving violence, sexual abuse or murder may be more obvious to outside observers, but many more cases involve difficult and fundamental decisions that affect the lives of the parties. These may include those involving vulnerable parties such as juvenile offenders, emotionally distressing family law cases, and employment and business cases that impact the ability of company owners to continue in business and provide work for their employees. The COVID-19 pandemic has only increased the need for a greater focus on health and wellness training and services in all branches of power, including the judiciary. No wellness training programmes are currently aimed at judges, particularly none that focus on stress management or dealing with emotionally challenging cases. There are no programmes that focus on the prevention of health consequences (instead of services that may be available when issues such as depression, substance abuse or even suicide have already emerged). Greater focus on physical and emotional well-being is an important investment to ensure that judges can remain productive, can be retained and that new talent can be attracted.

## **5.10. The impact of extended judicial working arrangements**

When case delay and backlog reach a stage that may threaten timely access to justice, there is a tendency to extend court sitting hours, shorten official court vacation times, and limit part- and flex-time options, if available in a jurisdiction. Courts globally have responded with night courts, weekend courts and shortened court vacation times in several jurisdictions. Where flex-time and other part-time options were available, they were suspended as needed. This trend was exacerbated during the COVID-19 pandemic. For

example, “Nightingale Courts” in England were set up to manage backlog caused by the pandemic, although triggered substantial resistance from private lawyers in England and Wales who felt that they stretched staff resources beyond what they can deliver (Bowcott, 2021<sup>[70]</sup>).

Indeed, extending court sitting hours could be helpful to address delays and backlog, while expanding access to justice for litigants who cannot afford to leave work and would prefer coming to court later in the day or on a Saturday. Yet, if the current schedules are expanded and no additional modernisation measures are undertaken to enhance efficiency, they would need to be accompanied by the correlated increase in judicial, prosecutorial and support staff to cover additional sitting times.

As mentioned, the workload study and additional information gathered show that judges at all court levels are currently working extra hours. While some courtrooms are not in use at certain moments, judges and other justice sector officials may be working outside of the court facilities. Therefore, the solution to reducing case delays would be more complex than extending courtroom and sitting hours, and would need to be carefully complemented by innovative procedures and appropriate human resources.

### **Box 5.12. Judicial governance and modern human resource management for judges and the courts – Key recommendations**

#### **Short-term:**

- **Strategic approach to HRM:** Develop a comprehensive, strategic approach to human resource management for the judiciary, including by assessing judicial needs and applicant trends, identifying avenues to continue strengthening judicial skills, attract, develop and retain needed talent, develop effective succession plans and long-term position planning capacities, supported by related action plans. This may also call for assessing the option of introducing a secular alternative to the current form of judicial declaration to foster further ethnic and religious diversity in the judiciary.
- **Clarity of HRM responsibilities:** Enhance clarity of responsibilities for the full set of human resource management processes related to judges to ensure current human resource support for judges is effective across all courts, and future planning is strategically aligned.
- **Consider standardising and modernizing judicial HRM processes,** including selection and hiring, through developing standardised guidance, relevant data, reviewing processes and ensuring sufficient training to those involved. Consider collecting relevant HRM data (sick leaves, vacation days, retirement schedules, diversity characteristics) in a standardised manner across all courts to support decision-making and planning.
- **Data and analysis for judicial resources needs:** Building on the OECD workload study, continue efforts to develop a set of base data that can be fine-tuned to inform the impact of new legislation, new case management practices, changes in caseload trends, etc. on future judicial resource needs, as well as to inform the development of an effective automated case management system.

#### **Medium and longer term:**

- **Judicial workforce planning:** Devise a sustainable approach that is able to factor workload shifts in staffing practices throughout the years, such as periodic obligations for the judiciary to report on the judicial resources needs and build capacities in the Courts Service and judiciary to model workloads and provide a staff needs report.
- **Retirement options and temporary resources:** Assess opportunities for adjustments in retirement options to better reflect the current needs of the judicial work environment, and provide flexibility to address temporary resource needs, including for instance senior judge

programs as the ones developed in other countries. Exploring the possibility to engage temporary or part-time judges may be an approach to consider, while ensuring appropriate safeguards to protect judicial independence and impartiality.

- **Training and development:** building on the current efforts, consider developing a systematic and comprehensive approach to training and development for judges and staff, in order to respond to various requirements (e.g., EU law training). Consider undertaking a training needs assessment to define priority training needs, reflect on the needed skills and competencies for judges and all court staff and how trainings can become a lever for increased efficiency and effectiveness of the justice system as a whole. Consider the option to link promotion opportunities to higher courts to becoming a training judge, which may have benefits to maintain an engaged and satisfied judiciary, to attract new talent, and to promote evolution of the judiciary as a profession through high quality training.

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## Notes

<sup>1</sup> See Rechtspraak website, available at <https://www.rechtspraak.nl/English/The-Council-for-the-Judiciary>.

<sup>2</sup> See Judicial Appointment Bill, 2020.

<sup>3</sup> See People Committee online: <https://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-court-service-board/scs-people-committee>.

<sup>4</sup> Judicial Office online at <https://www.judiciary.scot/home/publications>.

<sup>5</sup> The Council for the Judiciary online at <https://www.rechtspraak.nl/English/The-Council-for-the-Judiciary/Pages/Other-duties-and-responsibilities.aspx>.

<sup>6</sup> In response to a well-supported request by the Association of Judges, the Courts Act of 2019 increased the retirement age of District Court judges from 65 to 70.

<sup>7</sup> According to the latest information shared by the Netherlands in August 2021.

<sup>8</sup> This calculation is based on the standard judicial FTE calculation accepted by the judges for the purpose of establishing positions needed, i.e. 5 days of training, multiplied by 176 judges = 880 days, divided by 212 standard workdays = 4.15 positions.

# 6

## Towards more effective court, case and data management in Ireland

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This Chapter analyses the court and case-management approaches applied in Ireland, based on relevant OECD countries' court and case management methodologies and international standards, and offers recommendations aimed at helping drive improvements in justice performance in Ireland. More specifically, the OECD recommendations concentrate on identified opportunities and potential improvements in the areas of court and case management, data and IT systems, coordination and simplification, and multi-channel service delivery.

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Since the early 1980s, court and case management has grown in importance across many common and civil law countries. Overall court management, i.e. the sum of all responsibilities to ensure that courts work well to uphold the law and serve people and businesses, encompasses facility and information and communication technology (ICT) management, finance, human resource management, data collection and research, general administrative activities, and overall strategy development. Case management is connected to court management and includes court administration and other processes directly related to the processing of cases and bringing them to timely adjudication (Rooze, 2010<sup>[1]</sup>).

Driven by concerns about slow pace, high costs, procedural complexity and lack of predictable case outcomes, court leaders in many countries have focused on the development of different court rules and operational practices, collectively referred to as “case management”, to address problems in civil, criminal and family court contexts. Case management therefore has two meanings: the first refers to the overall policies, rules, regulations and techniques applied to all or a set of case types, while the second covers the management of an individual case by a judge supported by court staff. This chapter explores modern approaches to court and case management to help drive improvements in justice performance in Ireland.

## 6.1. Introduction

Most early efforts to enhance processing efficiency focused on internal court procedures to ensure timely decisions in response to motions, relevant and consistent enforcement of procedural rules, and the development of more effective case calendar scheduling practices to ensure sufficient capacity for hearings. The effectiveness of these techniques was quickly demonstrated; however, their adoption in courts often faced resistance from judges and private lawyers. Given the strong impact of judicial efficiency on economic performance and firm growth, these practices can be relevant levers for economic activity.

In the United States, where these approaches evolved first, fundamental common law principles of judicial impartiality were interpreted as requiring deference to civil litigants in matters of case processing. The role of judges in common law jurisdictions was, and still often is today, mostly seen as providing the forum for civil litigants to resolve their disputes. In this context, attempts to control case processing would limit litigants’ prerogatives to manage the case as they see fit. Furthermore, the assumption is that litigant interests were best served by professional attorneys who would advocate on behalf of their clients (Hannaford-Agor, 2018<sup>[2]</sup>; Rosen, 1994<sup>[3]</sup>). Civil law countries were even more cautious in considering approaches to enhance court efficiency, as the “common law” approaches were seen as not consistent with civil law principles. Judges in civil law countries have a different role as they drive the inquiries and have greater control, even in civil proceedings. The level of control is detailed in procedural laws, and diversions to reflect different case needs were seen as legally not possible. Civil law judiciaries also often did not consider such “administrative” matters as their responsibility, but that of the Ministry of Justice, which was tasked with the administration of the courts in most continental European nations (Langbroek, 2017<sup>[4]</sup>).

Confidence that existing court processes were functioning well continued to be widely shared by both the bench and private lawyers in common and civil law countries until increasing caseloads and shrinking budgets prompted a need for different approaches. Another element that contributed to advances in modern case management, especially in common law countries, was the ever increasing numbers of litigants resolved to represent themselves given the rising cost of civil litigation. In the United States, three-quarters of all general civil cases in state courts today have at least one lay litigant. To ensure equal access to justice for all, courts must now balance the provision of adequate information to unrepresented litigants with their obligation of neutrality between parties. These developments have led courts in the United States, United Kingdom and other countries to the realisation that court rules focusing on efficiency are essential, but insufficient by themselves to address problems of cost and delay. Instead, many courts today are embracing a considerably broader view of case management that considers the combination of

court rules, efficient business practices, local legal culture, governance, staffing and technology infrastructure. As a result, effective case management now recognises the importance of five core components that are necessary to achieve timely, cost-effective and procedurally fair justice (Hannaford-Agor, 2021<sup>[5]</sup>):

1. Use of triaging of processes to ensure that cases receive attention proportional to their needs.
2. Process simplification to remove procedural barriers that unnecessarily complicate litigation.
3. Stakeholder engagement to ensure clear communication about case management objectives at every stage of the litigation.
4. Effective use of court staffing and technology resources.
5. Ongoing commitment to data management and performance management.

The goal of case management nowadays is not simply moving cases effectively to disposition, but to achieve justice for all litigants served. This means that the processes must be designed to allow for the resolution of the matter within fair timelines without compromising the quality of the decision. It also means offering other less adversarial, easier to understand, and less costly options and support to litigants, when needed, to resolve disputes.

## 6.2. Current case management approaches applied in Irish courts

Across all court levels in Ireland, some case management techniques initiated by judges are applied, with changes introduced due to the pandemic driving further efficiency options. For example, particularly at the High Court level, list judges are judges with a specialism and have significant responsibilities for early case management actions and to ensure, as much as possible, that judges are available to hear all matters as scheduled.

Judges at the Commercial Court apply intensive case management approaches to encourage parties to settle cases early, follow realistic submission and hearing schedules, exchange evidence early, and aim to resolve contested issues up to the substantive hearing. This is an important measure to reduce hearing time. Judges also seek to promote the mediation of disputes, which allows parties to seek an amicable solution to their dispute that may allow them to continue commercial relations and protect their reputation.

The High Court has also established a practice in recent years whereby registrars go to the court about 20 minutes before the commencement of a motion list and are available to take on consent applications for strike out, settlement and adjournments. When there is consent, the motion is not called when the judge is on the bench - afterwards, the order is drawn by the registrar according to the consent agreement. Most motion lists in the High Court are currently also heard online, making it unnecessary for lawyers and litigants to travel to the Four Courts in Dublin for the hearings.

Judges at the Circuit Court level aim to mediate contested matters, especially in family law cases, as much as possible to limit the need for substantive hearings and to achieve a less contentious resolution to a family matter.

In response to COVID-19 restrictions, Callover processes at all court levels have largely moved to online hearings. Scheduling processes have also changed, and no longer require all parties to show up in the morning of a scheduled hearing, but are instead assigned set time slots throughout the day. This is considered an important improvement with respect to the way that Callover procedures were handled previously. Furthermore, at the District, Circuit and Court of Appeal levels, Callover is now mostly centralised, which relieves individual judges from this duty. Callover at the High Court level, while continuing to fulfil its original function, has also evolved into case management hearings to establish submission and hearing schedules.

At the District Court level, there is a special Drug Treatment Court that aims to effectively link addicted offenders to appropriate treatment options and reduce recidivism, thereby reducing the burden on all parts of the justice sector.

Selected judges at all court levels are slated to be available for emergency hearings. In addition, the District Court holds evening court each weekday at 4.30 pm in the Criminal Courts of Justice in Dublin. Two courts are also held each Saturday and on bank holidays for emergency business. In all districts, a judge is assigned for a week at a time to cover “out of hours” courts, which especially hear urgent search warrant applications, extensions of detention periods, preservation of crime scene applications, etc. This judge can be called out at any time. In the High Court, judges are rostered so that one judge is available each weekend to deal with urgent applications.

While it was beyond the scope of this study to assess all case management techniques currently employed across the four court levels that were part of this report, these examples demonstrate that the judiciary is actively exploring and implementing various case management approaches to better manage all cases.

At the same time, when comparing these efforts to the five core components of effective case management, only some have been partially developed. Judges are currently developing these efforts with limited access to relevant data, without support to assist in collecting and analysing results data, without access to comprehensive training in judicial case management to understand the full scope of case management techniques and their implications, and without the benefit of an overall strategic outlook for case management across all court levels. Therefore, their efforts are largely reactive in response to existing challenges, rather than systematic to overcome and prevent challenges in the future.

Earlier efforts to introduce more efficient processes, such as those recommended in the Kelly Report, are still largely waiting to be passed. As a result, most case processes still appear to be significantly lawyer-driven, while court efforts to attain appropriate control over its own business remains limited and reactive, rather than proactive.

Overall, most case management efforts in the Irish courts today appear to focus on encouraging mediation and early settlement at every stage of the case process. While valuable, without effective limits to adjournments and multiplicity of interlocutory hearings these efforts may not reap all the desired results. Except for the recently introduced timelines for judgement delivery at the Court of Appeal, no time standards exist. At the same time, cases are not triaged by complexity or level of dispute, and small claims proceedings could be further adapted to the needs of those who might be interested in faster and less formal proceedings. The plans for a different approach to be tested in the planned family law courts may include triaging cases to develop a more accessible, user-oriented system linked to family services (Courts Service, 2021<sup>[6]</sup>).

Despite all efforts in place so far, there is a growing backlog of cases to be heard at all court levels that accumulated before the COVID-19 pandemic, and has increased since. The full dimension of this backlog is unclear, as is the number of cases held back by litigants due to the pandemic.

International indicators of court performance are regularly gathered by international organisations, such as the European Scoreboard, (European Commission, 2021<sup>[7]</sup>) the Efficiency of Justice Report by the European Commission for the Evaluation of Justice (CEPEJ) and the World Bank’s Doing Business Report,<sup>1</sup> which will soon be relaunched in a different format.<sup>2</sup> These indicators show room for improvement in the efficiency and quality of service at Ireland’s courts. They continue to recommend that court proceedings in Ireland are made more affordable and speedier, and they highlight that courts require further support of IT solutions and modern case management approaches. While these international data collection efforts have their own limitations and must be viewed with a clear understanding of what they relate to within the context of a country, they can provide a useful barometer of the state of a country’s court performance in the international context.

### 6.3. Distribution of responsibilities between the judiciary and court administration

It is globally acknowledged that effective court administration, including case management, hinges on a successful partnership between the judiciary and those responsible for the administration of the courts (Martin, 2014<sup>[8]</sup>; UNODC, 2011, p. 40<sup>[9]</sup>). Nevertheless, challenges in the distribution of responsibilities between judges and those responsible for court management continue to exist in many countries. The key is to know where the action of “judging” begins, and where the action of “administering” ends (Cadiet et al., 2012<sup>[10]</sup>).

As pointed out by Lord Justice Thomas, former Lord Chief Justice of England and Wales, in his review of court governance systems for the Council of Europe, the distinction between matters of judicial responsibility and matters of administration was “never clear cut and there has been no success in drawing the line”, which is “a factor which has to be considered when deciding whether administrative services can be provided to the judiciary which are not ultimately answerable to the judiciary as opposed to the executive” (European Commission, 2021<sup>[7]</sup>). This becomes particularly important when the entity responsible for administration is either part of the Ministry of Justice, as in England and Wales, or created as an independent body governed by a board, even one with a majority of judges. The latter is the case in Denmark, Ireland, Norway and Sweden. However, these countries have very different appointment and governance structures that can impact judicial independence, and therefore require clarity in the distribution of responsibilities, especially for case management functions and related staffing.<sup>3</sup>

An article written by the former Chief Justice of Western Australia, Wayne Martin, provides an interesting summary of the evolution of court administration going back to the 18<sup>th</sup> and 19<sup>th</sup> centuries, a time when the judiciary in Britain controlled the administration of the courts. He outlines a step by step approach to clarify the roles and responsibilities of the judiciary, and court administration tasks that can be easily adjusted to any jurisdiction (Martin, 2014<sup>[8]</sup>).

He also pointed out that while the division of responsibilities is easy to determine for some functions, in many cases it has to be expressly established:

*The adjudication of a case after trial is the responsibility of the judiciary, and nobody would suggest that the judiciary should take responsibility for the engagement of cleaning contractors or the acquisition of pens and paper. However, there are many areas between the two ends of this spectrum in which the allocation of responsibility is far from clear (Martin, 2014<sup>[8]</sup>).*

In Australia, Chief Justice Martin then provided assessments of a judicial versus an administrative function for most of the key case and court management responsibilities performed in a contemporary court. The topics addressed were not meant to be exhaustive, and addressed policy setting responsibility and implementation for:

- accepting or rejecting documents filed at court
- case file maintenance and management
- the administrative disposition of cases
- allocating cases to judicial officers
- data collection and analysis
- effective utilisation of information technology
- budget management
- designing, constructing and maintaining court buildings
- recruiting, supervising and retaining court staff
- the development of policy with respect to court administration and procedures

- managing the relationship between the judiciary and court users.

Similar to previous literature, his analysis suggests that all these important functions must be regarded as a joint responsibility of the judiciary and the administration if they are to be effectively performed.

In this regard, there appears room to create stronger synergies and improve co-ordination among key stakeholders in Ireland across most of the areas analysed related to the above-listed topics that directly impact the efficiency of the work of judges and the courts overall.

While further study would be required to assess the reasons underlying difficulties in co-ordination in Ireland, preliminary findings point to a combination of insufficient human resources within the judiciary and Courts Service, a need for additional investments in training and education to advance modern case management approaches informed by data, and the need for updates in IT and other infrastructure.

Differences in understanding among Courts Service staff regarding their roles with respect to that of judges were also found. In particular, while the Courts Service was created as an independent organisation led by a board with a majority of judges, it appears to understand itself as closer to the executive. In this regard, there appears to be a need for the board to clarify its relationship with the judiciary and the executive.

Some of these differences in understanding may result from differences in interpretation of the existing legal framework for the Courts Service. Section 5 of the Courts Service Act, 1998 states: “The functions of the Service shall be to: (a) manage the courts, (b) provide support services for the judges, (c) provide information on the courts system to the public, (d) provide, manage and maintain court buildings, and (e) provide facilities for users of the courts (Government of Ireland, 1988<sup>[11]</sup>).” The precise meaning of points (a) and (b) mean is open to interpretation.

The 2019 Review of Courts Service (Courts Service, 2019<sup>[12]</sup>) also reflects the unclear determination of responsibilities of the Courts Service in relation to the judiciary, and what court and case management exactly relate to. The report highlights that:

*The Courts Service, through its offices in the Supreme Court, Court of Appeal, High Court, Circuit Court and District Court, together with the support Directorates established as part of the management structure for the Service, has responsibility for the management of all aspects of court support activities with the exception of judicial functions which are a matter exclusively for the judiciary (Courts Service, 2019, p. 10<sup>[12]</sup>).*

The report states that the focus is on:

*The organisation [Courts Service] tasked with managing the courts and thereby playing its part in facilitating access to justice – and not the Courts System – how justice is administered. Thus, the conduct of the Judiciary within their own courts, including decision-making, waiting times and case throughput, fall outside the remit of this review, reflecting the independence of the Judiciary as prescribed in the Constitution (Courts Service, 2019, p. 19<sup>[12]</sup>).*

Over the course of evidence gathering, “stakeholders raised concerns about access to justice, drawing particular attention to matters around delays, costs and complexity. However, for its part, the Courts Service pointed to the constitutional independence of judges and to the limits of its own statutory remit to effect change on its own in relation to these matters” (Courts Service, 2019, p. 15<sup>[12]</sup>). In response, the first recommendation provided in the report is:

*The Courts Service’s Board needs to exercise a much stronger strategic role on matters relating to access to justice and the effective operation of the Courts Service. That will include the Board overseeing the development of a strategic framework that would capture the long-term vision, goals, objectives and outcomes for the Courts Service along with a supporting action plan, implementation roadmap, and resourcing plan (Courts Service, 2019, p. 17<sup>[12]</sup>).*

A range of activities have been undertaken in response to this review. A new strategy has been published, and several implementation plans to respond to key recommendations, as well as a comprehensive ITC

strategy, have been developed. In this context, the promotion of activities around the essential topic of case management would support a clarification of responsibilities and establishment of processes regarding how to improve related capacities to effectively address issues such as delay, backlog and complexity. A specialised committee or group within the Courts Service's internal structure, or on the Courts Service Board, to focus on case management or overall court performance would help to develop overall policies and drive needed changes in this area. Court and case management is a central topic assisted by a related committee for the institutions that support court and case management in jurisdictions such as Scotland (see Box 9.1 below), the Netherlands<sup>4</sup> and most US states.<sup>5</sup>

The second report of the Working Group on a Courts Commission, focusing on case management and court management and developed to inform the creation of an entity that ultimately became the Courts Service, made a clear distinction between administrative and judicial case management, stating: “administrative case management is essentially concerned with the manner in which the administrative infrastructure of the Courts system carries out its tasks. This aspect of case flow management is to be distinguished from judicial case management” (Government of Ireland, 1996<sup>[13]</sup>). It seemed clear to the commission at that time that the administrative entity had to have certain responsibilities to ensure that cases move efficiently from filing to disposition.

The relationship between those responsible for the administration of the courts and the judiciary is often challenging, such as in the United States, where administrative bodies are part of the courts. However, here it is understood that collaboration is essential and in the interest of both partners in their efforts to achieve their shared goal – the effective and fair delivery of justice for all. Research has provided additional evidence demonstrating the importance of a collaborative environment to ensure that courts can and do perform well (Ostrom and Hanson, 2010<sup>[14]</sup>). 6.4 Advancing strategic case management approaches in Ireland

Modern court and case management recognises that timely case disposition alone is no longer enough to ensure that cases are processed efficiently and in a way that ensures all can access the courts, while still upholding the quality of processes and decisions. In practice, this requires justice sector leadership, including the judiciary, to establish what its overall goals are for court and case management, and then develop in collaboration with all relevant stakeholders solutions for how they can best be accomplished.

The Federal Courts in Australia have set out a National Court Framework and detailed the key objectives for case management (see Box 6.1).

### **Box 6.1. Case management: The National Court Framework (NCF) of the Federal Courts of Australia**

The NCF is a fundamental reform of the court and how it operates. Its key purpose is to reinvigorate the court's approach to case management by further modernising its operations so that it is better placed to meet the demands of litigants and can operate as a truly national and international court.

The overarching purpose of civil practice and procedure and case management within the individual case list system is to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible.

The parties and their lawyers are expected, and have a statutory duty, to:

- Co-operate with the court and among themselves to assist in achieving the overarching purpose.
- Identify the real issues in dispute early and deal with those issues efficiently.

The goals of the NCF are to:



- Organise and manage nationally the whole of the court's work by reference to the great subject matter areas of the court's work.
- Organise the court's resources to meet the demands of the broad range of work done by the court.
- Develop the confidence of the profession and the community, particularly in areas requiring a degree of specialised skill and knowledge.
- Broaden the base of judicial knowledge and experience in the court.

The key objective of case management under the NCF is to reduce costs and delay so that there are:

- Fewer issues in contest.
- In relation to those issues, no greater factual investigation than justice requires.
- As few interlocutory applications as necessary for the just and efficient disposition of matters.

The court's national practice notes set out the arrangements for practice, procedure and case management within the court. These practice notes are a central part of ensuring a nationally consistent approach to case management and making the court more streamlined and efficient.

Source: (Federal Courts of Australia, n.d.<sup>[15]</sup>), *Case Management under the National Court Framework*, <https://www.fedcourt.gov.au/about/national-court-framework/case-management>.

To ensure the development of effective case management that meets the needs of different case types, court levels and parties, a range of activities can be undertaken.

Collaboration among judges, relevant Courts Service managers and staff needs to be generated across all court levels to begin developing the overall direction for case management and clarifying roles. Successful co-operation should be underpinned by a clear vision established by the leadership, including Court Presidents. In other countries this has often taken the form of working groups, as part of a judicial council or separately. There are several governance approaches that can work effectively, as long as they can secure the necessary buy-in and staff support.

In Ireland, a working group would first establish the overall strategic direction for case management, aligned with the Courts Service strategy and with the national objectives for the judiciary. The reflections from the group could be used as basis to focus on setting the overall goals for case management and policy setting for functional responsibilities.

Collaborative groups could also be created at each court level to systematically outline functional responsibilities, which could then be adopted by the Courts Service Board, for example. With this roadmap, collaborative groups can identify the major processing issues and develop priorities for applying different case management techniques, further streamlining, data requirements, and the availability and need for staff, IT and other resources. The range of information and resources provided in this report may be helpful to begin such a process. The resulting recommendations may be pilot tested and assessed before a wider roll out is attempted, and provide the basis for well-supported shifts in resources or requests for further investments.

An example of a comprehensive strategic approach to improve case management options and create the capacities needed locally is the Better Case Management approach implemented to enhance the management of criminal cases in the Magistrate and Crown Courts in England and Wales (see Box 6.2).

### Box 6.2. England and Wales – Better Case Management (BCM)

The BCM forms part of the implementation effort resulting from a Review of Efficiency in Criminal Proceedings. It is based on the overarching principles or themes of the review:

- getting it right first time
- case ownership
- duty of direct engagement
- consistent judicial case management.

The overarching aims of BCM are:

- robust case management
- reduced number of hearings
- maximum participation and engagement from every participant within the system
- efficient compliance with the Criminal Procedure Rules; Practice and Court Directions.

BCM supports Transforming Summary Justice<sup>6</sup>. Beginning in 2016, BCM introduced two major case management initiatives: 1) A uniform national Early Guilty Plea scheme; and 2) Crown Court Disclosure in document-heavy cases.

To ensure effective implementation, a “road show” has been developed and rolled out to the relevant local jurisdictions. In addition, local implementation teams have been created, along with a comprehensive implementation package that provides a set of core documents to assist teams in training judges and court staff, adjusting their own operations, and implementing the changes into their work to deliver BCM and the Digital Case System (DCS) in their circuits. Similar efforts for the local police and prosecution service are also under way.

These initial efforts were seen as a first step in ongoing reform efforts. They are based on core principles and goals and involve detailed process rules and practice directions.

Source: Judiciary of England and Wales (2018), The Better Case Management Handbook, available here <https://www.judiciary.uk/wp-content/uploads/2018/02/bcm-guide-for-practitioners-05032018.pdf>. Further information on the Courts and Tribunals Judiciary website <https://www.judiciary.uk/publications/better-case-management/> [accessed in August 2022].

#### 6.3.1. Advanced case management options

Case management generally refers to a set of principles and techniques that enhance processing efficiency, thereby reducing delays and case backlogs and encouraging better services from courts. Case management promotes the early court control of cases, and active court management of the progression of cases from initial filing to disposition across all court levels. It facilitates case coordination between different courts involved where there are separate criminal and civil law implications arising from the same incident to ensure seamless procedures for litigants. It also provides for greater predictability of court events, which can increase public trust, and increases the transparency and accountability of courts due to greater adherence to standardised processing steps and better reporting capacities.

Although courts have differed in how they apply case management concepts depending on their own needs and local legal culture, courts across the globe have applied standard principles to manage cases efficiently. These have evolved into a general set of case management techniques. The underlying principle is that, in compliance with the guiding procedural codes, the court, and not lawyers or litigants,

should control how each case will be processed through the system to ensure that it is efficient and fair for the parties.

To develop meaningful rules for implementing case management, courts first need to review their own operations and then define performance goals and measures, such as creating timelines for processing cases that follow acceptable time standards for different case types and processing steps. Work practices should subsequently be adjusted to be more efficient and to better meet these goals.

Such changes require different and more consistent administrative actions from court staff, as well as changes in the judge's role in the process. The following case management techniques can be applied in combination based on the court's needs and capacities, and should continue to be adjusted as needed (Gramckow and Nussenblatt, 2013<sup>[16]</sup>):

- **Timelines for key case processing steps**, such as from filing to notification, from notification to first hearing, etc. These timelines should differ by case complexity to focus resources on the processing needs of cases to achieve timely solution without sacrificing fairness and quality. Such timelines will allow for some flexibility by case type and for special circumstances. Ideally, they are also combined with certain enforcement measures, such as fines or even case dismissal to ensure discipline among all parties involved.
- **Firm and credible hearing dates and limits to the number of hearing adjournments**, meaning that the court establishes and publishes hearing dates, as well as rules and policies that limit adjournments to a few, well-justified situations, and enforces its own rules within a reasonable margin of discretion.
- **Pre-trial and scheduling conferences** to narrow down contentious issues and evidentiary questions before the trial, while discouraging unnecessary pre-trial motions or other delay tactics. These need to also be used to set submission timelines and clarify submission needs so that all parties understand what information needs to be provided when, and what each party is expected to do at each processing stage.
- **Early disclosure requirements and limits to late submission of evidence** to ensure that both parties are aware of the evidence that will be presented, and that available evidence is not held back to delay the trial.
- **Alternative dispute settlement processes** that may encompass a broad range of options, such as mediation outside the court or as a court-annexed function, arbitration, and the establishment of small claims courts. For criminal cases, this can mean the introduction of case deferrals pending completion of a condition and certain forms of negotiating charges and sentences via plea agreements.
- **Summary judgements and similar forms of no contest processes** that allow courts to make a decision without a trial, often based on written statements and without evidence presented for the record when there is no dispute as to the facts of the case and one party is entitled to judgement as a matter of law.
- **Differentiated case management (DCM)** processes that provide multiple tracks for case disposition with differing procedural requirements and timeframes depending on the complexity of the case type. The courts then continuously monitor case progress to ensure adherence to track deadlines and requirements and establish procedures for changing the track assignment if needed.<sup>7</sup>

Case management also means that the court develops the operational policies and tools to guide and adhere to new procedures, assesses and adjusts resource needs to effectively manage cases, monitors performance and outcomes to assure quality and justice, and effectively communicates processing standards and requirements internally and externally.

Different case management options are needed depending on court and case needs, and a combination is usually what most courts need nowadays. Case management teams are often best placed to suggest which cases can most benefit from special fast tracks, and which require extensive, step-by-step management involving a judge. They can also assess which case types represent such a wide range of simple and complex cases that a special DCM process should be created to handle them (see for example Box 6.3).

### **Box 6.3. Montgomery County Circuit Court: Differentiated Case Management (DCM)**

Most cases filed in Montgomery County Circuit Court are not just categorised as criminal, civil, family or juvenile cases, but processing tracks are established within each of these major case categories. The court developed DCM plans for each of these major business groups and published information on its website about how the case management system for the Montgomery County Circuit Court works. The processing of each case type and the assignment of cases to a specific “track” are solely within the discretion of the Administrative Judge.

Every effort is made to update DCM plans to reflect legislative, rule and policy changes. The office is managed by a DCM co-ordinator who assists litigants with questions regarding the DCM plans, track assignments, or the policies and procedures contained within each plan. They also ensure that cases are handled accordingly.

Source: (Montgomery County Circuit Court, n.d.<sup>[17]</sup>), *Differentiated Case Management (DCM) Office*, <https://www.montgomerycountymd.gov/cct/departments/dcm.html>.

Some of the earlier recommendations for case management that could be considered by such court level teams are:

District Courts: New options for small claims solutions, including ODR offers; timelines for a strict fast track process for less complex cases; creation of a special Traffic Court.

Circuit Courts: Development of triage options for family cases.

High Court: Development of triage options for chancery and/or other cases; promoting more intensive case management from the early stages for Commercial Cases.

Court of Appeal: Development of an automated tracking system for judgements; development of timeline for other cases; creation of appeal review teams; review case process for streamlining options.

Court-level case management teams could be created to design and monitor overall case management approaches for all or selected case categories. Other case management options could be applied by teams reviewing and processing an individual case (see Box 6.4 for a range of case management team examples).

### Box 6.4. Case-type specific case management teams

Miami, the 11th Judicial Circuit Court of Florida, has implemented the Civil Justice Improvements (CCMT) Pilot Project. This pilot is comprised of four management teams consisting of one judge, one case manager, a judicial assistant and a bailiff, each with specific case management tasks.

Judges of the CCMT handle tasks requiring judicial knowledge, such as conducting hearings, case management conferences and ruling on substantive motions.

Case managers, who have a legal background, assess cases and provide recommendations to the judge for the next appropriate steps to address any management issue arising from the case, reviewing substantive and dispositive motions, recommending rulings and drafting case management plans, highlighting legal issues, and ensuring proper co-ordination among the team.

Judicial assistants handle the general hearing scheduling, monitor compliance with court orders, and prepare certain hearing and court documents and orders, while liaising with lawyers and parties.

Bailiffs deal with case intake, assign tracks or pathways for cases, and undertake courtroom preparation.

The pilots resulted in a significant decrease of delays, higher closure rates and reduced time to disposition. This reduction in case length contrasted with an increase of case events (hearings and conferences). The effort to design a methodology to evaluate the initiative by controlling for cases processed under the pilot was a key component of the project.

Piloted in 2015 in New South Wales, Australia, the Rolling List Court (RLC) is a case management model for criminal matters in District Courts that aims to discourage last-minute guilty pleas, better communication between parties, improved pre-trial disclosure and less frequent adjournments. In ordinary criminal proceedings, interaction between the prosecution and the defence is limited, and judges also hear other matters. In contrast, the RLC consists of a specialised judge who interacts with two prosecution and defence teams. One of these teams prepare for future matters, while the other is at hearings. As a result, almost 60% of cases assigned to the RLC achieved an early guilty plea, compared to 36% for the traditional process. Disposition times also dropped from 364 days to an average of 262 days from committal to finalisation.

The Single Justice Service (SJS) in England and Wales enables magistrates' courts to deal with minor offences in a way that is quicker, more straightforward and more efficient, while still being fair, transparent and rigorous. A single magistrate, sitting with a legal adviser, can decide adult, summary-only, non-imprisonable and victimless offences (such as speeding, fare evasion or not having a TV Licence). They can do this where the defendant has pleaded guilty or has failed to respond to notification that they are being prosecuted. The defendant always has the option to choose to attend an in-person hearing in court. Most of the needed interactions, notifications, responses and submissions are handled online. As a result, 96.51% of cases resolved without the need for a defendant to go to court, with 87% of users either "satisfied" or "very satisfied" with the service.

Source: (UK Government, n.d.<sup>[18]</sup>), *HMCTS services: Single Justice Service*, <https://www.gov.uk/guidance/hmcts-services-single-justice-service>. (Hamblin and Hannaford-Agor, 2019<sup>[19]</sup>) [https://www.ncsc.org/data/assets/pdf\\_file/0013/26230/cjipp-final-evaluation-report.pdf](https://www.ncsc.org/data/assets/pdf_file/0013/26230/cjipp-final-evaluation-report.pdf); (Rahman, Poynton and Weatherburn, 2017<sup>[20]</sup>) <https://www.bocsar.nsw.gov.au/Publications/CJB/2018-Report-The-NSW-Rolling-List-Court-Evaluation-Fianl-Report.pdf>

### 6.3.2. Backlog reduction measures

Court backlog refers to cases pending before the court for a longer period than the one prescribed. If no timelines are defined, backlog cannot be defined and, more importantly, the actual volume of case backlog cannot be established, even it is clear that too many cases are waiting to be dealt with.

The issue of pandemic-related court backlog has now become a serious concern in many countries, and become a matter of media interest in Ireland and elsewhere.

In addition to mounting caseloads with many cases delayed for several years, the Courts Service has identified 87 206 outstanding summonses awaiting issue. The Courts Service estimates that it will take approximately 40 weeks (almost a full year) to address this task, which in turn affects court case completions. Some 114 000 outstanding fine enforcements are awaiting issue, and the pandemic continues to take its toll: at the end of March 2022, the District Courts had to cancel all hearings for two weeks due to many judges and registrars being sick or having to quarantine.

Requests for special courts to hear lengthy childcare and family law cases, help with hearings of backlog in districts and help with overloaded lists currently cannot be addressed at any court level. To address this issue, several OECD countries such as Canada, most EU countries, all UK nations and the United States have launched special teams to deal with backlogged cases. The Irish courts would benefit from this measure if it were possible through additional judicial and staff resources.

In an emergency situation, such as the one courts everywhere are facing as a result of the COVID-19 pandemic, bringing in additional judicial and other staff resources could be a solution to keep the courts functioning and to address the ever-growing backlog, as long as necessary guarantees of independence can be secured (see for example Box 6.5).

#### Box 6.5. Backlog reduction in teams in the Netherlands

The Dutch courts created a central backlog team, known as the “flying brigade”, which is a special task force helping courts to reduce backlog in civil and municipal divisions. Once cases are received, judges and court staff within the chamber prepare draft decisions that are then sent back to courts, providing the latter with more time and resources to hear pending cases or dispose of those with pending decisions. In addition, courts can assign cases to other, less busy courts.

Source: Information shared by the Netherlands, August 2021.

Other ways to tackle backlog, not related to emergency situations, have successfully been applied in other countries as a general case processing measure to manage cases effectively. These additional activities are important to address the current accumulation of cases and to build a long-term response to strategic backlog reduction and prevention.

The first measure can be implemented almost immediately at a limited cost, and involves defining backlog for different case types and by court level. Judges are often best placed to define these metrics. Then, with support from other legal staff, which can include temporary support, cases should be screened to identify gaps in information and outstanding submissions, needed legal research should be conducted, case summaries compiled, and an initial drafting of judgements provided to help judges decide faster. If combined with a pilot to triage selected case types, or at least to provide a fast track, some cases can be moved ahead that would otherwise linger in the system.

The National Center for State Courts in the United States has outlined 12 steps that courts can take to address and manage a backlog situation that cannot be resolved in a short period of time, even when additional judicial staff resources, temporary and permanent, are approved (National Center for State

Courts, 2020<sup>[21]</sup>). Case-level teams in Ireland could review these to see which could be applied in their jurisdictions:

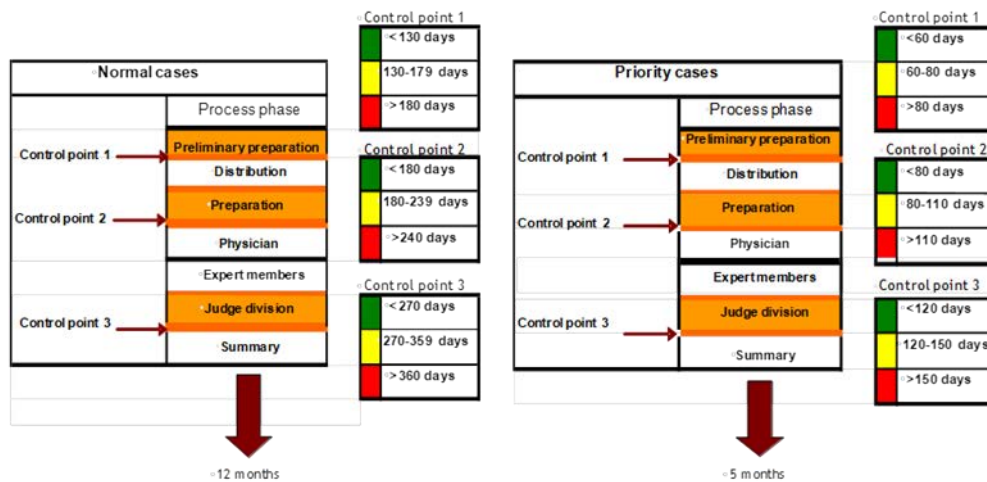
1. Provide information for litigants early, often and in an accessible way.
2. Ensure that traditional paper notifications accurately communicate details about scheduled court hearings
3. Triage existing cases and all new cases upon filing.
4. Embed flexibility into the triage pathways.
5. Get the cases that need judicial attention in front of a judge as soon as possible.
6. Engage judges and court staff in standardising processes to manage the entire civil caseload, including processes to monitor and incentivise effective case progression.
7. Put in place case scheduling orders, communicate deadlines to the parties and monitor compliance with case processing guidelines.
8. Compel lawyers and parties to communicate with each other and attempt to address procedural disputes without formal court involvement.
9. In high-volume case lists, provide procedural opportunities and resources for parties to reach resolutions.
10. Delegate essential case processing tasks to those who benefit most from their timely completion.
11. Embed meaningful deadlines for essential case events to ensure that cases continue to move toward final disposition.
12. Employ meaningful court hearing schedules as a substitute for firm trial dates to keep cases moving despite COVID-related delays.

Despite these helpful initial steps, without additional judges, the current volume of backlog cases may remain difficult to tackle, and likely take years.

In the long term, the Irish courts could aim to have clear backlog definitions for different case types at every court level that would need to be reviewed regularly as legislation and processing conditions change. In addition, Irish courts may continue to draw upon temporary judicial and other staff resources as needed to address temporary shortages, under specific circumstances and providing safeguards to ensure judicial independence. Finally, they may also put in place a strategy to arrive at a point where the collected data, systems and processes in place enable the identification of delays early on to adjust resources accordingly.

This would also mean implementing an IT system for judges to track the pending inventory of their cases. The system in place in several courts in Finland provides a helpful example of how such a system displays the pending caseload. This can be designed to be visible to the presiding judge and select court administrative staff as needed, as well as individual judges to track their own cases (see Figure 6.1). Similar data tracking, dashboards and displays are offered by major international court IT software companies.

**Figure 6.1 Online pending inventory control and time-frame alarm-system in Finnish Courts**



Source: (Finnish Ministry of Justice, 2011<sup>[22]</sup>), *New way of systematic management of delay reduction projects in courts: Combining external expertise and internal participation*, <http://rm.coe.int/new-way-of-systematic-management-of-delay-reduction-projects-in-courts/16807931da>.

### 6.3.3. Case file management and policies

Case file management is a seemingly purely administrative matter, but it is essential to the integrity of court operations and decisions. How well case files are structured and maintained, how clear and detailed related laws, policies and rules are, how well administrative staff are trained in such, and what control mechanisms are in place all impact the efficiency of court processes, including the operations of judges and their decisions, and can affect appeal rates.

The case file establishes the official record of the case. Files should be complete and easily located by registrars and judges to ensure the appropriate pace of justice and of the decision-making process. The structure of the case file and completeness of the information entered will also become relevant when designing an automated court and case management system. Such a system would help to ensure comprehensiveness; however, if rules, policies and current management practices to ensure completeness are lacking, there is a high chance that the related automated system will also be lacking.

Throughout the workload study, some stakeholders mentioned occasional challenges in ensuring file completeness. Occasional gaps in documents in paper files are not unusual and not a concern, unless found to be systemic. Many courts have set standards for case file management that generally cover issues such as retention and disposal policies, access to records, disaster planning, response, and recovery, creation, filing, maintenance and retention.<sup>8</sup> In the context of this study, the Courts Service indicated that no such standards are yet established in Ireland. While some standards may be covered in Irish legislation and court rules, there appear to be some gaps in implementation that could be due to limited details or clarity in how the required procedures are outlined. The establishment of these guidelines, together with regular file completion checks and related training, may be useful tools to consider.

### 6.3.4. Court specialisation

Specialisation is globally considered important to create a more efficient and effective court system. It can also be useful to address broader economic development issues, such as the need for more effective access to contract dispute litigation, improvements in the investment climate or more adequate protection of the environment. Specialisation can refer to judges who have gained particular expertise in a selected field and are assigned almost exclusively to related cases, a special bench of judges dedicated to handling



only certain types of cases, or an entire court set up to handle only a targeted type of cases (Gramckow and Walsh, 2013<sup>[23]</sup>).

All of these types of specialisation exist in the Irish courts and, with the development of the new Family Court divisions, will continue to develop. These include the Drug Treatment Court, the Commercial Court list and other lists focusing on certain case types only, especially at the High Court; and in the future, special Family Courts. There is still room to explore other specialisation options, such as a special Traffic Court in Dublin. The limited data collected for this study indicate that this could be a helpful option, but a more detailed assessment would be needed to design an effective approach.

Specialisation is not always designed to create greater processing efficiency, but rather greater effectiveness in achieving a justice goal. For example, the main goal of the Special Drug Treatment Court in Dublin is to link addicted offenders to the right treatment options and other services to help address the underlying addiction, lack of access to work opportunities, etc., thereby reducing recidivism in the long run. The new Family Court divisions currently being developed shift and expand current family law operations at the District, Circuit and High Court level. The aim is to increase judicial expertise and training in family law, and to streamline family law proceedings to make them more user-friendly and less costly (Department of Justice, Ireland, 2021<sup>[24]</sup>). This should lead to more timely and more effective access to justice for families. To ensure the achievement of this objective, processes would need to be adequately adjusted, together with the needed judicial and other resources within and outside of the court system.

When special courts or lists are created, it is important that data are available to understand if specialisation is justified by a sufficiently large number of cases of this special case category, and to test if the main goal of the specialisation can be achieved. Studies from Australia, the United States and other countries have shown that specialisation can be helpful in improving the processing of cases if the new approach is well designed, but that there are some drawbacks. For example, special attention to, and the allocation of additional resources for, handling business cases can lead to the perception that a court provides preferential services to the business community, but not to the average person. In some instances, special courts or specialised judicial positions have been created when the caseload did not actually justify the additional investment, raising questions as to whether the resources could have been better spent on improving overall court operations. In other cases, it was noted that judges who work on only one type of case may develop a deep but narrow expertise that may limit their focus and lead to a restricted view of the law, which may in turn lead to a reduced ability to consider new legal and societal trends reflected in other areas of the law. Judges may also develop too close a relationship with a particular group of lawyers and interest groups involved in special case types, especially if those groups are relatively small and if judges serve in this special capacity exclusively and for an extended period (Gramckow and Walsh, 2013<sup>[23]</sup>).

Solid data collection to assess the creation of the new family courts would be equally important to ensure that the design meets the expectations, and to inform if and where adjustments may be needed. Lessons learnt from the creation of the specialised personal insolvency positions have shown how important data are and the limitations that a strict position designation brings. For the Family Court, the Irish courts can build upon the experiences of many other courts in countries that have successfully implemented comprehensive family courts, such as the earlier example from Baltimore County (Box 4.15 in Chapter 4).

### Box 6.6. Court specialisation to address different case and litigant needs

The Courts and Tribunals Service in England and Wales launched a Financial List in 2015 for financial matters between businesses to provide a “mechanism for authoritative guidance before disputes have arisen”, and to increase timely access to the courts. Claims of GBP 50 million or more, or those requiring special market expertise, are allowed on the list, and parties issue their claims in the Commercial Court or Chancery Division. Twelve judges, who normally preside on matters in the Chancery Division or Queen’s Bench Division, are available to hear these cases. The judges have financial experience and keep authority over a case from beginning to end. The procedures used are the regular Commercial Court and Civil Procedure Rules, so that the process is familiar to the parties. In addition, as part of the Financial List the court is piloting a Financial Markets Test Case Scheme for cases that need immediate guidance under English law, or that are in the public interest (See (Judiciary UK, 2021<sup>[25]</sup>).

In the Netherlands, the District Courts operate a Patents Chamber, a division specialised in intellectual property cases. This division uses an expedited procedure with strict case management timetables, and limits written pleadings from parties to only one round, with the possibility of a hearing if necessary.

In Canada, federal judges specialised in family law sit on Unified Family Courts (UFCs), which exist in several Canadian provinces. In the absence of a UFC, some family law matters fall within the jurisdiction of provincial or territorial courts, while other family law matters fall within the jurisdiction of superior courts. Where a UFC exists, jurisdiction over all family law matters is consolidated in the superior court in that province or territory. UFCs allow families to resolve legal issues in a single court with specialised judges, rather than in two separate court systems.

### 6.3.5. Timelines and performance measures

Performance measurement is a tool to promote effective judicial governance and accountability, and therefore help protect institutional independence. Court leaders are accountable to both the judiciary and the public for a well-run court, which means that the judiciary, supported by administrative staff, must be able to both effectively measure and understand court and case performance issues, and demonstrate successes and room for improvement.

The judiciary often relies on this aspect of court management, as does the public, to ensure optimum court performance. Ensuring accountability, measuring performance and applying performance measures to court practices are concepts that have been applied in courts around the world for several decades, and continue to evolve. One of the earliest were the Trial Court Performance Standards developed in the United States (National Center for State Courts, 1997<sup>[26]</sup>), which evolved into the now widely applied ‘CourTools’ (National Center for State Courts, 2017<sup>[27]</sup>). The Framework for Court Excellence developed by the judiciary in the Netherlands follows a similar approach (Rechtspraak, 2008<sup>[28]</sup>), as does the performance measurement system established by Danish Courts, although this has a more limited range as it measures the four overall goals set for the courts (Danmarks Domstole, 2022<sup>[29]</sup>). In the United States, Principles for Judicial Administration have also been developed (National Center for State Courts, 2012<sup>[30]</sup>).

These documents provide a solid foundation to help court leaders measure and manage performance. Court leaders must be able to apply them to move from performance measurement to performance management (CORE, n.d.<sup>[31]</sup>). This means that they must have the time and knowledge to lead the design of a performance measurement approach, followed by its implementation, application and future adjustments. What needs to be measured and how depends on the specific context and environment in which a court operates.

Article 6 of the European Convention on Human Rights states that “everyone is entitled to a fair and public hearing within a reasonable time” (Council of Europe, 1950<sup>[32]</sup>). This objective must be pursued through the development of tools, policies, procedures and actions throughout the justice chain, including policy makers, judges, court personnel, lawyers, justice system users and other stakeholders.

Timelines or time standards are one of these tools. The length of judicial proceedings is one of what can be defined as a “trilogy” of goals for judicial systems, whose functioning should be: fair, affordable and in reasonable time, but they have proven useful to assess court operations and policies. Setting timelines is a fundamental step to start measuring and assessing case processing performance and defining backlog.

The CEPEJ has developed a range of timelines for courts in EU member countries to adopt and aim to achieve in progressive steps. The set outlined as Timeframe A states the overall objective all courts in member states should achieve with all proceedings (Table 6.1).

**Table 6.1. CEPEJ Timeframes A**

<b>Timeframe A for civil contentious cases and administrative cases</b>
90% or 95% of all civil contentious cases and administrative cases should be disposed in 18 months from the date of their filing.
<i>Buffer</i>
5% or 10% of very complex pending civil and administrative cases could be older than 18 months from the date of their filing.
<b>Timeframe A for criminal cases</b>
90% or 95% of all criminal cases should be disposed in 12 months from the date of their filing.
<i>Buffer</i>
5% or 10% of very complex pending criminal cases could be older than 12 months from the date of their filing.

Source: (CEPEJ, 2016<sup>[33]</sup>), *Towards European Timeframes for Judicial Proceedings: Implementation Guide*, <https://rm.coe.int/16807481f2>

These initial timelines suggested by the CEPEJ are considered the minimum that countries should be able to achieve. Most importantly, to report correctly countries must have the systems in place to track cases and report on disposition times (i.e. from filing to final judgement).

The Scottish Courts provide an example of an advanced level of court performance measures. The Scottish Courts and Tribunals Service (SCTS) Board is responsible for monitoring the overall performance of the organisation as part of its governance role. On a quarterly basis, the board assesses progress against delivery of the Annual Business Plan and a range of key performance indicators (KPIs) that provide an overview of performance. These are presented to the board in its performance scorecard. The SCTS has a set of 18 KPIs that are being tracked. While several measure overall performance goals of the SCTS, others measure what are understood as core court performance measures, especially 2(b) Disposal of summary criminal cases within 26 weeks, 5(a) Sheriff Summary criminal waiting periods, 5(b) JP Summary criminal waiting periods, 5(c) Ineffective use of court time, 5(d) Court business waiting times (non-summary), and 5(e) Effective tribunal operations (Scottish Courts and Tribunals Services, 2018<sup>[34]</sup>).

Beyond the creation of timelines, the next level of court performance measures, such as those used in Scotland, are also present in the abovementioned International Framework for Court Excellence and CourtTools. Both also provide clear explanations for adjusting to a particular court environment and for implementation, including training, that could be helpful to the Irish courts. Other resources are available from the CEPEJ (CEPEJ, 2015<sup>[35]</sup>).<sup>9</sup>

Actual measures of the quality of court performance are more difficult to develop, as quality in the context of courts is more difficult to define. The CEPEJ has developed quality measures that could be applied across European member states, beginning with identifying areas of quality within the “production process” of the procedure or regarding the substance of decisions made. The CEPEJ working group tasked with this activity points out that in many legal systems, some of this analysis is carried out by judicial inspection

bodies or as part of the appeals process, and states that its activities will rather look at compliance with the rules and obligations applied to the judiciary (CEPEJ, 2016<sup>[36]</sup>). Other efforts have taken a different direction, aiming to define “quality” in terms of procedural fairness.

Both the International Framework and the CourtTools provide models with some measures of quality of processes that are less controversial and easier to implement over time.

### **6.3.6. Use of data in the Irish courts**

The efforts carried out as part of this OECD study have shed light on several gaps in the availability of data within the Irish courts. The lack of data impedes effective management and future planning for the courts, which has made developing the infrastructure for a solid data framework a core element of the Courts Service’s modernisation strategy. Similarly, the Criminal Justice System also faces data limitations, with available data being siloed and unable to track flows of cases, incidents and citizens in and out of the system. This urgently needed framework could have a significant impact on effective and efficient case management and evaluation of practices in Ireland.

The reason for the limited amount of data currently collected seems to hinge on the fact that data are not collected or used for the purposes of case and court management, but rather only for annual reports. While valuable, this limited use has created gaps that mean neither the Courts Service nor the judiciary have the data needed to effectively manage staff (and other resource) allocation, assess case trends and their impact on operations, etc.

For instance, the available data and discussions with Irish stakeholders indicate that in several court business areas, the number of cases at hand, otherwise referred to as pending cases, has increased at a higher rate than the number of incoming cases for several years. Effective data strategies would have reflected this continuously increasing backlog and would have triggered a review to understand the underlying causes and respond accordingly. Differences in case definitions, unclear terminology and data gaps for important measures have also been identified during this study. The Courts Service modernisation programme may be an initial platform to address this issue.

Court Presidents use case business lists created by the Courts Service to make judicial assignments and plan for the next term, which may also explain why the count of court sittings is cited as the measure of court business volume by the Department of Expenditure and Finance.

Several specific areas related to data collection and use are analysed in the following sections.

#### *Specialisation and training for staff in the area of data*

The successful completion of the Courts Service’s modernisation strategy will require judges to be significantly engaged in the process of developing the data requirements. This is understood by the Courts Service and there is recognition and great willingness to engage on the part of the judiciary. To ensure that judges can engage effectively, judicial resources would need to be set aside and those participating may need some preparatory information and insights as to what data are used by other courts, especially judges in other countries, to help them in their day-to-day work and to plan ahead.

Creating the capacities to ensure widespread support for the development of new data requires significant work and time. A data maturity assessment was undertaken to inform the development of the Courts Service data strategy, and showed a range of serious data issues in every assessment category (Courts Service, n.d., p. 12<sup>[37]</sup>). Given that a significant challenge is recognised, much work and investment remains ahead. The Courts Service will require sufficient staff with the capacities to analyse the data and develop the needed management reports, as well as to track current processes, identify where issues occur and assist with informing future adjustments. The Courts Service is currently in the process of hiring staff with

such capacities; however, they will need to receive additional training and access to the many available resources to have a solid understanding of modern case management techniques.

As highlighted above, the data strategy would also need to be informed by a clear case management strategy, leadership from judges and likely additional experts. Without this kind of support, developing a more meaningful data concept for the courts could be difficult to achieve.

#### *Data collection and automated IT systems*

The current software systems need updates, which hampers the task of collecting better and more reliable data. For instance, the civil and family case data collected by the Courts Service for the two lower courts is supported by many unconnected “systems” based on Lotus Notes. The Progress system developed later for the Superior Courts is a stronger system, but still presents data challenges. One potential reason may be that the software is mainly understood as a case tracking system, not a case and court management system, and that management data needs had not been clearly defined at the time of design. Furthermore, the number of licences do not match the number of registrars in the Superior Courts, which often impedes registrars from regularly entering all needed case information into the system during the day. The system appears to be outdated and fragile and reportedly often becomes blocked following the addition of new licenses. Limited existing data to manage cases effectively would be difficult to be complemented successfully until a solid automated case management is in place. In the meantime, the range of needed case data using international good practices and comparative examples could be used to begin developing an initial map of data needed and management reports.

#### *Consistency in case definitions*

Case definitions encountered as part of this study are driven by legal definitions, and do not account for differences in complexity. As a result, it is challenging to distinguish cases that require more time and resources. In addition, while many case processes involve many interim steps of different types, this information is not regularly collected and is difficult to get from the system. As a result, there is no management information for judges to track adjournments, especially by reason. For several case categories, especially at the High Court level, cases reported as resolved “out of court” actually required significant judicial time.

A lack of information regarding important elements that can contribute to longer hearing times has also been identified throughout the study. For instance, there is no information about the number of lay litigants, except at the Court of Appeal level, and there is no information about cases that involved child witnesses or translation and interpretation. As a result of these limitations, the range of less and more complex cases included in each case category makes it difficult to apply expert estimations to establish the time required by a judge to process them. This is especially significant for several civil law categories.

1. Criminal case data are stored in a different system compiled for all court levels, and appeared to provide greater consistency in data definitions and collection with respect to civil law. A good range of data important for tracking case performance and inform management decisions and planning were available; however, the system was not designed to provide such information, and separate reports had to be developed.

#### *The way forward to better collect, analyse and use data in Irish courts*

This report and time study provide a range of suggestions regarding the exact data that could be collected for management purposes. A suggested table with data to collect to better assess judicial (and other) resource needs in the future is provided in Annex D, which could be instrumental for judges and Courts Service to develop a plan to ensure that these data are available in the future, and to outline the needed reporting approach. These efforts would benefit from being part on a wider justice data strategy that would

enable capturing access to justice indicators, monitoring the impact of reforms, and the development of an open justice data culture in Ireland. The Legal Education Foundation in the United Kingdom has highlighted that ongoing justice system reforms towards digitalisation can be an unprecedented opportunity to scale-up justice data collection and use. Relevant data on access to justice that could be captured includes data on legal needs of the population (OECD-OSJI, 2019<sup>[38]</sup>); on access to the formal legal system; to a fair and effective hearing; and to a determination and remedies (Byrom, 2019<sup>[39]</sup>) This would also support progress reporting under the new UN SDG Indicator 16.3.3 on access to justice (OECD, 2021<sup>[40]</sup>).

Court performance data should be developed after timelines and other performance goals are established for the courts. The most efficient process is often for judges to come together and define timelines, backlog, and other case and court performance measures using similar experiences elsewhere. Courts Service staff would need to be enabled (using current system information and training) to develop some reports that include information for court leadership to track case performance on a monthly basis. Guidelines for the development of judicial statistics for all EU member states are available from the CEPEJ (CEPEJ, 2008<sup>[41]</sup>).

HM Courts & Tribunals Service of England and Wales lists detailed information on how data are defined and sourced in its courts and tribunals (HM Courts and Tribunals Service, 2022<sup>[42]</sup>). As part of its work to reform access to justice, an evaluation and recommendation report was drafted in 2019 that outlines data points (page 18) and categories of data (page 25) that should be considered in a data strategy (Byrom, 2019<sup>[39]</sup>). The Ministry of Justice also released a dataset on Magistrate Court user data as part of the UK's Data First programme to help future policy making by understanding links between administrative datasets and crime and justice. The dataset is accessible to accredited researchers (ADR UK, 2020<sup>[43]</sup>).

The National Centre for State Courts in the United States, among others, manages the Open Court Data Standards (NODS), a project that developed business and technical court data standards to support the creation, sharing and integration of court data by ensuring a clear understanding of what court data represent and how court data can be shared in a user-friendly format. The information developed covers all important elements of data management and collection specific to courts and can be adjusted to any jurisdiction (National Center for State Courts, n.d.<sup>[44]</sup>). Adjustments will be needed, but it is easier to make adjustments to a well vetted and tested set of tools than having to develop everything anew. The NCSC also publishes a guide on data governance policy as part of its Court Statistics Project that may be helpful for Courts Service staff to review for their own purposes. The report emphasises the importance of creating a data strategy for courts as an essential underpinning of the strategy for justice system reform as a whole, appointing individuals to oversee data, and managing data quality and validation. Data can include case management data, bulk data, compiled data and administrative data, and may come in a variety of formats (Court Statistics Project, 2019<sup>[45]</sup>).

### **6.3.7. Staffing and training for effective case management**

Depending on the court level, staff to support judges in their daily work are limited or do not exist in Ireland. Similarly, the number of Courts Service staff assigned to directly support judges, especially registrars, is low with respect to increasing numbers of judges and hearings, which leaves less or no time to take on other responsibilities, such as support for enhanced case management, data collection and mediation.

Reportedly, there has been no formal assessment of the work or grading of registrars in any jurisdiction since the administration of courts was transferred to the Courts Service when established. Neither have their grades been revisited, except in a minority of cases. The role of registrar in the courts has been reported as mostly the same – namely to be the definitive record keeper for the court, including drafting the necessary orders. None of the registrars take on quasi-judicial roles, except those delegated to the High Court registrars as Deputy Masters.

The Courts Service provides some case management training to court staff during the initial induction period; however, it was not possible to ascertain if case management in this context means more than a

general introduction on how to manage an individual case within each court setting and how to use the diverse, not interconnected, case management systems. In this vein, a study conducted by the European Judicial Training Network (EJTN) indicated an overall lack of specialised training, not only in EU law but also other areas, for court staff in Ireland (EJTN, 2021<sup>[46]</sup>).

Considering the key role registrars play in ensuring case hearings and other court actions move efficiently, a review of their workload and functions could be useful, especially given the range of changes envisioned to modernise the courts and the need to enhance case management applications. As a positive step in this direction, an open vacancy for a registrar at the Circuit Court level includes the need to be familiar with the modernisation strategy, and envisions that the candidate will be engaged in informing and driving needed change processes (Courts Service, 2022<sup>[47]</sup>). At the same time, the question remains whether registrars have the time to support and carry out more effective case management options and case processes, as well as the time, knowledge and skills needed to effectively engage and drive the modernisation strategy as it relates to their work environment and responsibilities.

Other staff working in the offices of the Court of Appeal, High Court, and different Circuit and District Court offices tend to face similar situations, with general case management training apparently not available for registrars and other Courts Service staff directly involved in handling court cases.

Importantly, there is scope to enhance awareness of staff in courts and Courts Services of the evolution of and current trends in case management applied in other courts in common law jurisdictions, or in continental Europe. It may be useful to disseminate the available resources from organisations a range of institutions, such as the NCSC, Conference of State Court Administrators (COSCA), CEPEJ, All India Judicial Services (AIJS) and International Association for Conflict Management (IACM) and enhance training on advanced case and court management courses, as well as promote exchange of lessons learnt with similar jurisdictions.

### **Box 6.7. Court and case management training across countries**

#### **The Netherlands**

Staff at courts in the Netherlands can opt for continuing education offered by the Training and Study Centre for the Judiciary (SSR), and spend at least 90 hours spread over three years on training, some of which is focused on case management training.

#### **United Kingdom**

Across all UK nations, the HM Courts and Tribunal Service offers a comprehensive training programme for staff supporting the courts, including target court and case management offers. In addition, new case management initiatives, such as the earlier mentioned Better Case Management initiative, include related training for staff.

#### **France**

Chief clerks receive 18 months of professional introductory training at the National School of Clerks (École Nationale des Greffes, ENG). In addition, the ENG offers continuing education in case management for judicial clerks on civil and criminal procedures, including practical internships to understand the organisation of services and become familiar with the management methods of judicial activity. Case management training was included in the introductory and continuing curricula after a reform in 2013 to pursue four objectives: 1) enhancing the professional identity of the chief clerks; 2) refocusing knowledge on the missions of management and administration; 3) revitalising and decompartmentalising training; and 4) individualising the training course.

#### **United States**

Extensive court and case management training resources and offers are available to state court administrators and other court staff from several organisations. For example, the Institute for Court Management offers three levels of certification: the Certified Court Manager (CCM) and the Certified Court Executive (CCE) credentials, and the Institute for Court Management (ICM) Fellows Program. These encompass a broad range of court specific management knowledge and skills components, some online, including an international fellow programme. International fellows can also take advantage of the many online offers. Some countries, such as South Korea, have used these opportunities extensively for at least two decades to expose judges and court administrative staff to the latest developments in this field. For South Korean courts, this was one of the pillars to develop a judiciary that can lead effective court management and automation.

Individual state court organisations also have their own comprehensive training programmes for court staff. For example, the Texas Center for the Judiciary offers a range of training opportunities for judges and court administration in court and case management, as well as an introductory courts and annual conference.

Source: (Rechtspraak, 2015, p. 69<sup>[48]</sup>), *Kengetallen gerechten 2015* (in Dutch), <https://www.rechtspraak.nl/SiteCollectionDocuments/Kengetallen-Gerechten-2015.pdf>; (Judiciary of England and Wales, 2018<sup>[49]</sup>), *The Better Case Management (BCM) Handbook*, <https://www.judiciary.uk/wp-content/uploads/2018/02/bcm-guide-for-practitioners-05032018.pdf>; (ENG, 2013<sup>[50]</sup>), *Refonte de la formation initiale des greffiers en chef (Overhaul of the initial training of chief clerks)*, <http://www.eng.justice.fr/index.php?rubrique=204&ssrubrique=12124&article=25269>; (République Française, 2013<sup>[51]</sup>), *Arrêté du 5 mars 2013 relatif à la formation statutaire des greffiers en chef des services judiciaires (Order of 5 March 2013 relating to the statutory training of chief clerks of the judicial services)*, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000027243027>; (National Center for State Courts, n.d.<sup>[52]</sup>), *ICM: Three Levels of Certification*, <https://www.ncsc.org/education-and-careers/court-management-program/icm-certification-model>; (Gramckow, 2016<sup>[53]</sup>), *Leveraging technology to improve service delivery in the justice sector in South Korea*.

Providing both introductory and advanced case management training to registrars and Courts Service staff involved with handling cases could be useful. Currently, training in overall court management and specifically case management techniques for judges seems limited in Ireland, and presiding judges would benefit from training in effective court and case management. They would also need the time and support to actively advance, lead and monitor court performance and case management effectiveness.

Some of the development work and specific research studies needed could be outsourced. For example, outreach to local universities with a solid public administration masters and PhD programme or a similar focus may be a helpful option to boost the Courts Service's internal capacities. Such collaboration between courts and universities have proven beneficial to both, providing researchers and students with a real-life challenge to study, and the court with access to skilled researchers to bolster limited staff resources. Examples of such collaboration can be found at the Justice Programs Offices at American University,<sup>10</sup> the Montaigne Centre for Judicial Administration and Conflict Resolution at the University of Utrecht,<sup>11</sup> and the International Institute for the Sociology of Law in Oñati, Gipuzkoa, Spain.<sup>12</sup>

As noted, the level of case management support judges need for their daily operations, for longer-term management and planning, and to inform policy development, input to legislative reform and longer-term strategy setting is a policy decision for Irish authorities to make.

Close collaboration between the judiciary and Courts Service management and staff is needed to support effective case management, coupled with training in this area appropriate for their position. Case and court management is a team effort that requires clear alignment of responsibilities informed by data, as well as the creation of case management teams at each court level and eventually also for major case categories and lists. This would ensure that all operations are reasonably streamlined, and maximise judges' time to deal with cases instead of tracking events and analysing data.

Beyond training to enable judges and court staff to manage cases effectively on a day-to-day basis, longer-term perspectives would need to be adopted. This would enable judges and staff, particularly presiding



judges, to manage and plan the overall workload and staffing requirements, inform future reform needs, and adjust to the courts' strategic direction. While this is a function currently not present within the Courts Service, there are plans underway to address this as part of the modernisation effort. An example of such a division created to support the courts in Washington DC is outlined in Box 6.8.

### **Box 6.8. Strategic Management Division at the District of Columbia Courts**

The Strategic Management Division works to build court capacity to develop, execute and evaluate strategy and performance to better serve the public. It provides innovative strategies and evidence-based information to develop policies, enhance the administration of justice and improve the quality of services at DC Courts. The division performs strategic planning, analysis, research and performance measurement functions to enhance strategic management of DC Courts. Services enable judges and court administrators to make decisions based on evidence and best practices, and facilitate court performance monitoring and accountability to the public as the District's Judicial Branch.

The Strategic Management Division team is responsible for:

**Strategic planning and development:** Leading court planning and development initiatives to set organisational goals, foster innovation and change management, and promote effective strategy execution, collaborating with other divisions in ongoing efforts to develop strategic and performance solutions to enhance the delivery of justice. Staff work with the Strategic Planning Leadership Council (SPLC) to produce a Strategic Plan for the Courts every five years and to monitor implementation.

**Research and evaluation:** Designing and executing research studies, programme evaluations, and data, policy and business process analyses to evaluate court programmes, services and operations. Research results are used to inform programme enhancements, request funding for new services and reengineer business operations to increase efficiency. The division promotes collaborative partnerships and data exchanges with external research organisations and academic institutions to support evaluation initiatives that will enhance the state of knowledge about the justice system.

**Organisational performance:** Working with court leadership to identify organisational performance measures that align with the Strategic Plan and focus on outcomes important to the public. Division staff work closely with the Chief Judge's Performance Standards Committee to foster continuous performance improvement within the Superior Court, and with divisions to develop cost-effective data collection and reporting procedures that adhere to quality standards. The division co-leads the courts' business intelligence programme with the Information Technology Division. The courts' ability to monitor its performance as a public institution is essential to maintaining the independence of the Judicial Branch, as well as the trust and confidence of the community.

Source: (District of Columbia Courts, n.d.<sup>[54]</sup>), *Strategic Management Division*, <https://www.dccourts.gov/about/learn-more/strategic-management-division>.

### **6.3.8. Case management IT solutions for judges and court staff**

The evolving modernisation programme in Ireland is designed to replace the systems currently in place. Significant planning activities have been underway, including a review of lessons learned. This is an important exercise, as even the newer Progress system for the Superior Courts showed room for improvement and requires additional licences to enable smooth working conditions for registrars.

A new jury management system is also being developed. Envisioned to handle the approximately 120 000 jury summons the court issues per year, a three-part implementation plan was announced in 2020, with the objectives being to 1) centralise the jury summons process; 2) streamline and improve processes; and

3) inform the design of a fully centralised digital system. So far, phase one has been accomplished, and initial cost savings could be measured. Some progress was also reported to have been made regarding the streamlining of processes. Nevertheless, when the most recent annual report was issued, all work continued to be paper based (Courts Service, 2021<sup>[55]</sup>; Government of Ireland, 2020, pp. 21-29<sup>[56]</sup>).

Implementing IT solutions in complex systems such as courts tends to be a slow process. Lessons learnt from failed projects have shown that effective court and case management processes must be built upon effective, streamlined processes to make a difference, and must be designed in close collaboration with court administrators and judges. See next section for further discussion on simplification of procedures.

A good Court Management Information System (CMIS) is designed to support the case management techniques implemented and the related organisational functions throughout the entire court process across all courts. If appropriate case management techniques are developed and translated into CMIS, they offer the ability to effectively track the status of cases and their position in the court process, support the development of caseload and possibly workload statistics and management reports, and monitor case processes, all of which contribute to performance monitoring. Regularly gathered statistical information of the flow of cases through the court process can identify process bottlenecks and case delays, which can inform about needed resource and process adjustments (Gramckow and Nussenblatt, 2013<sup>[16]</sup>).

These systems support controlling data and defining electronic, paper and other media input to case records; establish record control; support managing case processing and record updating, as well as scheduling case events and tasks and sending notifications; support controlling and storing final records; and provide reporting management information. More advanced systems bolster broader court administration support functions such as expenditure accounting, budgeting, tracking, collecting and accounting for filing fees; revenue accounting and accounts receivable; and the full range of human resource and talent management functions. These applications can be integrated with or at least connected to case management solutions, thereby enabling the court to manage its resources according to case volume and demands. Other technology applications can also be linked, such as electronic document management, electronic filing or judicial decision-making support functions.<sup>13</sup>

Many third-party providers offer effective and flexible software solutions for the entire range of functions needed, which are scaled and phased to the needs of each particular court system. There are also many resources available online to assist courts seeking to develop a new system in developing the details needed and building upon lessons learned by others. A broad and comprehensive range of guides and tools that assist in design, including system and data standards, are for example available online from the US National Center for State Courts<sup>14</sup> and from the CEPEJ.<sup>15</sup>

Many different functions have been automated across court systems around the globe, with the examples shown in Box 6.9. All automation can be helpful by itself, for instance it can limit foot traffic at the courts, save time for litigants and others to come to the court, and save postage costs for sending summonses and notices. Nevertheless, the basis for all further automation to be effective is a good case management system informed by effective policies and processes and sound user experience. If the fundamental functions of the courts are not effectively structured, effective management of the courts will remain hampered. In this context, there appears to scope for the Courts Service to review its digitalisation and other modernisation efforts.

### **Box 6.9. Court automation solutions in selected countries**

#### **United Kingdom**

Courts across the United Kingdom have been supported by a range of solutions that continue to evolve. For example, Civil Money Claims Online, earlier versions of which had been introduced over ten years ago, is a service that offers parties the ability to issue, respond and settle money cases online 5.2 weeks

faster than before, and without the involvement of a third party. Similarly, the divorce online system, rolled out in 2018, allows parties involved in non-contested divorces to carry out the process faster, reducing application errors to 1% compared with the paper-based system (HM Courts & Tribunals Service, 2019<sup>[57]</sup>).

There is a new online system for jurors to reply online to summons, confirming their availability or requesting a date change. An overwhelming majority of jurors (close to 99%) now respond online within seven days, and accepted summons are uploaded automatically to the internal court system without the need of staff members to manually complete forms (HM Courts & Tribunals Service, 2019<sup>[57]</sup>).

Case management across all courts is supported by the “Common Platform”, a case management system integrated with other systems to decrease task duplication and free up administrative staff time. The platform allows users to access, manage and share criminal case information for several relevant stakeholders, such as the judiciary, police, solicitors and barristers, prosecution service, probation service, youth and witness support services, and court staff (HM Courts & Tribunals Service, 2019<sup>[57]</sup>). The HMCTS Magistrates’ Rota system, an online calendar system for magistrate sittings, was piloted in 17 areas before being rolled out across England and Wales in 2016. Magistrates enter their availability and court administrators use the tool to allocate sittings and share the information online (UK Government, 2016<sup>[58]</sup>).

CaseLines, an evidence management platform, has been introduced for Crown Court matters so that legal professional and court staff can access case information quicker and in digital format. This has led to a 50% reduction in hearings because parties can prepare, advise and enter pleas more effectively. This reduces the number of unnecessary adjournments and helps deliver justice quicker. It is estimated that this system cuts cost by GBP 70 per hearing. It is worth noting that the introduction of this system is a starting point in building new capabilities such as artificial intelligence tools that can search bundles, translate and read text (Reform Research Trust, 2018, p. 8).

### **Singapore**

Singapore eLitigation started at the Singapore Supreme Court with an initial case management and electronic filing solution in 2000, which reduced case backlog by 92% within three years. The system was upgraded in 2013 to deliver new functionality in response to technical advancements and the needs of the justice system. The upgraded eLitigation is a web-based platform that provides access to a content management system and e-form technology. Users engage through a single access point and can actively manage files from front and back end. When a user inputs information into the e-form, the system stores this information on the cloud and can auto-populate supplemental documents in the case (CrimsonLogic). Implementing the broader upgrade required a “structured and comprehensive change management programme”. This included seminars, e-guides, module training, and a 24/7 helpdesk to train staff and users on how to use the system.

### **Scotland**

A simpler, less automated but important tool for managing the performance of the courts is used by the Scottish Courts and Tribunal Service (SCTS). In October 2020, the SCTS started publishing a monthly workbook with information on volume of cases and trends for criminal cases, which has since been expanded to other cases. The workbook can be used alongside quarterly office statistics to provide forecasts and transparency around scheduled trials. As part of its performance management system, this includes monthly information about case levels and court backlogs (present and projected). This information is obtained through data and modelling carried out by analysts and a statistician. It is shared with the judges, court managers other justice organisations, and published on its website (Scottish Courts and Tribunals, n.d.<sup>[59]</sup>).

Source: (UK Government, 2016<sup>[58]</sup>), *Magistrates' Rota application roll out*, (<https://insidehmcts.blog.gov.uk/2016/07/22/magistrates-rota-application-roll-out/>); (Scottish Courts and Tribunals, n.d.<sup>[59]</sup>), *Official Statistics*, (<https://www.scotcourts.gov.uk/official-statistics>). (HM Courts & Tribunals Service, 2019<sup>[57]</sup>)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902301/HMCTS\\_Annual\\_Report\\_and\\_Accounts\\_2019-20\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902301/HMCTS_Annual_Report_and_Accounts_2019-20_WEB.PDF)

A key concern regarding technology is that any IT-supported solution must be easily available and easy to handle by all who access the courts. The design would benefit from adopting a people-centred lens that ensure the system is user-friendly for staff, counsels and parties alike. It should also consider interoperability, or even integration with, existing alternative dispute resolution mechanisms, to capture processes both online (ODR) and in-person. Limitations in bandwidth, connectivity and available technology make it difficult for some individuals or organisations to participate in virtual court processes, creating a vulnerable group due to the digital divide. A balance must therefore be struck between using data to ensure that technology's benefit to people is maximised, while protecting fundamental human rights and the most vulnerable groups. A multichannel approach to justice that offers different possibilities to cater to the needs of each group is preferable. Some US courts with "user support" centres that had to close due to the pandemic started providing assistance online and via phone and chat options. Other courts set up programmes to allow parties to loan technology and get free virtual private network (VPN) access to be able to join virtual proceedings.<sup>16</sup>

Other concerns are that the distance introduced by virtual proceedings can limit the efficiency of some tasks, such as document-sharing during proceedings or easy access to private discussions between individuals involved in the process. Technology may also be a challenge to key processes, including defence counsel building rapport with clients.

Recent studies conducted in the United States show that remote hearings take somewhat longer than similar hearings conducted in-person, mainly due to ongoing issues with the use of remote hearing technology. In addition, preliminary data suggest that fewer cases end up in default judgements as more people attend remote hearings, which can extend the time a hearing takes, but also may increase the number of hearings held. The full impact of remote hearings on different case processes and case types is not yet completely understood, and may change over time as people get more used to them (National Centre for State Courts, 2022<sup>[60]</sup>). Similar observations were made for European courts, with a survey of active and former members of the Council of Europe's Consultative Council of European Judges finding that rather than saving time, remote hearings were not more efficient than face-to-face hearings. Therefore, the hope that remote hearings alone will suffice to reduce backlogs may lead to disappointment (Sanders, 2021<sup>[61]</sup>).

These justified concerns should be addressed in consultation with others involved. Policies should reflect the issues, and the solutions developed elsewhere that can be adapted by other courts should be considered.

Not all court sessions lend themselves or are appropriate for virtual hearings. As mentioned, studies in the United States, where courts have over ten years of experience with virtual hearings, have pointed to issues such as higher pre-trial rates due more frequent denials of bail. It is likely that similar patterns will appear in Ireland, but without related data this cannot be confirmed. Research efforts focused on these issues could provide a broader understanding of the effects of substantially adopting virtual technologies, and inform decisions for court technology implementation going forward.

There is a need to better understand the impact of the different procedural measures, virtual and other alternative hearing solutions on users, as well as on the time judges and court staff need. Across the United Kingdom and the United States, many courts are observing that these formats impact their workload differently, especially as they become more permanent fixtures. As a result, there is a need to track this impact to ensure future workload assessments and related position adjustments reflect the differences

compared to in-person proceedings. Further workload studies would need to reflect both types of hearings as they are implemented. A good first step would be qualitative sessions such as Delphi or focus groups to develop adjusted workload estimates (National Center for State Courts, 2022<sup>[62]</sup>).

Case management strategies can take advantage of the many resources available that have been developed by courts and gone through similar efforts. They should ensure that any system is designed in close collaboration with judges and court management, with input from other stakeholders, as needed.

### **6.3.9. Potential IT and other solutions to serve all court users more effectively, especially in outlying provincial districts**

In April 2020, courts in Ireland began conducting the first remote hearings, joining many OECD countries that introduced virtual hearings for the first time, including Greece, Italy, Israel, Latvia, Poland, Portugal, Slovenia, Spain and Switzerland (OECD, 2020<sup>[63]</sup>). The successful use of virtual hearings during the pandemic for thousands of cases in Ireland has created new opportunities to design more effective access to justice solutions. Even though virtual hearings could not be held in some rural venues, most locations provide some options that can be built upon. Even in countries with the most advanced digital tools, judges and other justice and legal actors faced challenges to abide by social distancing rules and be connected to the needed secure technology outside regular court premises. Additional locations had to be found and technology had to be scaled up and expended. Box 6.10 and Box 6.11 highlight some options to maintain digitalisation and other advances prompted by the pandemic based on lessons learnt globally and in Ireland.

#### **Box 6.10. Looking ahead: stabilising digital transformation from the COVID-19 pandemic**

Studies and lessons reported from **Canada, the United Kingdom, the United States and many European countries** indicate that implementation of digital tools scaled up in response to the pandemic will be helpful to ensure efficient and effective court operations for all in the future in many countries, including Ireland. These are:

- **Maintaining remote and paperless work processes for courts:** Even before the COVID-19 pandemic, courts were pursuing paperless processes and other IT improvements. Although models that allowed easy working from home were valuable during the pandemic, they also would improve efficiency after the pandemic.
- **Continuing virtual elements of in-person processes:** Although a return to traditional in-person jury trials is a priority, maintaining virtual components wherever possible – for example, in the jury selection process, callover and some interlocutory hearings – would increase efficiency and make jury service less burdensome.
- **Maintaining virtual connectivity between courts and corrections facilities:** Courts and correction agencies noted the high value of bringing individuals from custody to court virtually as it increased safety for all and cut costs involved with prisoner transportation and security at court. The impact on the time needed for these hearings, and especially the outcome and decisions, must be compared to in-person hearings to fully understand if efficiencies in one area are not offset by negative consequences in others.

Note: A range of resources have been developed in other countries that Irish courts could adapt to the national context as relevant. For example, helpful information can be found at RemoteCourts.org, an international research initiative supported by HMCTS. In addition, the OECD Compendium of Country Practices (OECD, 2020<sup>[64]</sup>) gathers examples, as does The Pandemic and the Courts, a website from the National Center for State Courts focused on US courts (National Center for State Courts, n.d.<sup>[65]</sup>), and *The Functioning of Courts in the Covid-19 Pandemic*, an OSCE/ODIHR report with an international focus (OSCE/ODIHR, 2020<sup>[66]</sup>). In May 2020, the Michigan (United States) Supreme Court and the State Court Administrative Office created a Lessons Learned Committee to assess the experiences of judges, court staff, other justice sector actors and court users during the pandemic to develop recommendations for adjustments and future planning, with a large focus on the use of digital tools such as Zoom for virtual trials (see Box 6.11).

### Box 6.11. The Lessons Learned Committee in Michigan

The Michigan (United States) Supreme Court and the State Court Administrative Office created a Lessons Learned Committee that drafted a report summarising experiences that may be helpful to the Irish courts.

Only 24% of the Michigan State Courts had disaster response and management plans in place before the pandemic struck. Prior to the pandemic, some Michigan courts had consulted with their local health department regarding the impact of an infectious disease/epidemic outbreak on the justice system, and others were experimenting with Zoom® for certain limited hearings. However, even these courts struggled to adjust to the challenges of the pandemic, although less so than others. An assessment by the committee showed that “the more coordinated a court’s operations were among administration, judges, magistrates, referees, clerks, registers, staff, prosecutors, public defenders, city/county operations, sheriffs, jails, friends of the court, bar associations, Michigan Department of Health and Human Services, local health departments, and other key stakeholders, the more nimble and responsive the court – and the more positive the experience for those using and relying on the courts” (Michigan State Court Administrative Office, 2021, p. 6<sup>[67]</sup>).

One relevant finding was that courts in more rural areas could not support Zoom sessions, even though they were authorised to do so and sufficient licences were available. Existing hardware, connectivity and staff were not able to accommodate this option, and neither were most court users. In addition, co-ordination with other justice sector agencies proved challenging given the limited early cross-sector co-ordination in some locations. This report mirrors many issues courts across the globe and in Ireland faced, and some of the recommendations developed as a result may be helpful.

Source: (Michigan State Court Administrative Office, 2021<sup>[67]</sup>), *Michigan Trial Courts: Lessons Learned from the Pandemic of 2020-2021*, <https://www.courts.michigan.gov/4a4803/siteassets/covid/covid-19/lessonslearned.pdf>.

The need to cover outlying provincial locations appears especially important for those with less means, as public transportation does not exist in many rural counties. As such, it might be important to explore solutions with others, especially social services, and access to lawyers could be one way to develop the needed service network in provincial areas. Access to lawyers in rural areas, for example, seems to often present a challenge, and can add to uneven representation in rural court locations contributing to delays and higher numbers of lay litigants. A review of access to lawyers and options to address gaps was conducted in Canada, and highlighted the need for courts to consider this issue and involve lawyers in developing joint solutions (Baxter and Yoon, 2014<sup>[68]</sup>). This type of review mapping the justice journey and barriers faced by users to reach legal counselling could be beneficial for more cost-effective, evidence-based resource allocation and regulation Ireland, especially if coupled with a study of the legal needs of the population.

An additional consideration regarding the use of virtual trials, highlighted by the OECD, the CEPEJ and other international organisations, is that closed virtual hearings limit the right to public hearings, while broadcasting virtual sessions can have negative impacts on some parties, especially victims, witnesses and the accused (OECD, 2020<sup>[64]</sup>). Ensuring access for parties, the press and others, while at the same time making sure that vulnerable participants are not exposed to unnecessary risks, has been an issue with virtual hearings since before the pandemic. Where available before, measures such as limited access streaming and the preclusion of unauthorised recordings were in place. In countries where virtual hearings were less common before the pandemic, these had to be developed along with mechanisms to ensure adherence can be regularly checked. Given the sensitivity of the issues involved, the privacy interests of participants must be considered.

This important consideration goes beyond concerns for the safety of victims and witnesses involved in trials. Streaming trials may also be potentially unfair to the accused, regardless of whether they are found guilty. Streaming risks creating additional "digital punishment" as a result of broadcasting the hearing, and has to be mitigated by limited access policies. Broadcasting proceedings are particularly incompatible with the goals of problem-solving courts (Jackson et al., 2021<sup>[69]</sup>). Equally important is the need to provide special victim support during backlog situations to keep victims informed and engaged to ensure that they are not discouraged to appear in court, virtually or otherwise, when the time comes (Victims Commissioner, 2021<sup>[70]</sup>). The need to cover outlying provincial locations appears especially important for those with less means, as public transportation does not exist in many rural counties. As such, it might be important to explore solutions with others, especially social services, and access to lawyers could be one way to develop the needed service network in provincial areas. Access to lawyers in rural areas, for example, seems to often present a challenge, and can add to uneven representation in rural court locations contributing to delays and higher numbers of lay litigants. A review of access to lawyers and options to address gaps was conducted in Canada, and highlighted the need for courts to consider this issue and involve lawyers in developing joint solutions (Baxter and Yoon, 2014<sup>[68]</sup>). This type of review mapping the justice journey and barriers faced by users to reach legal counselling could be beneficial for more cost-effective, evidence-based resource allocation and regulation Ireland, especially if coupled with a study of the legal needs of the population.

There is also an uneven provision of other social service and alternative settlement options. If courts and other services face similar issues, the cost of creating information kiosks or special joint rural services websites could be shared. Co-locating these courts in more modern buildings, where mobile mediators and social services would be available, possibly on the same days the court is sitting, could offer both cost-saving options and could make referrals easier, as well as potentially creating other synergies.

It would also be important to consider the needs of judges regularly sitting in rural locations, who tend to have fewer opportunities to converse with colleagues, exchange experiences and hear about the latest legal developments, as well as more difficulties participating in training. Creating regular virtual exchange opportunities and access to online information and training is essential, as is the need to ensure that rural-based judges can attend judicial gatherings and in-person training. Both are important for ensuring that all judges are up to date with the latest legal developments and court modernisation trends, and can enable the sharing of experiences that can be fed into policy and resource discussions and inform processes about the needs of litigants. They can also help maintain judges' personal well-being.

The Irish court districts in their current configuration were last adjusted in 2008. However, much has changed since then, including population shifts, moving of economic activities to other locations, seasonal population shifts and electronic connectivity in rural areas. This has reportedly resulted in a substantial disparity in caseloads among District Court districts. In this context, it could be an opportune moment to assess the current configuration of the districts, and possibly create larger districts to allow for more flexibility in assigning judges across an area.

This re-configuration would require a mapping of the cases that currently come to District Courts, actual justice needs, other resources available in assisting with legal matters, and other support services available locally, on regular rotation or virtually. While this mapping process would need to be tailored to individual jurisdictions, examples from other countries could serve as a relevant starting point.<sup>17</sup> For example, a 2018 policy paper issued by the US-based Conference of State Court Administrators focused on defining the challenges and needs of different rural jurisdictions in the United States, and outlined some of the core options to focus on to build a more efficient court service delivery system in rural areas (Conference of State Court Administrators, 2018<sup>[71]</sup>).

### **6.3.10. Simplification and streamlining of procedures: learning from the COVID-19 pandemic**

Simplification of procedures is a relevant tool to reduce the time and resources required from public services when required, as well as a way to reduce access barriers for citizens who may find it challenging to navigate complex, long or cumbersome procedures. This approach became particularly relevant during the COVID-19 pandemic, when justice systems increasingly adopted risk-based approaches to maintain accessibility of services. The application of good regulatory principles (such as risk proportionality, using the lightest possible process/procedure for the desired result, using information regulation rather than product approval when no major risk is present, etc.) can be useful to foster efficiency gains.

In Ireland, along these lines, callover at all court levels was moved to virtual or audio sessions and centralised at the District Courts and Court of Appeal, and to some extent at the Circuit Courts, and became more streamlined at the High Court. This significantly simplified a process that had been complicated before. In addition, hearing schedules at all court levels were finally assigned timeslots throughout the day, a necessity for virtual hearings and also useful for in-person sessions. Building on the lessons learned in Ireland, as well as other countries (see Box 6.12) during the pandemic, there is scope to continue exploring opportunities to simplify processes and procedures across a wider range of areas, also as the basis for improved case management and implementation of digital / IT technologies.

#### **Box 6.12. Selected examples of procedural simplification**

In an effort to streamline existing processes, the Federal Courts of Australia devised a specific, nationwide and fast-track “COVID-19 list” for urgent family matters, such as child abuse or domestic violence (Federal Circuit Court and Family Court of Australia, n.d.<sup>[72]</sup>; Centre for Justice Innovation, n.d.<sup>[73]</sup>). To apply to the list, parties are provided with affidavit forms that must be emailed to a dedicated COVID-19 list email to certify that:

- The application has been filed as a direct result of, or if indirect, has a significant connection to, the COVID-19 pandemic.
- The matter is urgent or of a priority nature.
- The party has made reasonable attempts to resolve the issue unsuccessfully.
- The matter can be dealt with using electronic means (e.g. using telephone or video link).

Once an application has been made, early diversion strategies are set forth and the National Registrar triages the case to assess if it is suitable for an urgent electronic mediation or conciliation. If there is significant risk to the parties, the registrar refers the case directly to a judge. To ensure flexibility in how judicial resources are deployed, judges will hear COVID-19 List matters on a national basis, i.e. from across the country, not just by their assigned districts.

In New Brunswick, Canada, a pilot project for jury summons and selection was established by the courts. Processes for summons and paperwork for jurors were streamlined, making it easier to identify



ineligible or exempted jurors. Language was revised, question and answer sheets were added to the summons, as were checklists providing step-by-step guidance to enable potential jurors to understand the duties and possible exemptions for jury duty (Government of Canada, 2020<sup>[74]</sup>).

The courts in Ontario, Canada developed a new case management approach to address the significant backlog that developed during the COVID-19 pandemic and continued to grow. The Judge-led Intensive Case Management Court (JICMC), a separate division, was introduced in every major court location across the province. JICMCs supplement and assist the regular case management courts operating at each court location. Cases are referred to the JICMC based on case age, with priority being given to older cases. Unless otherwise directed by the regional senior judge or designate, all cases in regular case management courts that are 15 months or older will be referred to the JICMC. At the direction of the regional senior judge or designate, the age threshold for referral to a JICMC may be adjusted in a location to account for case volumes. Cases that meet the age threshold but do not require further case management may be adjourned to another court (Ontario Court of Justice, 2021<sup>[75]</sup>).

## 6.4. Reviewing court functions

In many countries, courts have a range of other functions beyond handling criminal, civil, family, administrative and other cases, and judges and court staff have different responsibilities in handling these other matters. Decades, often centuries, of the development of local, regional and state governments and court jurisdictions determine today the range of responsibilities of courts beyond handling cases brought to them, and judges may or may not have a role in these proceedings and decisions. The creation of a unique administrative law structure in most continental European countries that follow the Napoleonic law tradition, for example, generally meant that the initial review and appeals of decisions and actions of administrations are handled by government lawyers within the administration, and only appeals against their decisions are handled by the courts. Most of the many licensing applications currently handled by the District and even Circuit Courts in Ireland, for example, would not come before most courts in continental civil law countries in Europe, unless they involved a contested licensing dispute that was reviewed and declined by the relevant licensing agency (see discussion in Chapter 4).

While it is not unusual that courts have other responsibilities, it would be important to ensure appropriate consideration of how to optimise the use of judicial time. In Germany, for example, courts manage a range of registers, such as land and real estate, movable property, company registries, and registries of wills that historically were part of the courts' responsibilities. These rarely require judicial time, but tend to require significant non-judicial resources and often generate a significant fee-related income source for the administration of the courts. This is also true for most licensing cases handled by the courts in Ireland, which may be why the courts would be less interested in these cases being handled elsewhere. Automating application processes and moving most decision making to non-judicial staff, leaving only contested applications to the judges, could be a more efficient option to explore.

In comparison, how the more than 150-year-old Wards of Courts system is currently set up in Ireland requires judges to make decisions that would tend to be the initial responsibility of related administrative agencies in other countries, leaving only review and disputed issues to the courts. It also places the responsibility of managing these related assets on the courts. This is not the most common approach, but is not unique to Ireland. The scope of responsibility awarded in relation to asset management is less common. In 2015, assets reached over EUR 1.5 billion resting with the court (Joint Committee on Justice and Equality, 2018<sup>[76]</sup>). A significant reform effort is still evolving (Holland, 2020<sup>[77]</sup>). The Assisted Decision Making (Capacity) Act 2015 (the 2015 Act) introduced a new legal framework for supported decision making in Ireland. On commencement of Part VI of the 2015 Act, S.54, which was recently triggered, a three-year review period begins during which all existing wards of court must be reviewed and transferred

to the new system, requiring additional High Court and possibly Circuit judges for this temporary additional work. The longer-term impact on judicial time required to handle future cases remains to be clarified. As will be explored in Chapter 4, some options applied in other countries could potentially be used with adjustments in Ireland.

### Box 6.13. Towards more effective court, case and data management – Key recommendations

#### Short-term:

- **Data for case management and planning:** Repurpose existing data collection efforts to ensure that data reports and processes are not only conducted with public information objectives, but to also assist in case management and resource planning. In this vein, develop a definition of backlog for each case type and court level.
- **Clarity of responsibilities, co-ordination mechanisms and internal capacities:** Enhance clarity in the distribution of responsibilities and links between the judiciary, Courts Service and other relevant institutions regarding case management policies and their implementation. Consider the establishment of a specialised committee or group within the Courts Service’s internal structure, or on the Courts Service Board, to focus on case management or overall court performance to develop overall policies and drive changes in this area. Establish innovative co-ordination schemes among institutions and external partnerships to boost Courts Service’s internal capacities, including outsourcing projects that require specific technical expertise and reaching out to local universities with a solid public administration masters and PhD programme or a similar focus.
- **Goals for court and case management:** Set goals for court and case management overall and at each court level, and develop advanced case management options in collaboration with the Courts Service and other stakeholders.
- **Case management pilots and resources:** Consider pilot-testing specific case management techniques led by case management teams (e.g. fast track for small claims, triage by case type and complexity, effective limits to adjournments and multiplicity of interlocutory hearings), following a review of priority areas and implementation requirements, including adjustments to staffing and training. Disseminate among court staff international practical resources available online concerning case management approaches.
- **Case file management policies:** In relation to the Courts Service, assess current case file management policies and ensure clearly established procedures, standards and regular audit processes are in place for the creation, maintenance, disposal and retention of files, supported by related staff training.
- **Lessons learned from COVID-19:** Continue efforts to leverage the modernisation measures adopted during the COVID-19 pandemic, including by considering the creation of a “Lessons Learnt Committee” that includes all relevant stakeholders and judges from each court level. The aim could be to assess the impact of new processes and IT solutions introduced on users, especially vulnerable groups, and other justice sector officials, and on time requirements for judges and court staff. In view of the lessons learned, reflect on the needed adjustments to court operations and infrastructure, support for court users, proposals for legislative adjustments, and staffing and budget requests.
- **Procedural simplification:** Maintain existing simplification and streamlining of procedures derived from the COVID-19 pandemic with a view to reducing administrative burdens on people and businesses.

- **Consider upgrading IT systems:** Consider upgrading and connecting various IT systems and applications (e.g., inputs to case records; scheduling of case events, sending notifications, controlling and storing final records, expenditure accounting, budgeting, tracking, and accounting for filing fees and revenue and human resource and talent management functions) to enable better decision making and to support the court to manage its resources according to case volume and demands.
- **Monitor impact of virtual hearings** Consider deepening the understanding of the impact of virtual hearings on judicial time requirements, including through Delphi estimates of the requirements for virtual versus in-person hearings.
- **Multi-channel service delivery:** In view of increasing adoption and adaptation of technologies by the justice system, establish a multichannel approach to legal and justice service delivery to ensure vulnerable groups are reached, while placing emphasis on ensuring fair access to technology so that no groups are disadvantaged when accessing justice.

#### Medium and longer term:

- **Cross-jurisdictional collaboration:** Strengthen coordination mechanisms between the courts involved where there are separate criminal, family law and possibly also child protection hearings arising from the same incident to ensure seamless procedures for litigants, avoid victim re-traumatisation (where applicable) and foster efficiency gains.
- **Backlog reduction:** Scale-up collaboration between the judiciary and Courts Service to review case data and consider options to develop backlog reduction measures, including the creation of special backlog reduction teams for select case types.
- **Caseflow in the Criminal Justice System:** Consider matching annual reports with an IT system that enables judges to track the pending inventory of their cases and a clear idea of caseflow in the Criminal Justice System.
- **Court timelines and performance measures:** Building on the experience with judgement delivery timelines in the Court of Appeal, consider the CEPEJ recommended minimum timelines to implement related measures with the needed staff, underpinned by data support from the Courts Service. Eventually, consider adopting broader court performance measures in Ireland, benefiting from experiences in other countries.
- **Data for Family Courts:** Support the current planning for the special Family Courts with data to ensure that the design is anchored in solid information, that the initial pilots can be assessed and to enable needed adjustments for further roll-out.
- **Staff support:** Considering the relevant role played by registrars for effective hearings and the potential identified to strengthen staff support across all court levels, assess current staff positions, roles and capacities to inform needed adjustments, ensuring that there are capacities to support the development and implementation of effective case management options.
- **Court specialisation:** Consider selected additional court specialisation options, such as a District Traffic Court in Dublin and adjusted small claims operations.
- **Monitor the impact of digitalisation across the system and its users:** Consider ensuring that data collection and case management systems being developed can effectively track the use of virtual/audio hearings or online dispute resolution (ODR) solutions created by case type and court level. At the same time, measure and evaluate the impact of digital tools on court users, especially vulnerable groups, those without access to digital connectivity or skills, and sensitive user categories such as victims, witnesses, minors and the accused.
- **Research strategy:** Develop a research strategy for the courts that could be overseen by a joint research group including the judiciary and other key stakeholders in court management.

- **Emergency preparedness:** To ensure courts are prepared for future pandemic or other crisis situations, consider updating the disaster management and response plan based on current experiences, along with mock implementation test and related training programmes.

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## Notes

- <sup>1</sup> See <https://archive.doingbusiness.org/content/dam/doingBusiness/country/i/ireland/IRL.pdf>.
- <sup>2</sup> As reported by World Bank staff during consultations with international court experts, the revised report, preliminarily titled “Business Enabling Environment”, will continue to include measures related to court performance similar to the enforcement of judgement indicators included to date in the Doing Business report with some adjustments, such as use of mediation/ADR and support for lay litigants. See also: <https://www.worldbank.org/en/programs/business-enabling-environment>.
- <sup>3</sup> The differences among the appointment and governance structures laid out by Lord Justice Thomas in this report could be reviewed to better understand why some of the collaborative processes are not working as well as they should and why a clear delineation of responsibilities is essential.
- <sup>4</sup> See <https://www.rechtspraak.nl/English/The-Council-for-the-Judiciary>.
- <sup>5</sup> See for example administrative Office of the Courts of Maryland [www.mdcourts.gov/aoc](http://www.mdcourts.gov/aoc) or the Federal Courts of Canada <https://www.cas-satj.gc.ca/en/about/mandate.shtml>.
- <sup>6</sup> The Transforming Summary Justice initiative was adopted by all England and Wales criminal justice agencies from June 2015. Its aim is to reform the way that criminal cases are handled in the magistrates' courts, and to create a swifter system with reduced delay and fewer hearings. If it is successful, it will reduce the amount of distress that victims and witnesses suffer during the court process. More information

available here <https://www.justiceinspectors.gov.uk/hmcpsi/inspections/transforming-summary-justice/>.

<sup>7</sup> Cooper, Solomon, and Bakke 1993; NCSC 2001a, 28; Jacoby, Gramckow, and Ratledge 1992

<sup>8</sup>For example State Court Administrative Office (2022), *Michigan Trial Court Records Management Standards: Data, Case, and Other Court Records*, [https://www.courts.michigan.gov/4a81cf/siteassets/court-administration/standardsguidelines/casefile/cf\\_stds.pdf](https://www.courts.michigan.gov/4a81cf/siteassets/court-administration/standardsguidelines/casefile/cf_stds.pdf).

<sup>9</sup> Several CEPEJ working groups responsible for the implementation of concrete actions related to the compilation of official documents of the institution also publish helpful studies and tools, and some provide assistance to member states or can link them to the pilot courts they are working with. These include: the Working Group on the Evaluation of Judicial Systems (CEPEJ-GT-EVAL); the Centre for Judicial Time Management or Study and Analysis of Judicial Time Use Research Network (SATURN Centre); the Working Group on Quality of Justice (CEPEJ-GT-QUAL); the Working Group on Execution (CEPEJ-GT-EXE); and the Working Group on Mediation or Alternative Methods of Resolving Disputes (CEPEJ- GT-MED).

<sup>10</sup> See <https://www.american.edu/spa/jpo/upload/jpo-brochure-2016.pdf>.

<sup>11</sup> See <https://www.uu.nl/en/research/montaigne-centre-for-rule-of-law-and-administration-of-justice>.

<sup>12</sup> See <https://www.iisj.net/en/oñati>.

<sup>13</sup> see NCSC 2004, World Bank 2007; Fabri 2001, 11; Velicogna 2009, 29

<sup>14</sup> See <https://www.ncsc.org/services-and-experts/areas-of-expertise/technology>.

<sup>15</sup> See <https://www.coe.int/en/web/cepej/home>

<sup>16</sup> See Rand 2021

<sup>17</sup> See for example CEPEJ (2013), *Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System*, [https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-revised-guidel/168078c492#\\_Toc356475576](https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-revised-guidel/168078c492#_Toc356475576) (last visit 17/02/2022); Washington Courts (n.d.), *Rural Court Survey, Summary and Analysis*, [https://www.courts.wa.gov/programs\\_orgs/pos\\_bja/ptc/documents/RCSurvey\\_FinalReport.pdf](https://www.courts.wa.gov/programs_orgs/pos_bja/ptc/documents/RCSurvey_FinalReport.pdf) (last visit 17/02/2022).

# Annex A. Methodology applied for this study in Ireland

The methodology used for the Ireland judicial workload study builds on the well-tested methodologies applied in other countries, while being adapted to the Irish courts. The weighted workload model is grounded in the understanding that different types of court cases vary in complexity, and therefore differ in the time required by the judge. For example, a typical assault case requires more time for a judge to prepare, hear and decide than the average theft case. The model generally calculates judicial time and position needs based on each court's total annual workload, and requires three core data elements:

1. Case filings, or the number of new cases of each type opened each year.
2. Case weights, which represent the average amount of judge time required to handle cases of each type over the life of the case.<sup>1</sup>
3. The “judge year value”, or the average amount of time a judge has available for case-related work in one year.

First, to calculate case weights (i.e. average hours needed per case per judge), the average time needed for all case action types per case must be collected and calculated from the time study data (i.e. sum of time needed for all case action types per case category divided by number of cases processed by case category per judge). By developing separate case weights for different case types, the study can reflect the variable case complexity and the different amounts of judge time needed for handling different types of cases.

Second, the total annual case-related workload is calculated by multiplying the annual filings for each case type by the corresponding case weight, then summing the workload across all case types. The time judges need to handle all non-case related work (e.g. other administrative tasks, co-ordination meetings, community outreach, work-related travel time) is then added.

*Annual workload (per case type) = annual filings x case weight*

*Total annual workload = sum of annual workloads + non-case related work*

Third, each court's workload is then divided by the judge year value to determine the total number of full-time equivalent judicial positions needed to handle the entire workload.

*FTE judges required = total annual workload / judge year value<sup>2</sup>*

This study represents the first application of the weighted workload methodology in Irish courts. To adjust this model to the Irish court system, significant preparation steps had to be completed before detailed data collection instruments could be designed.

## Scope of the study

In order to define the full scope of the study, it was important to clarify the levels of courts that would participate in the workload analysis. It was decided that all court levels would participate except the Supreme Court, as its jurisdiction and role differ from other courts. With respect to the specialised courts,

the judges decided to exclude the Drug Treatment Court as it has a unique focus, limited caseload and is adequately staffed.

## Creation of a Judicial Resources Liaison Group

To ensure that the study design, implementation, analysis and resulting recommendations were fully reflective of court operations and their environment, the OECD team requested that a working group be formed. The Liaison Group consisted of one judge from each of the participating court levels, and initially one, then two representatives from the Courts Service.

The responsibilities of the judicial members of the liaison group included:

- Choosing the court levels and study methodology to be applied in consultation with the Court Presidents and Chief Justice.
- Choosing the exact timing for the data collection implementation at each court level.
- Advising the OECD team on the definitions of case types and case-related and non-case related events to be used during the time study.
- Supporting the development and testing of the different data collection forms and data collection guides needed for each court level.
- Co-ordinating with their Court Presidents on the number and selection of a representative group of judges to include in the time study data collection and Delphi vetting process.
- Supporting the implementation of the time study.
- Reviewing and agreeing to the definitions used to develop the core data elements needed to define the judicial year value, e.g. FTE calculation.
- Distributing and collecting electronic time study data sheets and sending them to the OECD study team.
- Implementing the Delphi vetting processes.
- Reviewing the initial results of the time study and the Delphi vetting process.
- Advising and commenting on the core set of recommendations resulting from the study.

Due to heightened considerations about the anonymity and privacy of the study participants, the liaison judges took on additional responsibilities to train participating judges from their relevant courts, collect completed timesheets and assist the study team in following up on data entry issues.

The responsibilities of the Courts Service liaisons were to:

- Advising the judges and OECD team on the availability of required case data and options for compiling data as needed.
- Providing the administrative staffing and processing information required for the study.
- Collaborating with the study team and liaison judges on identifying which case data can be used for the time study data collection to ensure the full caseload of the judges was reflected.
- Clarifying data definitions and limitations.
- Providing the OECD team with the needed case data in electronic version as determined during the study design process from Courts Service and other sources.
- Reviewing case data collection results.
- Providing feedback on initial study recommendations related to court case administration and related Courts Service operations and efficiency issues.

## Timing of the study

The timing of the study was driven by the government's creation of a Judicial Planning Working Group to inform requests for judicial positions. This required some adjustments, particularly due to the unprecedented virtual approach to the study<sup>3</sup> in view of the continuing COVID-19 health restrictions. While electronic data collection tools had been used previously for such studies, as well as a variety of information exchange and virtual meeting options, these tools were used to complement rather than replace site visits, observations and in-person meetings. Given that the pandemic had increased judges' access to and familiarity with virtual communications, the courts decided that it could be feasible to conduct a fully virtual workload study in Ireland.

The significant use of virtual hearings combined with solid social distancing concepts had allowed the Irish courts to start operations again after a few months of lockdown in 2020. By the time the study started, many court operations were conducted closer to pre-pandemic levels. This was essential for ensuring that the data collection could capture case data, court operations and related judicial time spent that was sufficiently reflective of court operations in general.

While the initial time period for the study was envisaged for five months – not without precedent internationally (National Center for State Courts, 2016<sup>[11]</sup>) – the duration of the study had to be extended given that it had to start at the end of the judicial year, which is a very busy month for all courts, and therefore certain case types and work actions would not be scheduled during this time. The study schedule also had to accommodate the fact that July and August are official court vacation time in Ireland. As a result, operations in July do not reflect the typical judicial workload, and no data could be collected during July and August. While judges are partially working throughout this time, no hearings, except for emergency matters, are conducted. A compromise was found for the Circuit Court, High Court and Court of Appeal by starting data collection in July 2021 for one week, and then resuming data collection during the first two weeks of October 2021, the start of the new Court Year. The District Courts, which usually start their hearings in September, agreed to begin their three weeks of data collection during the last week of September 2021.

This timing, combined with a very tight timeline for completing the study, meant that the time study data collection was limited to the shortest time period possible, while still reflecting a representative workload, as confirmed by the judges in the Liaison Group. While typically, workload studies are conducted over four to six weeks; this study was conducted over a three-week timeframe. While this timeframe was not ideal and shorter than usual, it nonetheless can be considered reliable as the study period was representative of the annual workload. In addition, the Delphi study ensured that any time collection data gaps were appropriately addressed in the time estimates.

The timeline for conducting the Delphi study was dependent on the timing of the time data collection, as its results indicate the average time spent per judge on individual case processes by case category. This information was needed for the Delphi vetting process. As a result, the Delphi vetting for the Court of Appeal, High Court and District Court was conducted in late October/early November 2021. Given that Circuit Court judges tend to be especially busy during this time (the start of their court year), it was decided that a preliminary Delphi study would be conducted in September 2021 using the initial time study results from the first week of data collection in July 2021. Adjusting the Delphi results when all time study data were collected was therefore expected to take significantly less time.

## Collection of background and broader context information

In preparation for the study, and to inform the study design, relevant background material was initially compiled in June from online sources. This informed the development of an initial and follow-up questionnaire for the judiciary and Courts Service to identify the availability of core data and compile

qualitative information. Additional qualitative information needed was compiled from published documents. Other information, including from unpublished documents, was provided throughout the period by judges, the Courts Service and other national stakeholders, such as the Director of Public Prosecutions (DPP) and Tusla.<sup>4</sup> Peers from Canada, the Netherlands, the United Kingdom and the United States also provided valuable feedback and information on the practices in their countries.

At the end of June 2021, interviews were conducted as part of a virtual mission with stakeholders working at and with the courts. This included other members of the judiciary, registrars, prosecutors, legal aid providers, and members of the bar association and the judges association. Further interviews with relevant stakeholders, including all Court Presidents, judges in special positions or committees, and other Courts Service staff, were conducted throughout the duration of the project as additional information needs arose.

## Development of time and Delphi study data questionnaires

At the end of June, bilateral meetings began with the liaison judges to collect the position and staffing data needed to define judicial FTE (see Section 4.4. for details), and to develop an electronic time study data collection form and electronic user guide specific to each court level.

To assist in the development process, the OECD team has shared a template document used in other jurisdictions, with a view to adapting it to the Irish context and capturing the full range of work related to different case types.

The first task was to determine:

- The types of cases judges at each court level handle.
- The tasks and activities (case-related events and non-case-related functions) that judges perform in and out of court.

Based on experiences in other jurisdictions and to ensure accurate data collection, one way to make the data collection form more user-friendly and not overly complicated to create “composite case categories”, or categories of similar cases that require relatively equivalent judicial effort. As case volume and processing pace varies by court level, the detail of data collected tends to vary by court level accordingly. This was the same for the Irish courts.

In addition, it was important to ensure that all case types are captured and can be matched to regularly collected case data. The number of case categories that the Courts Service collects varies significantly across court levels and is not easy to establish. More importantly, the categories that the Courts Service uses do not fully match the court lists, i.e. the way judges organise themselves and think about case categories. In this context and in coordination with Courts Service staff, liaison judges worked to establish meaningful composite categories for criminal and civil cases, and family cases as necessary.

This resulted in:

- 6 criminal and 15 civil case categories for the Court of Appeal;
- 7 criminal and 17 civil case categories, plus several sub-categories for the High Court;
- 2 criminal, 8 civil and 2 family case categories for the Circuit Court;
- 3 criminal, 4 civil, 2 family and one “other cases” category for the District Court.

Under each case category, judges recorded which specific case actions they were involved in and how many cases were handled during each action (see Table A.1. for an example of one case category). In addition, District Court and Circuit Court judges indicated the locations they were sitting to determine potential local processing variations.<sup>5</sup> The final time data collection sheets used by the judges at each court level have been made available to the Irish authorities. The data collection instrument for the Delphi study built upon these case and action categories.

**Table A A.1. Example case category and related case action categories collected by Court of Appeal judges**

Category: Criminal	Case actions
Article 40/Habeas Corpus	Pre-hearing actions/decisions (e.g. reading/research time) Substance hearing Cost hearing Judges deliberations Delivery of <i>ex tempore</i> judgement – substantive Delivery of <i>ex tempore</i> judgement – costs Judgement drafting/considerations Other post-hearing actions/decisions (e.g. case communication with Court of Appeal office)

### Case-related and non-case-related activities

Judges perform a variety of functions, both in and out of court, related to the handling of cases (case-related activities), as well as non-case-related activities. The study team collaborated with liaison judges to develop a full set of non-case-related tasks and activities judges perform. These lists were similar for all courts, with only slight variations. The example from the High Court is shown in Table A.2 .

The time study collection instruments were developed to allow participating judges to enter the number of cases per individual case category and action handled. As mentioned, these data are needed to calculate case weights by case action. In practice, this part proved particularly difficult for judges at the higher volume Circuit and District Courts. At the Circuit Court level, judges could draw on the help of their Judicial Assistants to track the number of cases dealt with each day. District Court judges, however, do not have judicial assistants, and the registrars were unable to provide such support. As a result, the number of cases handled during a day was not always fully captured and related entries could not be included in the overall analysis. Further details related to specific data collection issues faced at the different court levels are provided in Chapters 4 and 6.

**Table A A.2. Non-case related work – High Court data definitions example**

<b>Non-case-related administration</b>	Includes work directly related to the administration or operation of the court. For example, personnel issues, case assignment, internal staff meetings, budget preparation and listing.
<b>Judicial education and training</b>	Includes continuing education and professional development, general judicial meetings, and other out of jurisdiction education programmes permitted.
<b>Community activities, education, speaking engagements</b>	Includes time spent on community and civic activities in the role as a judge. For example conducting moot trials, speaking at local non-governmental organisations, chairing lawyers' seminars, speaking at a law book launch or Law Day at a local school.
<b>Travel time</b>	Includes time spent travelling to and from a court or other facility for any court-related business that does not constitute general to and from work commute, but travel you are entitled to claim expenses for the journey to the court rather than within your county, including travel for meetings.
<b>Travel time on weekends</b>	If required to go into work at weekends, such as to the courthouse, the judge should record the local commuting time as travel time. Monday through Friday commute time is not included.



<b>Vacation/illness</b>	Includes any non-recognised holiday and sick time (personal or family leave). Does not include statewide, recognised holidays as they are accounted for in the determination of the Judge Year Value.
<b>Other</b>	Includes all other work-related, but non-case-related tasks that do not fit in the above categories.

## Selection of judges to participate in the studies

The aim was to include a representative sample of judges that covered the entire range of case types and specialty courts. For District and Circuit Courts, a representative coverage of regional differences (i.e. Dublin Metropolitan District (DMD), provincial locations of different population levels and regional representation) was also discussed. The selection was made by liaison judges in co-ordination with their Court Presidents. Specifically, this included:

- 15 judges from the Court of Appeal;
- 22 judges from the High Court;
- 33 judges from the Circuit Court;
- 13 judges from the District Court.

## Development of case data collection instruments

A series of bilateral meetings also took place in July with the Liaison Group members from the Courts Service, with a view to developing a case data collection instrument that matched the time study data case categories.

Usually, case data collection for a workload study relies on collecting data from a case management system. Typically, this takes four to eight weeks to complete, depending on the level of automation and number of data elements needed. This timeline does not include follow-up data requests as findings evolve or as new data needs emerge. In the case of this study, however, the lack of an integrated case management system for each court level presented significant challenges.

An additional challenge was related to the current approach to data collection by the Courts Service, and particularly that much of the collected data do not reflect or match the actual workload of the courts and judges. While the OECD detected some of these challenges at the outset of the study and inquired if other data collection options, such as sample case file reviews, could be possible, it was not deemed possible at the time by the Courts Service in view of their lack of resources.

Due to these challenges with data, it was difficult to ensure the case categories used in the time study matched the categories used by the Courts Service, which introduced further significant delays. There were two primary data issues that needed to be considered:

- The meaning of a “case”, as used by Courts Service, varies for different case categories.
- The timing of when “case” data are currently counted varies across case categories.

Usually, the data requested for a workload study are the number of cases filed annually in each established case category per court level (and specialty court, location, if that is part of the study focus). Ideally this information is available for a three to five year period to capture case trends and calculate a meaningful average caseload as it develops over time. Considering the impact of the pandemic on the courts’ operations and the mentioned challenges to provide needed data, the initial request to the Courts Service was for three years of data prior to the start of the pandemic. Available 2020 data could also be considered to better understand case trends during the data collection period.

Regarding “cases filed”, this is generally understood as cases that will eventually come to a judge. A workload study must be based on the full number of cases coming to judges each year to ensure the full workload is considered, not only the cases the judges had time to handle. If the study only considered “cases disposed by judges” it would be limited to the number of cases they were able to handle, which would not lead to a full understanding of the current annual workload.

In Ireland, numbers reported by the Courts Service as “incoming cases” refer to all matters filed at the court. For civil and family cases, these can frequently represent an action taken by parties to notify the opposing party of their intention to take the matter to a hearing to encourage an out-of-court settlement. To manage the courts efficiently, it may be beneficial to distinguish within incoming cases those that eventually settle from those that reach a judge. In the United States and United Kingdom, information on which cases settle after being filed with the court is collected to ensure that the business of the court is presented correctly.

For some case categories, other data are collected in Ireland. For example, personal injury cases are shown in the annual report as “incoming” and “resolved”.<sup>6</sup> Resolved is reported as “resolved by courts” and “resolved out of court”. The number of cases resolved by courts is reported to be about half, or less, of all incoming cases, for all court levels and for both years shown. Furthermore, in some case categories the total sum of cases resolved by court and out of court does not match the total number of incoming cases. Which leads to questions regarding whether half of “incoming” cases settle, and if so, is this before or after a case is listed for a hearing, i.e. after it has incurred some judicial time. Of the 4 596 personal injury cases reported as resolved in 2019 at the High Court, only 374 resulted in an award being made, which leads to uncertainty regarding what happened with the remaining cases, as no cases resolved out of court were reported. It is explained that only a few personal injury cases involve a substantive court hearing, which means that it could be assumed that those cases where an award was made resulted in a substantive hearing. However, there is limited information on the status of the over 4 000 cases that may not have resulted in a full hearing and award, and whether they required judicial time (See Table A.3). This example demonstrates some of the questions presented by the current data collected and reported by the Courts Service. It also demonstrates the challenges involved in establishing how much time judges are spending on handling their incoming cases.

To address some of these challenges, a combined effort of the Courts Service, the judges and the OECD team was necessary to develop a more detailed database of case categories from a range of sources that would satisfy the requirements of this study. Where this was not possible, groups of experienced registrars and judges were asked to provide estimates, mirroring the Delphi study approach used to confirm case weights.

The time and Delphi collection gathered data both for the overall time judges need to handle different cases and separately for the major case events per category. Therefore, it was possible to apply these individual time requirements by steps to calculate judicial time needed when cases settled or plead out before a substantive hearing was held, assuming that this could be established.

**Table A A.3. Example case reporting**

Personal injury	Incoming		Resolved			
	2019	2018	2019		2018	
			By court*	Out of court	By court*	Out of court
High Court	7 987	8 889	4 596	0	3 967	526**
Circuit Court	12 878	12 193	7 429	526	6 522	493
District Court	1 116	967	613	0	454	0
<b>Total</b>	<b>21 981</b>	<b>22 049</b>	<b>12 638</b>	<b>526</b>	<b>10 943</b>	<b>1 019</b>

Note: \*Cases dealt with by the court include all cases assigned to a judge. \*\*The majority of these cases are managed without a substantive court hearing.

Source: (Courts Service, 2020<sup>[2]</sup>), *Annual Report 2019*, <https://www.courts.ie/annual-report>.

This issue did not apply to the same extent to criminal cases, as the DPP tends to bring cases to court that will be prosecuted and are ready to be heard. However, even in these events a plea may be entered before a matter is listed. This is likely a rarer event, but would still need to be counted in the future by the Courts Service. In addition, many pleas reportedly tend to be entered immediately before or right at the start of a substantive hearing, meaning that less judicial time is needed. Related case data would need to be collected by the Courts Service to reflect these differences.

In parallel, criminal cases (as well as a range of civil and family cases) presented other types of challenges. The definition of a “case” used by the Courts Service appears to differ to what a “case” means to a judge or what it generally means in various other court systems. Judges, and most others, refer to what comes to them in a file as a “case”, for example a person commits a crime, is apprehended by police, charged with multiple counts that are reviewed by the prosecutor and all or some charges may be dropped if there is no supporting evidence. The prosecutor submits the “case”, i.e. a file outlining which charges are brought against the offender to the court. This is one “case”, or one case that may include several charges. In other cases, multiple offenders may be involved in a crime, but this typically tends to remain one case for the court until a plea or jury verdict is issued, at which point separate sentencing hearings may be held for each defendant. However, the Courts Service reports on incoming offences and defendants, not cases. The number of defendants can be a good enough proxy for actual case numbers, as few cases have multiple offenders. However, cases resolved, while reported separately by guilty pleas, trials and other decision points (several of which may apply to one case), are currently reported only by offences resolved. These data do not allow the incoming numbers of offenders to be linked to potential outcomes, which determines how much time judges generally spend on them.

As outlined for each court level in Chapters 4 and 6, at the two lower-level courts, data could eventually be linked to case record numbers to provide a true count of cases. For the Court of Appeal, appeals are regularly filed by one offender and counted as one matter. For the High Court, however, developing a similar dataset required significant additional time. To provide more detail, the High Court President, other judges and the Courts Service conducted additional data reviews for select case categories and sample months in 2018 and 2019. These additional data substantiated the Delphi estimates and assisted in clarifying case data calculations. More detail is provided in the High Court section in Chapter 4.

In addition, for many family and civil case matters, similar issues arose. Cases incoming was reported with a range of meanings, such as “orders made” (e.g. childcare District Court, domestic violence District Court) and “applications” (e.g. chancery High Court), all of which can relate to multiple orders or applications made in one case. Or, as mentioned with personal insolvency cases, it is unclear what is counted at any of the trial court levels.

When possible, the OECD aimed to apply data from other sources, such as the DPP and Tusla, to confirm incoming and resolved data. As different agencies report data differently, a direct comparison was not possible, but some approximations confirmed the additional detailed analysis.

One remaining challenge was related to the limitations of having clear data definitions or data collection standards. Ireland would benefit from developing more relevant and reliable data collection mechanisms to support the ongoing efforts to develop new case management applications.

Access to solid data that holistically reflects the work of the judges and other efforts is essential to predict court resources needed for the future and ensure the proper functioning of court management. The related recommendations in Chapter 6 aim to support Ireland to ensure that the future state of case data collection is better focused on enabling good case and court management.

## References

- Courts Service (2020), *Annual Report 2019*, <https://www.courts.ie/acc/alfresco/9bd89c8a-3187-44c3-a2e9-ff0855e69cb5/Courts%20Service%20Annual%20Report%202019.pdf/pdf#view=fitH>. [2]
- National Center for State Courts (2016), *Vermont Trial Court System Judicial Officer and Court Staff Weighted Caseload Study, 2015*, [https://www.vermontjudiciary.org/sites/default/files/documents/Weighted\\_Caseload\\_Report.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/Weighted_Caseload_Report.pdf). [1]

## Notes

<sup>1</sup> While case weights represent averages of different types of cases and could be subject to outliers, the study methodology aimed to mitigate this risk through the Delphi study, which asked the expert participants to estimate an average minimum and maximum time needed, not considering significant outliers. After the initial results, the Delphi study participants were then requested to consider again if outliers may have influenced their estimates and if adjustment might be needed.

<sup>2</sup> See the calculations for Ireland in Chapter 3, pp 43-45.

<sup>3</sup> In July, an inquiry by the OECD team to the National Center for State Courts, the predominate organisation conducting court workload studies in the United States, indicated that all workload studies had been halted for the duration of the pandemic.

<sup>4</sup> Tusla is the Child and Family Agency of Ireland, regulated by the Child and Family Agency Act 2013 (available [here](#)).

<sup>5</sup> Considering the limited data collection period, this did not provide sufficient data to draw solid conclusions for different locations

<sup>6</sup> See , (Courts Service, 2020<sup>[2]</sup>) from the Courts Service Annual Report 2019, p. 48.

## Annex B. FTE judges available for case work by court level in Ireland

Table A B.1. Committee assignment and FTE judges available for case work by court level, October 2021

Court of Appeal (CoA)				
Number of positions available, ordinary judges plus Court President	Number of ordinary judges assigned to committees and % of time	Committees chaired or attended by the President	% estimated case-related work time availability by Court President	Total FTE available to handle cases, all CoA judges
15(1)	1 – Cervical Smear Committee 100% (1 – Law Reform Committee 100% – additional position not counted here)	<p><i>Standing committee assignments:</i></p> <ul style="list-style-type: none"> <li>• Board of Court Service (5-6 half day meetings annually)</li> <li>• Finance Committee of Court Service (5-6 half day meetings annually)</li> </ul> <p><i>Ad hoc committees (about 0.5 days per year):</i></p> <ul style="list-style-type: none"> <li>• Other committees of Courts Services</li> <li>• Board of Judicial Council</li> <li>• Judicial Conduct Committee</li> <li>• Judicial Council Committee</li> <li>• Courts Presidents Group</li> <li>• Covid Safety Group Judicial Appointments Advisory Board</li> <li>• Statutory Committee to recommend to government in relation to Patents of Precedence</li> <li>• Council of Kings Inns</li> <li>• Investment Committee Personal Injuries Guidelines Committee</li> <li>• Personal Injuries Committee</li> <li>• Bar/Solicitors Liaison Committee</li> </ul>	65%	14.6 FTE
High Court (HC)				
Number of positions available, ordinary judges plus Court President	Number of ordinary judges assigned to committees and % of time	Committees chaired or attended by the President	% estimated case-related work time availability by Court President	Total FTE available to handle cases, all HC judges

45(1)	1 – An Garda Siochána Ombudsman Commission 100% 1 – Commission of Inquiry 100% 1 – Director of Judicial Studies 50% 2 – Surveillance Judges 50% 1 – Cervical Smear Committee	<ul style="list-style-type: none"> <li>• Investment Committee</li> <li>• Personal Injuries Guidelines Committee</li> <li>• Personal Injuries Committee</li> <li>• Bar/Solicitors Liaison Committee</li> <li>• The President's Committee</li> <li>• The Judicial Appointments Board (JAB)</li> <li>• Patents of Precedence Committee</li> <li>• Court Service Board</li> <li>• Modernisation Committee</li> <li>• Board of Judicial Council</li> <li>• Judicial Resources Working Group</li> <li>• Extension of Time Committee</li> <li>• Superior Court Rules Making Committee</li> <li>• Judicial Conduct Committee</li> </ul>	20%	40.8 FTE
<b>Circuit Court (CC)</b>				
<b>Number of positions available, ordinary judges plus Court President</b>	<b>Number of ordinary judges assigned to other courts or committees and % of time</b>	<b>Committees chaired or attended by the President</b>	<b>% estimated case-related work time availability by Court President</b>	<b>Total FTE available to handle cases, all CC judges</b>
37(1)(8)	4 – Special Criminal Court about 50%  About 30 other committee assignments, several days per year each	<ul style="list-style-type: none"> <li>• Personal Injuries Guidelines Committee</li> <li>• Personal Injuries Bar/Solicitors Liaison Committee</li> <li>• The President's Committee</li> <li>• The Judicial Appointments Board (JAB)</li> <li>• Patents of Precedence Committee</li> <li>• Court Service Board</li> <li>• The Modernisation Committee</li> <li>• Board of Judicial Council</li> <li>• Judicial Resources Working Group</li> <li>• Extension of Time Committee</li> <li>• Superior Court Rules Making Committee</li> <li>• Judicial Conduct Committee</li> <li>• Finance Committee</li> <li>• Circuit Court Rules Committee</li> <li>• Health &amp; Safety Committee</li> <li>• Benchers of King's Inns</li> <li>• Judicial Planning Committee</li> <li>• Conduct &amp; Ethics Subcommittee</li> </ul>	40%	34.7 FTE
<b>District Court (DC)</b>				
<b>Number of positions available, ordinary judges plus Court President</b>	<b>Number of ordinary judges assigned to committees and % of time</b>	<b>Committees chaired or attended by the President</b>	<b>% estimated case-related work time availability by Court President</b>	<b>Total FTE available to handle cases, all DC judges</b>
63(1)	4 – Special Criminal Court 50%  About 30 other committee assignments	Similar to Circuit Court President assignments and commitments	60%	61.6 FTE

## Annex C. Case weight tables in Ireland

**Table A C.1. Preliminary case weights and position calculations – Court of Appeal**

Court of Appeals – case business	Case category	Average # cases incoming to judges, 2018/2019 – defined as resolved and determined*	Min. case weight (hours)	Min. annual workload (hours)	Av. mixed workload
<b>Civil</b>	Chancery	112	30.5	3 416	6 027
Civil	Commercial	24	49.7	1 193	2 017
Civil	Companies Act 2014 (and corporate insolvency)	11	30.4	334	516
Civil	Constitutional and European Law (excluding Chancery, Commercial List and Judicial Review appeals)	2	54	108	137
Civil	Contract	10	26.4	264	451
Civil	Family (including abduction)	9	28.1	253	369
Civil	Insolvency (personal)	13	26.6	346	488
Civil	Judicial review (other than commercial list, includes asylum and other)	90	29.6	2 664	5 157
Civil	Other (e.g. statutory appeals, cases stated, attachment/contempt)	46	26.9	1 237	2 220
Civil	Other work (civil: weekly directions, cases mentioned, Friday list callover, two judges)	42	12	504	1 812
Civil	Personal injury	52	36.8	1 914	2 041
Civil	Plenary (not covered above, e.g. defamation, professional negligence, other tort)	18	36.6	659	657
Civil	Proceeds of Crime Act	2	27	54	76
Civil	Security for costs	1	23	23	37
Civil	Summary judgement	60	26	1 560	1 740
<b>Criminal</b>	Article 40/Habeas Corpus	10	14.2	142	205
Criminal	Bail	16	3	48	84
Criminal	Criminal appeals	278	32.5	9 035	12 262
Criminal	Extradition	6	30.5	183	220
Criminal	Judicial review (criminal)	26	28.8	749	886
Criminal	Other work (criminal: weekly and daily average callover/directions, motions, administration; two	42	17	714	714

	judges)				
<b>Non-case related</b>	Non-case related work, p. week	42	192	8 064	8 400
	<b>Total av. annual work hours needed</b>			<b>33 464</b>	<b>46 515</b>
	<b>Total workload-based positions</b>			19	29

Note: \*Calculated per annual work week per judge – 30 December 2021.

**Table A C.2. Preliminary case weights and position calculations – High Court**

High Court – court business	Case category	Average incoming to judges, 2018/2019 – Courts Service's definition for "incoming" differs by category	Min. case weight (hours)	Min workload (hours)	Average mixed case weight (hours)	Average mixed workload (hours)
<b>All</b>	<b>Callover</b> – total annual p. list judges, individual judges, provincial judges, vacation judges. Provided by High Court judges in December 2021.	2 248	0.20	450	0.60	1 349
<b>Civil</b>	<b>Chancery</b> (includes injunction applications, company law motions, specific performance/recession of contracts, administration of estates of deceased persons and trust actions) – <i>reported as resolved by court</i> . From Annual Report 2018 and 2019; plus 22 from other civil p. year.	248	10.10	2 505	87	21 613
	Chancery cases resolved "out of court". Time estimates based on sample case file reviews, by High Court President, February 2022.	251	5.00	1 255	11	2 636
	<b>Child abduction</b> – <i>reported as resolved by court</i> . From Annual Report 2018 and 2019.	32	15	480	28	896
	<b>Commercial Court</b> – cases reported as resolved. From Annual Report 2018 and 2019 – shown as resolved in court (av. 72).	72	19.80	1 426	198	14 249
	Commercial cases settled by motions to dismiss.	3	18.80	56	33	99
	Commercial cases settled after entry.	9	0.80	7	1	8
	Commercial cases settled after directions hearing and after hearing date set.	26	16.50	421	30	752
	Commercial cases settled at hearing.	16	19.50	312	33	528



<b>Common law non-jury</b> – includes breach of contract (av. 36), negligence (except negligence resulting in personal injury) (av.33), debt recovery (av. 508), and Circuit Court appeals minus family law and personal insolvency appeals (370-59- 163 = 148) – reported as resolved by court. From annual report 2018 and 2019; plus 31 from other civil p. year.	756	12.80	9 677	39	29 408
Common law non-jury cases resolved ("settled") out of court – time calculated based on Court President data – breach of contract (69, 81=75), negligence (51, 124=87.5), none f. debt recovery as those are default appearances and discontinuance notices that do not require judicial time; plus 7 from other civil p. year.	169	5.50	930	11	1 817
<b>Cases stated from District Court</b> – average from Annual Report 2018 and 2019 (33, 39).	36	12.80	461	39	1 400
<b>Corporate insolvency</b> – (examinership (41 orders, av. 4 orders=10 cases), wind up company (44 cases), restrict directors (12 cases), disqualify directors (1 case) – reported by orders made (more than one order may be made in a case). From Annual Report 2018 and 2019; average orders made estimated by register and judges.	67	7.70	516	28	1 899
<i>Windup company cases that settle, struck out, withdrawn</i> ; cases data from Annual Report 2018 and 2019; time from new Delphi estimates.	22	0.50	11	1	13
<b>Defamation and assault</b> – reported as resolved by court and out of court. From Annual Report 2018 and 2019 (D21, a30)	29	15.00	435	45	1 291
<b>European Arrest Warrant</b> – resolved by court. From Annual Report 2018 and 2019	140	9.50	1 330	17	2 408
<b>Family</b> (excluding child abduction), family law appeals from Circuit Court (36,82=59), divorce (39,27=33) (minus 20 uncontested=13), judicial separation (34,47=40.5) (minus 24 uncontested=16.5), cohabitation (5,3=4) (minus 2 uncontested=2), nullity (of marriage) (1), maintenance (1,2), supervision and care orders (17,20=18.5), family law (other) (44, 44) and adoption (23, 22) (minus 14 uncontested=8) – reported as resolved by court. From Annual Report 2018 and 2019; plus 11 from other civil p. year.	238	22.00	5 236	57	13 447
Uncontested divorce, judicial separation, cohabitation, adoption, surrogacy; 38% contested cases estimated by registrar.	61	0.50	31	1	46
<b>Judicial review (except asylum)</b> – including <i>habeas corpus</i> . Reported as resolved in court. From Annual Report 2018 and 2019 (220+46, 337+41; plus 64 from other civil p. year).	322	11.20	3 606	37	11 866
<i>Judicial review cases resolved "out of court"</i> (88+1, 157+1)	124	2.60	322	3	391

<b>Asylum cases</b> – reported as applications resolved by court. From Annual Report 2018 and 2019 (130, 262)	176	13.60	2 394	15	2 614
Resolved "out of courts" (332, 135)	228	1.70	388	2	479
<b>Medical negligence</b> – special data from Courts Service in Dec 2021 and Jan 2022 for 2018 and 2019. Annual Report shows data as "cases" incoming to judges, which are orders made. New data provided by Courts Service are for new data on cases either heard and determined or settled during hearing (17, 25).	21	81.30	1 707	202	4 245
Medical negligence cases settled/strike out before hearing. New data provided by Courts Service 3 March 2022 (250, 239). Time estimates by HC President.	244	2.00	488	2.5	610
Medical negligence fatal settlement (52, 34). Time estimate based on Court President exercise.	43	3.00	129	3	140
Medical negligence "minor", i.e. child, settlement and minor refused (43+6, 25+2). Time estimate based on Court President exercise.	37	3.00	111	3	120
Medical negligence settled judgement (13, 21).	17	2.00	34	3	43
<b>Personal injury</b> (including Garda Compensation) –special data from Courts Service, Dec 2021 and Jan 2022 for 2018 and 2019. Reported as "cases" incoming to judges. "Cases" in the Annual Report are defined as number of orders made; new data are for cases either heard and determined or settled during hearing; revised by Courts Service 24 February 2022 (401, 295); plus 27 from other civil p. year.	375	28.80	10 800	75	28 181
Personal injury cases settled before hearing. New data provided by Courts Service 3 March 2022 (2 968, 3 234). Time estimates by HC judge.	3 101	1.10	3 411	1.6	4 807
Personal injury fatal settlement (26, 41). Time estimate based on Court President exercise.	33	2.00	66	2	74
Personal injury "minor", i.e. child, settlement and minor refused (142+7, 154+0). Time estimate based on Court President exercise.	151	2.00	302	2	340
Personal injury settled judgement (48, 41)	102	1.00	102	2	153
<b>Personal insolvency</b> – (including bankruptcy and personal insolvency appeals from Circuit Courts). From Annual report. Summonses 2018: 97; 2019: 88. Bankruptcy petitions: 32, 24. Special data provided by Courts Service Dec. 2021 and Jan. 2022.					
Bankruptcy summonses.	93	1.50	139	5	486
Bankruptcy petitions.	29	38.50	1 117	47	1 363
Personal insolvency and debt relief arrangements; 80% no judgement writing; Annual report 2019 and 2018 (10, 21).	13	8.50	109	22	282

Personal insolvency and debt relief arrangements; 20% with judgement writing; Annual report 2019 and 2018 (10, 21).	32	38.50	1 232	47	1 504
Personal insolvency applications – self-adjudication. Annual report 2019 and 2018 (75, 73).	74	0.20	15	0	19
Personal insolvency appeals from Circuit Court (97, 229). Special data provided by Courts Service Dec. 2021 and Jan. 2022; 80% no judgement writing.	169	8.00	1 354	22	3 680
Personal insolvency appeals from Circuit Court (97, 229). Special data provided by Courts Service Dec. 2021 and Jan. 2022; 20% judgement writing.	42	38.50	1 629	47	1 988
<b>Probate</b> – No data published. Number of cases handled on probate list based on list register estimate from Dec. 2021. Average 14 matters listed, 3 adjourned 11 cases handled per week in one morning session, occasionally sitting into half of the afternoon.	462	4.00	1 848	5	2 333
More complex probate cases heard on other days – additional hearing time and judgement writing; av. 1.5 cases per week. Data based on estimate by probate judge, Feb. 2022.	63	3.00	189	7	410
<b>Proceeds of crime</b> – resolved by court. Annual Report 2018, 2019.	16	10.90	169	18	278
<b>Property</b> – possessions and other. Resolved by court. From Annual report 2018 and 2019 (169+35, 95+29); plus 14 from other civil p. year.	178	2.10	374	10	1 700
Property resolved out of court (12+6, 11+1).	15	0.50	8	2	26
<b>Regulation of profession</b> – resolved by court. From Annual report 2018 and 2019 (159); plus 3 from other civil p. year.	164	1.40	230	3	508
<b>Wards of Court</b> – reported as declaration orders and applications dealt with by way of undertakings.	382	1.40	535	3	1 222
Wardship orders dismissed, discharged, temporary protective confinements, etc. Monday list. Data based on High Court judge estimate cases listed provided 1 March 2022.	1 416	0.20	283	0.4	496
Wardship orders dismissed, discharged, temporary protective confinements, etc. Tue-Fri. lists. Data based on High Court judge estimate cases listed provided 1 March 2022.	1 416	1.00	1 416	2	2 124
<b>Other civil: admiralty cases, simple</b> – provided by Courts Service 8 March 2022.	4	1.00	4	2	6
Other civil: admiralty cases, complex – provided by Courts Service 8 March 2022.	1	14.00	14	14	14
<b>Other civil: freedom of information appeals</b> – provided by Courts Service March 8, 2022.	2	45.50	91	46	91

	<b>Other civil: arbitration</b> – provided by Courts Service 8 March 2022.	1	61.50	62	62	62
	<b>Other civil: wrongful imprisonment cases</b> – provided by Courts Service 8 March 2022.	1	84.50	85	146	146
<b>Criminal</b>	<b>Bail</b> – resolved by court. From Annual report 2018 and 2019.	1 353	0.80	1 082	3	4 059
	<b>Central Criminal Court</b> – special data from CCTS system, provided by Courts Service, Dec 2021. 2018, 2019: 140, 141 cases.	143				
	Excluding accused deceased, <i>Nolle prosequi</i> and TIC/non-conviction only.	21				
	Guilty plea, lesser charge guilty plea.	52	5.50	286	8	403
	Not guilty by direction of judge.	6	24.50	135	74	409
	Guilty by jury, no result, not guilty by jury, not guilty reason of insanity, unfit to plea.	65	29.30	1 890	85	5 470
	<b>Special Criminal Court</b> – special data from CCTS system, provided by Courts Service, Dec 2021. 2019: 39 cases both years.	39				
	Excluding <i>nolle prosequi</i> . TIC/Non conviction.	5				
	Guilty plea.	19	19.17	364	52	990
	Guilty, non-guilty, and acquitted.	15	108.00	1 620	264	3 960
<b>NCR</b>	<b>Non-case related work, p. week, all judges</b>	1 932	11.00	21 252	16	30 912
	<b>Total workload (hours)</b>			<b>86 925</b>		<b>212 859</b>
	<b>Total workload-based positions</b>			<b>48</b>		<b>118</b>

Table A C.3. Preliminary case weights and position calculations – District Court

District Court – court business	Case category	Average incoming to judges, 2018/2019 – definitions differ by category	Min. case weight (hours)	Min. workload (hours)	Av. mix workload (hours)
<b>Civil</b>	<b>Enforcement of judgements</b> – reported as incoming and orders issued. Numbers in AR are enforcement (summons to attend lodged in office) (2019 and 2018). System files show data for no. cases and NOT/Substantive Motion Disposed of and are significantly lower (see below).	2 140	0.19	407	738
	<b>General civil</b> – data from Courts Service file Annual Report 2019 District Court Civil with averages 270 320; reported as <i>civil cases disposed by court</i> . This includes appeals to DC, ejectment, other civil/ordinary, personal injury and personal injury minor.	5 505	1.70	9 359	17 203
	<b>Licensing</b> – from Courts Service data file: Annual Report 2019\DC & CC Licensing Stats 2019\2019 CSOL Stats\2019 Annual Licensing Stats.	42 144	0.03	1 264	4 847
	<b>Small claims (SC)</b> – from Courts Service data file Annual report\DC Small Claims 2019 06 05 2020; all Irish and EU, reported by cases received, disposed of out of court, and adjudicated by court. Most cases disposed out of court didn't qualify for SC procedures.	606	0.70	424	576
<b>Criminal</b>	<b>General criminal</b> – Annual report provides resolved by offences only, includes juvenile.	104 330			
	General criminal offenders dealt with 2019 – special report from Court Service – CCTC system, 16 December 2021; % resolved estimates by judges and registrars 21 Dec. 2021. 2018 – 78 418; 2019 – 50 506.	64 462			
	Resolved by plea – 75%.	48 347	0.15	7 252	10 878
	Requires full hearing – 25%.	16 116	0.70	11 281	19 339
	<b>Juvenile Children Court</b> – Annual report provides resolved by offences only.	4 114	1.05		
	Juvenile delinquents dealt with 2019, including Juv. Road traffic accidents –special report from Court Service – CCTC system, 16 December 2021. Estimates by judges (19 Jan. 2021 and registrars 21 Dec. 2021); 2018 – 1 118; 2019 – 1 255.	1 218			
	Resolved by plea – 75%.	913	0.20	183	183
	Requires full hearing – 25%.	228	1.05	240	314
	<b>Road traffic</b> – Annual Report only provides number of offences dealt with.	134 060	0.60		
	Defendants dealt with 2019 – special report from Court Service – CCTC system, 16 December 2021, estimates by judges (22 Jan. 2022, and registrars 21 Dec. 2021), adult road traffic accidents only. 2018 – 78 418; 2019 – 79 709.	79 064			
	Resolved by plea – 80%.	63 251	0.10	6 325	18 975
	Requires full hearing – 20%.	15 813	0.60	9 488	11 069

<b>Family</b>	<b>Childcare</b> – reported in AR are only incoming and resolved <i>applications for orders</i> (including case process orders, i.e. adjournment, direction, etc.). Used Courts Service special file, annual total, DC Family Law 2019 08 05 2020, and registrar estimates sent by CS on 12/21. Compared with Tusla data – av. order types issued 2019-2021.	9 398	2.00		
	Divided by av. number of applications per case estimated by registrars at 10.	940	2.00	1 880	3 289
	<b>General family law</b> – From Courts Service special files. Resolved by court. Includes maintenance, domestic violence, guardianship and other, which is mainly application for service and sect. 32.	46 644	0.70		
	Divided by av. number of applications per case estimated by registrars at av. 2.8.	16 659	2.00	33 317	33 317
<b>NCR</b>	<b>Non-case related work, p. day all judges</b>	42	1 280.00	53 760	69 216
	<b>Total workload (hours)</b>			<b>135 178</b>	<b>180 677</b>
	<b>Total workload-based positions</b>			<b>75</b>	<b>100</b>

**Table A C.4. Preliminary case weights and position calculations – Circuit Court**

<b>Circuit Court – case business</b>	<b>Case category</b>	<b>Average # "cases" incoming to judges, 2018/2019 – definition varies by case category</b>	<b>Min. case weight (hours)</b>	<b>Min. annual workload (hours)</b>	<b>Average mixed workload (hours)</b>
<b>All</b>	Callover – 5 Daily in Dublin, 4 days in provinces = av. 4.3 days p. week per judge.	6 682	0.24	1 604	7 484
<b>Civil</b>	District Court Appeals – civil – from Courts Service file CC Annual Total 2019 and 2018, CC civil.	148	1.6	237	237
	Hearings (on oral evidence) – from Courts Service file CC Annual Total 2019 and 2018, CC civil. Reported as civil bills issued; discontinued and NOT/Substantive Motions Disposed.	11 707			
	Excluding possession applications (1 578) personal insolvency (4 076), Care representative (590) and District Court Appeals (148). Annual Circuit Civil stats 2019.xls tab Annual Report 2019 & Annual Circuit Civil stats 2018.xls tab Annual Report 2018.	5 315			
	Excluding discontinued, resolved out of court (1 262). Annual Circuit Civil stats 2019.xls tab Annual Report 2019 & Annual Circuit Civil stats 2018.xls tab Annual Report 2018.	4 053			
	Cases settled at hearing, av. 60%.	2 432	0.25	608	1 520
	Full hearing, av. 40%.	1 621	3	4 864	12 159

Civil	<b>Licensing</b> reported as applications handled – from Courts Service files Annual Total 2019 190 520 pm and Annual CC Licensing 2018.	237	1.7	403	403
Civil	<b>Motions (on affidavit other than possession)</b> reported as "Judges motions and <i>ex parte</i> dealt with" – from Courts Service files Annual Circuit Civil stats 2019.xls tab Annual Report 2019 & Annual Circuit Civil stats 2018.xls tab Annual Report 2018.	4 730			
	Motions dealt with/settled (excluding adjourned).	2 586	0.5	1 293	1 293
	Motions adjourned, av. 2018/2019.	2 144	3.7	7 933	8 362
Civil	<b>Personal insolvency</b> – incoming (4 076) – counted as Debt Relief Notices and Protective Certificates incoming av. 2018/2019 (1 872) to avoid multiple counts of PI applications – from Court Service special files Annual Report PI stats 2019 and 2018.	1 872			
	Personal insolvency – DRN & PIA/DSA 2019 only – resolved by court, includes refused, excludes withdrawn.	1 566	3	4 698	8 613
Civil	<b>Possession applications</b> – property (possessions), incoming and resolved by courts/out of court.	1 578			
	PA – contested 80%, av. 2 applications.	631	4.2	2 651	3 219
	PA – settled 20%.	316	1.8	568	726
<b>Criminal</b>	<b>District Court appeals</b> – criminal; reported incoming by appellants; resolved by offences. From CCTs_ICMS 2018 (9 165) and 2019 (10 171) special calculations on 13 Jan. 2022.	9 668			
	Incoming appeals minus strike out withdrawn (5 112) and strike out no appearance (4 680). From CCTS files from Courts Service, Jan 2022.	4 896			
	Sentence only – 65%.	3 182	0.8	2 546	3 262
	Conviction and sentence – 35%.	1 714	1.6	2 742	4 027
Criminal	<b>Jury trials</b> – data from special calculations from Courts Service, Dec. 2021 and 3 Jan 2022 are "all resolved" count from CCTS average 2018 (3 210) and 2019 (3 396) = 3210; excluding exceptional results (av.29), TIC/NON Conviction (83), accused deceased (9).	3 182			
	Preliminary time only = No result (15,4=10), Nolle prosequi (236,228=232), Unfit to plead (2) = 244 = 8%.	255	1	255	764
	Plea w. sentence only hearing (7) and plea at hearing and sentence (2 661) = 2 669 = av. 83%.	2 641	1.5	3 962	15 186

	Full substantive hearing and sentence = sum of "guilty by jury" (152), "lesser Charge, guilty by direction" (2.5), "lesser charge guilty by jury" (3.5) – av. 5%.	159	10.95	1 742	5 895
	Full substantive hearing no sentence = not guilty by direction of judge (92.5), not guilty by jury (169), not guilty by reason of insanity (5.5) = 267 = av. 8.3%.	264	9.3	2 456	9 283
<b>Family</b>	<b>District Court appeals</b> (DCA) – family; reported as resolved; data from Courts Service file CC Annual Total 2019 and 2018, CC Family Law Galaway Revised; excluding not entered (av. 40).	960			
	DCAs contested – 55%.	528	4	2 112	3 168
	DCAs uncontested – 45%.	432	0.15	65	76
	<b>Interim applications</b> – and other final orders – data from Courts Service file CC Annual Total 2019 and 2018, CC Family (av. 10,582) – 40% of total come to judges.	4 233			
	Long applications – 60%.	2 540	8.3	21 079	26 730
	Short applications – 40%.	1 693	0.5	847	847
	<b>Status decrees</b> – counted as final orders, data from Courts Service file CC Annual Total 2019 and 2018, CC Family, (4 627).	4 627			
	Minus Judicial Separation (av. 767).	3 860			
	Status decrees – contested – 20%.	772	3.8	2 934	3 976
	Status decrees, not contested – 80%.	3 088	0.75	2 316	2 362
<b>NCR</b>	<b>Non-case related work</b> p. week, p. judge	42	380	15 960	35 700
	<b>Total workhours</b>			83 872	155 290
	<b>Total workload-based positions</b>			47	86

Note: One judge is assigned permanently by the government to the Eastern Circuit (comprising Meath, Louth, Kildare and Wicklow – sits in Trim, Dundalk, Naas and Bray); South Eastern Circuit (Waterford, Wexford, Tipperary, Kilkenny and Carlow – sits in Waterford, Dungarvan, Wexford, Clonmel, Thurles, Nenagh, Kilkenny and Carlow); South Western Circuit (Limerick, Clare and Kerry – sits continuously in Limerick and in Ennis, Kilrush, Newcastlewest, Tralee, Killarney and Listowel); Western Circuit (Galway and Mayo – sits in Galway, Loughrea, Clifden, Castlebar and Ballina); Midland Circuit (Laois, Longford, Offaly, Roscommon, Sligo and Westmeath – sits in Longford, Portlaoise, Tullamore, Mullingar, Athlone, Roscommon and Sligo); and Northern Circuit (Cavan, Monaghan, Leitrim and Donegal – sits in Cavan, Monaghan, Carrickmacross, Carrick on Shannon, Letterkenny, Buncrana and Donegal).



# Annex D. Key data needed for effective judicial workload tracking in Ireland

The below tables provide suggestions for the main, minimum data that should be regularly collected and analysed to provide judges and the Courts Service with needed case management and resource management information. The data need to track how cases move through the system, if and when they move out and why, how long each event takes (at least by days), and when a judge is involved.

**Additional data points needed per case – all business:** Lay litigant, translation needed during hearing (not just requested), child witness, possibly other complexity indicator.

Definitions needed: case = matter by record number; case type = matter by sub-category/complexity; case actions = motion, application, hearing, decisions type. Definitions have to follow set data collection points.

Civil and family law business (by case type)											
All incoming (= number of cases filed – i.e. record number assigned)	Cases withdrawn, settled before hearing or listing (or any judicial actions)	All cases coming to a judge	Cases ready for hearing/ listed	Cases withdrawn, settled before next processing step	Interlocutory hearings (by type and reason)	Interlocutory hearings adjourned, reason for adjournment, number of interlocutory hearing days	Cases settled/ withdrawn	Substantive trials*	Hearings adjourned, reason for adjournment, number of hearing days	Cases settled after start of hearing	Cases appealed, appeal decision

Note: \*If there are other separate hearings involving a judge related to case these must be tracked in the same manner.

Criminal law business (by case type)												
All incoming (= number of cases filed – i.e. record number assigned)	Bail hearings	Cases withdrawn/ <i>nolle prosequi</i> , TIC-non-conviction, accused deceased, before ready for hearing or listing (or any judicial actions)	All cases coming to a judge, excluding bail hearings	Cases ready for hearing / listed	Cases withdrawn, <i>nolle prosequi</i> , guilty plea, guilty of lesser charge before next processing step	Cases plead out before start of hearing	Not guilty by direction of judge	Substantive trials	Hearings adjourned, reason for adjournment, number of hearing days	Guilty by jury, no result, not guilty by jury, not guilty reason of insanity, unfit to plea	Sentencing hearings – by number of days, record any adjournments	Cases appealed, appeal decision

# Modernising Staffing and Court Management Practices in Ireland

## TOWARDS A MORE RESPONSIVE AND RESILIENT JUSTICE SYSTEM

Ireland has launched an ambitious strategy to build a more inclusive, efficient and sustainable justice sector. Irish citizens recognise these efforts: Ireland is one of the OECD countries with a higher percentage of citizens trusting their government and courts, according to the recent OECD Survey on the Drivers of Trust in Public Institutions. This study aims to support these efforts by analysing the judicial workforce and relevant support structures and processes currently employed by the Irish courts. In particular, the study seeks to contribute to the deliberations of the Irish Judicial Planning Working Group, which was established to identify reform initiatives and evaluate staffing needs to enhance the efficient administration of justice over the next five years.



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