

The Court Service of Ireland – New Expectations

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Thank you very much for inviting me to speak to you today about our experience in Ireland establishing an independent Courts Service 21 years ago. Over the next twenty minutes or so I hope to share our experience in the functioning of the Courts Service, the problems encountered in the process and how these were overcome. I'll conclude by sharing our plans for the future and how I believe that our journey has prepared us to deliver even more for the people of Ireland.

I'll begin by providing some context for the decision to establish an independent agency to manage our courts, which I hope will assist you in understanding in the journey we have been on.

The Irish Courts Service was established as an independent agency on 8 November 1998 to solve a number of problems. We had inherited a Courts system from the British which had remained largely unchanged since the 1920s.

At the time, the system was accurately described as follows:

“a process that is costly, complex and subject to delays which are the cause of, at best, unnecessary stress and anxiety and, at worst, grave injustice. It is a process conducted by over-burdened and poorly organised staff in buildings which are sometimes in a ruinous state of disrepair and which almost invariably lack the basic facilities essential to mitigate what even in the best of circumstances is a stressful experience. These ills bear heavily on all concerned but most of all on the ordinary citizens who usually have recourse to the Courts as a reluctant last resort.”

The courts were run by eight different groups with links to the Department of Justice and in 1998 served a population of 3.6 million citizens. It was described as a “cumbersome, unwieldy and outmoded fabric.” It was in fact a series of organisations which were not interconnected adequately. The 838 staff worked in more than 200 buildings which were owned not by the Department of Justice but by local authorities who were not funded to maintain the buildings

In Ireland, we have an independent judiciary under our constitution which comprises one of the three branches of Government. The principle is that there should be independence for each organ of Government within a system of checks and balances. The powers of Government are distributed: no one organ of Government should be paramount.

The primary question to be addressed at the outset was the relationship between the Courts, the Department of Justice and the elected Government. An important step was the decision that the judiciary (at that time 101 Judges) could be involved in the running of the courts without impacting their independence. Good governance was the key.

The Courts Service Act, 1998 is the legislative basis for the establishment of the Service. A Board framework document defines the governance framework for the Service and sets out the functions of the Board, the Chief Executive, and the Committees of the Board. It also outlines the appropriate levels of authority and delegation arrangements. It defines the communication strategy between the Chief Executive and the Chief Justice and Presidents of the Courts, between the Courts Service and the Minister for Justice and between the Courts Service, the public and the media. The Act provides that the Chief Executive Officer is the Accounting Officer for the Service and clearly defines the accountability framework in which the Service operates. This is supported by the governance framework and corporate governance arrangements within the Service. The Courts Service is accountable to the Minister for Justice and through the Minister, to the Government. The Service must submit an annual Report to the Minister and such other information as the Minister may require. The Courts Service must also submit to the Minister an annual return in relation to its compliance with the Code of Practice for the Governance of State Bodies. An annual Agency Framework Agreement is also in place with the Department of Justice in relation to the roles and responsibilities of both bodies and setting out performance targets for the Courts Service for the year in accordance with the organisation's annual Corporate Business Plan. The Courts Service is also accountable through me as Chief Executive Officer, as both Accounting Officer and as Accountable Officer, to the elected representatives including to the Committee of Public Accounts.

The functions of the Service under the Act are to

- Manage the Courts
- Provide support services for Judges
- Provide information on the Courts system to the public
- Provide, manage and maintain court buildings
- Provide facilities for users of the Courts
- Perform such other functions as are conferred on it by any other enactment.

Ancillary powers given to the Courts Service under the Act include the power to:

- Acquire, hold and dispose of land
- Enter into contracts
- 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 recommend appropriate scales of court fees
- Designate court venues

The Courts Service has no role in relation to the administration of justice which is a matter for the courts and the judiciary. The judges are, under the Constitution, independent in the exercise of their judicial functions. The Courts Service is precluded by the Act from impugning in any way the independence of the judiciary or interfering in any way in a judicial function.

The function of the Board is to

- consider and determine policy in relation to the Service, and
- oversee the implementation of that policy by the Chief Executive Officer.

The Board comprises 18 members and is chaired by the Chief Justice. Each of our 5 jurisdictions is represented by the President of the Court and by a judge elected by their colleagues. I am a member of the Board and the staff of the service have an elected representative, the Department of Justice has a nominee and there are a number of public service representatives nominated by the Minister for Justice as well a representative each from the Bar Council of Ireland and the Law Society of Ireland.

The Courts Service Board has established a number of Committees which support the Board in carrying out its functions in relation to finance, buildings, audit and risk, family law court development and most recently modernisation.

I am responsible for the management and control generally the staff, administration and business of the Service. I am obliged to report regularly to the board on the implementation of policy and perform such functions of the Service as the Board delegate to me.

We experienced rapid change in the early years. It is my view that the key to building a successful organisation has been to successfully build trust. Trust between the judiciary and the executive, trust between the Board and executive and trust between the executive and the Department of Justice and central government.

It's not all easy. Some areas are easier to show results in than others. If you have access to funding, progress can be made quickly where you are dealing with things - by renovating buildings, building a website or in our case introducing technology. Progress in these areas is very visible, court users can see an improvement and it is easy to account for spending.

The changes involving people are more difficult.

The modernisation of the management of the courts was envisaged as a two track process – the development of modern management techniques and the growth of a new management ethos including in the regions outside Dublin. Our managers had managed court lists but had no management skills or expertise in the general sense. An additional challenge which could not be underestimated was the necessity to amalgamate several different streams of staff. A series of training events were held to raise consciousness among staff as to the implications of change for the Courts, providing staff with national and international examples of successful change management initiatives, assisting staff to identify key issues to be addressed, providing senior managers with options of management development programmes, providing communications channels for staff to engage and to encourage staff to express their fears, concerns and hopes for the future. A variety of workshops, conferences, focus groups and discussion groups were used to assist the process. Engagement of staff at all levels was critical to the success of the process. A senior managers conference held in 1997 and was the very first occasion where senior managers involved in the courts system had ever met together. The session awakened staff to the possibilities that change could bring and helped to allay some of the fears they had. It helped to identify change champions at all levels throughout the organisation, helped to start the process of building a corporate identity for the new service, allowed staff to network with each other and helped to bring down some of the barriers to change.

Other groups had fears too. Judges rightly guard their independence fiercely and were concerned about the future relationship with the executive and with the Department of Justice. Prior to the establishment of the service, Judges and local staff had excellent working relationships and both groups were wary of what the introduction of a management structure would bring.

One of the functions of the service is to provide support services to the Judiciary. This has resulted in the delivery of proper accommodation, mobile technology, library

and research support, a dedicated knowledge management system, expert advice in relation to the investment of court funds and support for the rules committees established at each jurisdiction. Annual conferences are held for Judges in each jurisdiction together with a national conference where all Judges attend. The relationship between the judiciary and the executive is strong. In practice, the executive and judiciary work together to deliver constant improvement for court users. A good example was the recent rollout of improved mobile technology to Judges. The Chief Justice and the Head of ICT discussed where mistakes had been made in the past. It was recognised that not all Judges used technology in the same way so one or two IT staff shadowed some volunteer Judges in different jurisdictions and of varying IT literacy for a couple of weeks to see how they needed to access systems, what they needed to access and when. By listening and working in partnership, we delivered IT solutions that actually worked for the Judiciary rather than what we (and they) thought they might want.

We recognise that neither the Judiciary nor the Courts Service can deliver alone. We are ever aware that in the minds of the public the Courts and the Judiciary are the same – our reputations are inextricably linked - but that is not a bad thing as we have the same goal in mind – improving access to justice for ordinary people. On a daily basis my senior managers work with the Presidents of the jurisdictions to best effect change to the benefit of court users. This was most recently evidenced during the pandemic when weekly meetings of the Senior Management team and the Chief Justice and Court Presidents resulted in the rapid delivery of remote courts, a safer court environment, improved communications and a more streamlined way of working at the most challenging time in living memory.

Trust between central Government and the Courts Service has also taken time to build. I account for spending and thanks to the trust built by my predecessors by spending wisely and efficiently, I have the benefit of delegated sanction whereby I can hire my own staff to a very senior level without having to seek approval in advance. This has allowed me to hire specialist staff quickly for areas such as finance, ICT, procurement, health and safety and communications. It has provided access to public private partnership funding to build 8 brand new courthouses with 6 more planned. Strong governance has supported us in this as have strong financial controls and an active internal audit unit who are overseen by the Audit and Risk Committee of the board.

Trust with Court users grew as we delivered improvements. Tangible improvements in the early days provided assurance that the new service would deliver for citizens – a website to provide easy access to information both about the Courts and some court cases, better facilities, trained staff, new buildings with separate circulation routes for Judges, jurors, the public and the accused. We have established the

commercial court, drugs courts, small claims on-line, an electronic licencing system and a new jurisdiction, the Court of Appeal but the best progress is made where we communicate. Each of our offices hold user group meetings with court users every quarter to ensure that we keep on top of customer issues. This built the strong understanding relationships which have helped us most in the past difficult year. Practitioners are involved in working groups on a wide variety of change projects including our recent transfer of the tax elements of probate to revenue systems, remote courts and e-licensing.

It hasn't all been easy. Not every thing worked. In an external organisational review published in 2019 the service was criticised for its poor ICT, reflecting the difficult choices made during the great recession when ICT was under resourced and under funded. The review found that the Board and management team needed to be more strategic, that there was scope to improve the working relationship with the Department of Justice especially on prioritisation and strategic reform and that we needed a comprehensive and well planned response to the significant numbers of staff due to retire in the following 5 years.

So was it all worth it? Did it work? Well the bad news is that the system is still costly, complex and subject to delays! The good news is that we are better placed to address those problems. Our governance structures have successfully survived three Chief Executive Officers, five Chief Justices and six Ministers for Justice and continue to serve us well. We have provided a clear management structure with accountability and responsibility, clear and regular reporting between the various constituencies, performance measurement systems with objective setting and planning beyond the day-to-day, a good use and understanding of the benefits of innovation and information technology, staff training and development, professional management to support the structures, statistics, annual reports and a three year strategic plan. Our judges now have what they need to do their work, when they need it.

I believe that the test of a system is a crisis and the Courts Service has experienced two in it's short 21 years. The first was the great recession when funding was cut dramatically at a time when the population grew and the amount and complexity of incoming work grew exponentially. Our service now serves a population of 4.9 million people with a staffing of 1,106 supporting 176 Judges in 103 venues. We are a lot more efficient and provide better value for money than we did in 1998. The number of staff per case has dropped significantly in recent years. The crisis also made us look again at how we did our work. We became more citizen focussed so for example during this time we put plans in place to centralise jury services so that the 120,000 citizens we call for jury duty annually now get a better service.

The second crisis – the global pandemic – coming so soon after the first, tested us in every way imaginable. It tested our leadership. I was in my job less than six months and because of retirements had 3 vacancies on my small leadership team. The Department of Justice was in the middle of a root and branch transformation moving to a functional model of working. I did not know if our ICT infrastructure could withstand the demands of additional video calls to prisons and remote working. Our budget had an immediate €18 million hole in our finances because of a drop in fee income. It was a perfect storm.

I'm not going to say it was easy but not only did we cope with the effects of the pandemic, we thrived. We had the agility to make extraordinary changes in the space of a few days because working with the senior judiciary, we had the autonomy to make our own decisions, quickly, and to manage our courts ourselves. We could decide what services to provide, in what way. The Department of Justice supported us in this with funding, legislation and regulations delivered at pace. We pivoted almost overnight. We realised quickly that capital works would not be progressed as planned because of lockdowns and were able to redirect our capital budget to ICT spending – increasing the use of remote technology to allow 80% of staff to work from home when possible, dramatically increasing the use of video link to prisons so as to successfully protect the prison population and most importantly, we repurposed technology for taking expert evidence to run thousands of remote courts thereby reducing the numbers attending in our courthouses and maintaining zero workplace transmission of the virus to date. Some of the changes we made didn't cost money but were innovative – working with the President of the High Court we have published court approved authorities for the ten most common court applications on our website so that, by practice direction, they are no longer included in books of authorities presented to the Court. This has saved lawyers and their clerks time and saved their clients money.

We made this progress because of the strong working relationships between the Service, the Judiciary, the Department of Justice and court users which had developed over the previous twenty years. Could we have done it under the old regime? Absolutely not. Are we perfect? Absolutely not. We do not yet know the full impact of what could be our third crisis – Brexit, but I am certain that we will face it in the same way. Working in partnership together within the parameters of our legislation and governance framework.

Our citizens have changed dramatically in recent years. Citizen expectations of public services are high and rightly so. In response to that organisational review and its findings we have adopted a ten year plan to improve access to justice underpinned by improved technology. We are working with colleagues across the justice sector to align our plans for technological improvement, to deliver an

improved Family Court system, to implement the recently published recommendations of a review of the civil administration of justice. Our Board and its committees have recently been the subject of the first external review (conducted by the Institute of Public Administration) and are now working to implement the recommendations, recognising that the expectations of public boards and research about good governance have changed over the past 21 years.

Over the past 21 years, I have learned that change is not something that starts and finishes, it is never done. It is continuous and the pace of change will never be as slow as it is today. The key to successful change is successful communication. Listening is key. Showing that you have listened is even more important.

Our common law legal system is built on precedent and incremental change. We become lawyers because we like certainty and prefer incremental change. All change creates uncertainty. However, that is no reason to leave things as they are. The creation of an independent courts service has served the ordinary people of Ireland well over the past 21 years. My advice, should you choose to accept it, is to be brave, and remember that everything you want is outside your comfort zone.