
Management of the Courts: the Irish Experience

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Background

The management and administration of the courts in Ireland had remained essentially unchanged since the Courts of Justice Act of 1924, which provided for the courts system of the new State shortly after independence.¹ The 1924 regime left a vacuum, failing to address the need for an independent administrative structure for the Courts. There was, for example, no Department such as the Lord Chancellor's Department. Under the Act, the Department of Justice managed the Courts and their funding apart from judicial salaries. Those arrangements followed what is often loosely referred to as the "Ministry of Justice" model. Responsibility for the provision of budgetary, staffing and other resources, and the management of those resources, rested with the Department of Justice, Equality and Law Reform, as it is now known, through its Courts Division. As distinct from the allocation of business before the courts, the Judiciary – although it might be consulted and make representations – had little input into the allocation of resources or the way in which they were deployed.

The extent of the Minister for Justice's remit - and limits of the Judiciary's – in this regard is best summed up by the provisions which governed the management of the various offices of the High Court and staffing arrangements for the Superior Courts generally. Senior management in the courts was "subject to the general direction of the Minister in regard to all matters of general administration" and answered to the senior Judiciary (the Chief Justice in the case of the Supreme Court and the President of the High Court in the case of that court) on matters relating to the conduct of the business of the court required by law to be transacted before a judge.² The Minister for Justice, with the sanction of the Minister for Finance and after consultation with the Chief Justice and the President of the High Court in relation to the offices of the Supreme Court and High Court respectively, determined how many and what categories of court officers and ancillary staff would be deployed in the offices concerned and, after similar consultation, how they were deployed.³

Concern about deficiencies in the system grew over the next 70 years and by the mid-1990s had spawned proposals for new machinery to administer the courts that were considered by successive governments.⁴ The Working Group on a Courts Commission, chaired by The Hon. Mrs Justice Denham, Judge of the Supreme Court, was established by the Minister for Justice in October 1995 to:

1. "review:
 - a) the operation of the Courts System, having regard to the level and quality of service provided to the public, staffing, information technology, etc;
 - b) the financing of the Courts system, including the current relationship between the Courts, the Department of Justice and the Oireachtas (legislature) in this regard; and
 - c) any such aspect of the operation of the Courts system which the Group considers appropriate; and
2. in the light of the foregoing review, to consider establishing a "Commission on the Management of the Courts as an independent and permanent body which financial and management autonomy..." and,
3. to report its recommendations to the Minister.

In the first report, published in 1996⁵, the Working Group recommended that priority be given to the establishment, under statute, of an independent and permanent body to manage a unified court system. The body would be supervised by a Board chaired by the Chief Justice or the Chief Justice's nominee. It would be composed, "in light of the constitutional parameters involved"⁶, of a majority of judges of the various jurisdictions and include, as well, representatives of the

¹ The jurisdictional arrangements established by the 1924 Act were substantially replicated on the reconstituting of the courts by the Courts (Establishment and Constitution) Act 1961.

² Par.7, Eighth Schedule, Courts (Supplemental Provisions) Act, 1961.

³ Par. 22, Eighth Schedule, Courts (Supplemental Provisions) Act, 1961.

⁴ The "Programme for a Partnership Government" announced in 1993 by the Fianna Fáil-Labour Government of that year had included provision for the establishment of a Judicial Commission to examine and make recommendations on overall management of the courts and the streamlining of court services, the fixing of the courts' budget and court charges, and the review and reform of court practice. The Fine Gael-Labour-Democratic Left Coalition Government which succeeded to office in December 1994, in its Programme "A Government of Renewal", envisaged the establishment of an independent management authority for the courts.

⁵ The working Group published a series of six reports between 1996 and November 1998 on various aspects of the administration of justice.

⁶ Working Group on a Courts Commission , First Report "Management And Financing of The Courts", April, 1996, page 46.

Department of Justice, each branch of the legal profession, court staff, court users, business, and the trade unions. Day-to-day operational responsibility would lie with a Chief Executive who would, in the financial and administrative management of the Courts Service, be accountable to the Oireachtas (Legislature). These recommendations led to the enactment of the Courts Service Act, 1998 in April of that year and the establishment of the Courts Service, initially under transitional arrangements, and in November 1999 as a permanent agency. The courts administration model in Ireland was thus recast as an “independent agency” model.

Judges, understandably, were concerned about the separation of powers and the independence of the judiciary. After lengthy and careful consideration, the Working Group recommended that Judges work alongside others on matters relating to the administration and management of the Courts.

The Courts Service

Functions

The statutory mandate given to the Courts Service emphasizes the roles of that organization as court manager and service provider. Under section 5 of the Courts Service Act, 1998, the functions of the Service are 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.

Powers ancillary to Courts Service’s functions include:

- a) Acquire, hold and dispose of land,
- b) Enter into contracts,
- c) Make proposals to the minister in relation to – reform and development, the distribution of jurisdiction and business among the courts and matters of procedure, and
- d) Designate court venues.

The Courts Service is a body corporate with perpetual succession and power to sue or be sued. The Service is subject to the legislation and independent in the performance of its functions. The Board may establish such committees as it considers fit to advise it, but it must notify the Justice Minister of such committees, their functions, and their membership.⁷

A leading commentary on the administration of justice in Ireland has described this development as:

“a fundamental shift in the “philosophy” of the courts system, requiring it to take account of the concepts of quality, service and competitiveness more associated heretofore with the private sector...there can be no doubt of move from “court system” to “court service”.⁸

Under the provisions of the new Act, functions previously exercised by the Minister in court management and administrations were transferred to the Courts Service⁹. The Department of Justice, Equality and Law Reform retained responsibility for securing the annual vote of funds from the Oireachtas. Some staff from the Department’s Courts Division was transferred to the Service. The Department now oversees the vote and manages its relationship with the Judiciary and the Courts Service through a slimmed down Courts Policy Division.

Functions of the Board

The Board considers and determines policy (operational policy for the Service) in relation to the Service, and oversees its implementation by the Chief Executive Officer.¹⁰

Membership of the Board

Reflecting the Working Group’s recommendations, the Board consists of

- the Chief Justice for the time being or a judge of the Supreme Court nominated by the Chief Justice, as Chairperson,

⁷ Section 15, Courts Service Act, 1998.

⁸ Byrne, Raymond and J. Paul, McCutcheon, *The Irish Legal System* (4th ed.), (Dublin: Butterworths, 2001), at page 156.

⁹ Section 29, Courts Service Act, 1998.

¹⁰ Section 13(1), Courts Service Act, 1998.

- the Presidents of the High, Circuit, and District Courts,
- a judge nominated by the Chief Justice in “respect of his or her experience or expertise in a specific area of court business,”
- a judge from each of the courts aforementioned other than the court president, elected by the ordinary judges of the courts concerned,
- the Chief Executive,
- a practicing barrister nominated by the Bar Council,
- a practicing solicitor nominated Law Society,
- a member of the staff of the Courts Service,
- an officer of the Minister for Justice, Equality and Law Reform nominated by the Minister,
- a person nominated by the Minister to represent “consumers of the services provided by the courts,”
- a person nominated by the Irish Congress of Trade Unions, and
- a person who, in the Minister’s opinion, “has relevant knowledge and experience in commerce, finance or administration and who is nominated by the Minister after consultation with such bodies as the Minister considers are representative of such interests in the State.”

Members of the Judiciary have 9 of the 17 places on the Board. It should be emphasized, however, that the Judiciary has never found it necessary to rely on its majority; matters of policy are determined by the Board largely by consensus and in a spirit of collaboration.

Term of Office of Members

The term of office for Board Members generally is three years. The Chief Justice, the President of each Court, and the Chief Executive Officer are Ex officio members of the Board.

Meetings of the Board

The Board meets as often as it considers necessary, but must not meet less than once in every period of three months.¹¹

Functions of the Chief Executive Officer

The Chief Executive manages and controls generally the staff, administration and business of the Service and such other functions as may be conferred on him or her by or under the Act or by the Board. The Chief Executive is responsible to the Board for the performance of his or her functions and the implementation of the Board’s policies. The Chief Executive provides to the Board such financial and other information in relation to the performance of his or her functions as the Board may from time to time require.¹²

The Chief Executive is the accounting officer for the appropriation accounts of the Service and appears before Oireachtas (Leislative) Committees including the Public Accounts Committee.¹³

Accountability

The Board must prepare and submit to the Minister an Annual Report each year which provides information on the performance of its functions. The Board must also supply to the Minister any information the Minister requests relating to its functions. The Board is accountable to the public through the publication of its annual report.¹⁴

In overseeing expenditure of resources allocated, the Courts Service Board is required to consider:

- the resources available and the need to secure “the most beneficial, effective and efficient use of such resources,” and
- any policy or objective of the Government or a Minister of the Government insofar as it may affect or relate to the functions of the Courts Service.¹⁵

Every three years the Board must prepare and submit to the Minister for approval a three-year strategic plan. When approved, with or without amendments, the Minister must present the plan to both houses of the Oireachtas. Strategic plans shall:

- a) Comprise the key objectives, outputs and related strategies (including use of resources) of the Service,

¹¹ Section 14, Courts Service Act, 1998.

¹² Section 20, Courts Service Act, 1998.

¹³ Sections 19 & 20, Courts Service Act, 1998.

¹⁴ Section 8, Courts Service Act, 1998.

¹⁵ Section 13(2), Courts Service Act, 1998.

- b) Be prepared in accordance with any directions issued by the Minister,
- c) Have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Service, and
- d) Have regard to the Government policy on bilingualism and, in particular, to the need to ensure that an adequate number of staff is competent in the Irish language so as to be able to provide service through Irish as well as English.¹⁶

Role of the Minister for Justice, Equality & Law Reform

The Minister for Justice, Equality and Law Reform is politically accountable for the Service. Funding is negotiated through the Department of Justice, Equality and Law Reform. The Service has its budget appropriated directly by Dáil Éireann.

The Courts Service and the Judiciary

The 1998 Act contains provisions designed to ensure that the new arrangements do not permit either the Executive or the Legislature to encroach on matters that are appropriately the preserve of the judicial function. Section 9 provides that:

“No function conferred on or power vested in the Service, the Board or the Chief Executive, under this Act shall be exercised so as to interfere with the conduct of that part of the business of the courts required by law to be transacted by or before one or more judges or to impugn the independence of:

- a) A judge in the performance of his or her judicial functions, or
- b) A person other than a judge in the performance of limited functions of a judicial nature conferred on that person by law.”

Although the Chief Executive Officer may be called upon by a committee of the Oireachtas to “give account for the general administration” of the Courts Service, that obligation is qualified in that the CEO cannot be requested to give account for any matter relating to:

- a) The exercise by a judge of his or her judicial functions, or
- b) The exercise by a person other than a judge of limited jurisdiction of a judicial nature, including a matter which is, has been, or may at a future time be the subject of proceedings before a court in the State. Where the CEO is of the opinion that a matter falls within these categories, he or she must inform the committee giving reasons and, should the committee not withdraw the request, the CEO or the committee chairperson may apply to the High Court for a ruling on whether the matter is excluded from inquiry. If the High Court does so determine, the Committee must withdraw the request. If the High Court determines that it is not a matter falling within the area of judicial functions, the CEO must appear before the committee to account for it.¹⁷

Funding and Staffing

The Bulk of funding for the Service is provided by the State. The Service currently employs 1100 staff; positions in the Service are approved by the Minister with the consent of the Minister of Finance.¹⁸ The Service manages funds in a trustee capacity totaling €1.062bn.

Judicial Support

A Judicial Support Unit within the Courts Service provides a “one-stop shop” in delivering on the agency’s mandate to provide support services for judges. The Courts Service also provides staffing and support to bodies such as the Judicial Appointments Advisory Board, the Judicial Studies Institute and the three Courts Rules Committees, all of which are independent of the Courts Service. A support unit for these three committees provides administrative, secretarial, and drafting services for all three committees. The committees function independently of the Service.

Obtaining and allocating resources

In common with other jurisdictions, the courts are largely dependent for funding and other resourcing on the other branches of Government. Although judicial salaries are met from the Central Fund, the bulk of the Courts Service’s funding is secured by means of the annual vote of funds by the Oireacht, as noted earlier.

By contrast with the position in England and Wales, the courts in Ireland are not required to recover the full economic cost

¹⁶ Section 7, Courts Service Act, 1998.

¹⁷ Section 21, Courts Service Act, 1998.

¹⁸ Section 23, Courts Service Act, 1998.

of their operations from the revenue generated by court fees; nor indeed could they be, given the constitutionally guaranteed right of access to the courts.

Judges actively participate in the decisions on resource allocation through their membership on the Board and through membership of committees and project boards. These include the Finance, Audit, Investment (the latter of which oversees investment policy in relation to the €1 billion in funds of beneficiaries managed by the courts), and Family Law Committees. In addition, judges serve on Buildings Committees and project boards such as those established for the new Criminal Courts Complex and ICT projects.

Reform

The 1998 Act gave to the Courts Service an advisory role not previously enjoyed by the court administration. The Service is empowered to “make proposals to the Minister in relation to the distribution of jurisdiction and business among the courts and matters of procedure”.¹⁹ The Service prepares proposals for amendments to primary legislation and court rules to modernize and reform court procedure. It provides a vehicle through which the Judiciary has input into court reform without encroaching on the boundary between competencies of the Judiciary and the Executive.

Conclusion

The Irish courts governance model combines a strong combination of judicial and non-judicial involvement in the setting of policy on the management and administration of the courts. The effective resourcing of the courts depends heavily on a successful partnership with the Executive (The Department of Justice, Equality and Law Reform). The partnership, as it has evolved in Ireland since 1998, has, it is fair to say, worked very well.

¹⁹ Section 6(F), Courts Service Act, 1998.

