

## **A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence**

As part of its ongoing work, the Sentencing Guidelines and Information Committee (SGIC) of the Judicial Council identified sentencing in the District Court as an area in need of research. In that regard it contracted the services of Dr Niamh Maguire of the South East Technological University to carry out this project.

The intention of the research was, on a confidential basis, to identify District Court Judges' views on the sentencing process in the District Court.

The study explored both systemic issues and particular issues related to sentencing in cases of Relationship Violence and Abuse. It had three research objectives:

- (a) To ascertain judges' views on the issues of concern and challenges in approaches to and arriving at sentencing in criminal matters in the District Court.
- (b) To ascertain the concerns and challenges in approaches to arriving at decisions in specific cases of Relationship Violence and Abuse, including exploring the following
  1. sentencing for breaches of barring, safety and protection orders- i.e. offences under s.33 Domestic Violence Act 2018
  2. sentencing in cases of coercive control (s. 39 Domestic Violence Act 2018)
  3. applying section 40 Domestic Violence Act 2018 (relationship between Defendant and Victim as aggravating factor in sentencing)

and the following themes, insofar as they relate to the sentencing decision

4. decisions on bail
  5. how to deal with withdrawal of complainant's cooperation
  6. understanding dynamics of family violence both generally and in specific cases when reaching a decision on sentencing
  7. judges' access to information regarding the parties involved and affected by the offences
  8. charging s. 33 Domestic Violence Act 2018 in cases where other criminal offences could have been charged instead
  9. the role of probation officers in assisting the court
  10. the role of probation officers in monitoring sentences
  11. the role of other professionals in assisting the court
  12. issues related to ss. 2 and 3 of the Non-Fatal Offences Against the Person Act 1997 insofar as such prosecutions relate to relationship abuse and violence.
- (c) To ascertain views on how sentencing in the District Court might be better supported, including their views regarding sentencing guidelines and sentencing information and the role of the SGIC.

The draft Report prepared by Dr Maguire has been furnished to the SGIC, which has adopted all of the key recommendations in the Executive Summary, which follows. The SGIC intends to publish the Report once finalised.

## Executive Summary

Large caseloads and long court lists are two of the challenges perceived by District Court judges as reducing the time and flexibility that they have to consider the appropriate sentence. Pressure to progress the list is an important overarching consideration that judges feel compelled to factor into their decisions around sentencing in order to avoid delays and the impact that this might have on the defendants' right to a fair trial. A case in point is the decision to request a pre-sanction report and the potential delays this might lead to. Another key challenge identified by judges in this study was the difficulty of accessing timely and accurate information they considered essential for making their sentencing decision.

The challenges inherent in making decisions under extreme time pressures and with limited information are compounded by weak structural and contextual supports including a lack of bespoke sentencing guidance relevant to the types of cases dealt with in the District Court, the absence of a dedicated system of appellate review for the District Court, the under-resourcing of prosecutors whose duty it is to assist judges in information on sentencing, and a very limited programme of judicial induction, training and continued professional development in the area of sentencing. These challenges combined make it more difficult for District Court judges to stay up to date with new laws, processes and legal procedures.

The introduction of a bespoke system of support that caters specifically for the needs of District Court judges would significantly enhance their ability to overcome many of the challenges they currently face when sentencing in the busiest and most diverse court in the Irish legal system.

Despite these challenges, this study found a marked difference in attitudes of District Court judges from previous research carried out over a decade ago in that most judges now adopt a structured approach to sentencing with reference to the principle of proportionality and only a minority following an instinctual synthesis approach. Similarly, most judges interviewed for this study value consistency in sentencing and welcome the provision of more sentencing information, guidance and training on a wide range of sentencing issues.

A key point that emerged from judicial perspectives on the sanctions at their disposal was the consensus amongst judges that the system for the enforcement of fines is not fit for purpose, that judges are reluctant to impose fines and are sometimes more amenable to imposing a contribution to charity and/or a compensation order. The underlying problem from a judicial perspective appears to be the low probability that the fines imposed will ever be paid. How judges should navigate the potential lack of equity in sentencing in relation to persons who do not have the financial means to pay a fine, contribution to charity or compensation order emerged as an important area that requires sentencing guidance.

District Court judges interviewed in this study have a low level of awareness of the range of community sanctions at their disposal and highlighted several other obstacles limiting their use of community sanctions including: the lack of availability of and delays associated with getting pre-sanction reports and their perceptions that community sanctions are not always suited to people appearing before them as many have substance misuse issues and serious mental health problems that make them unsuitable for these sanctions.

Additionally, District Court judges opined that often a prison sentence is the only suitable penalty for people with multiple convictions, largely because multiple convictions increase the seriousness of even relatively minor offences to the point where no other sanction is suitable.

In order to support judges in the District Court address the key challenges highlighted above the Sentencing Guidelines and Information Committee (SGIC) should prioritise the following key recommendations:

## Key recommendations related to the sentencing of criminal offences in the District Court

- Develop sentencing guidelines specific to the District Court based on the general sentencing jurisprudence of the superior courts. Guidelines should be specifically adapted to the types of cases and circumstances typically heard in the District Court and the following areas should be prioritised:
  - the adoption of a structured approach to sentencing, and the various steps involved in this with specific examples based on typical cases tried and sentenced in the District Court;
  - the different points on the scale of severity for the more serious offences heard in the District Court and appropriate penalties incorporating the full range of financial, supervisory and custodial sanctions available to District Court;
  - role of previous convictions in sentencing in the context of the District Court with particular emphasis on cases with large volumes of previous convictions where the offence itself is relatively minor;
- Regular updates on Court of Appeal and Supreme Court sentencing jurisprudence reported with specific discussion of their relevance in the context of the District Court.
- Regular provision of feedback of outcomes of District Court sentencing appeal decisions.
- Annual updates to Sentencing Bench Books with information on the full range of sentencing disposals available to judges sentencing in the District Court;
- The provision of sentencing information for District Court on the various community sanctions overseen by the Probation Service to inform judges about the range of different supervisory sanctions, what they involve as well as the relative success of the different sanctions in helping people desist from crime.

Ireland does not have a specifically designated or specialist domestic violence court. By default more than design, there are at least two different approaches underpinning the sentencing of breaches of domestic violence orders in the Irish District Court. One in which judges have full access to the original civil application for the protective order and another in which they have no previous knowledge of the family law file.

The majority of judges interviewed expressed the view that relationship violence cases are different to other criminal cases due to the relationship between the parties and the sensitivities and complexities that this gives rise to.

Analysis of the sentencing vignettes showed that some judges tended to adopt a family law solution approach rather than one based purely on the ordinary sentencing principles when sentencing section 33 offences. This study therefore found a divergence of approach amongst District Court judges in terms of how they approach the sentencing of breaches of domestic violence orders which was principally related to the different court contexts in which they operate.

The SGIC can support the adoption of a more coherent and uniform approach to the sentencing of domestic violence offences under section 33 by the provision of a bespoke programme of sentencing information, guidance and training relevant to the section 33 types of cases that typically appear in the District Court. The majority of judges would welcome information, training and sentencing guidance from the SGIC in relation to sentencing of domestic abuse cases in the courts and see the absence of such training as a gap in provision that should be filled.

While some judges consider physical abuse as more aggravating than psychosocial or emotional abuse, there was strong evidence that judges were motivated to adopt approaches that they believed would protect victims.

While many judges noted that controlling behaviour was a common feature of section 33 cases in the District Court a majority appeared to believe that the reason very few section 39 prosecutions were

taken in the District Court was because the offence of coercive control was too serious to be heard in that court.

Key recommendations related to the sentencing of relationship violence in the District Court

- Sentencing information and training for District Court judges on how to identify different forms of abuse and their respective impacts on victims/survivors and their children. Information and training on recognising the various forms that domestic abuse can take and their respective harms is directly relevant to sentencing judges to enable them to correctly assess the nature of the harm involved in the domestic abuse and thus the seriousness of the offence.
- The provision of dedicated Sentencing Domestic Abuse Bench Book for District Court judges which will provide a one stop shop for all the sentencing information and guidance they need when sentencing section 33 offences and of other criminal offences involving domestic abuse.
- Sentencing guidance for District Court judges on how to approach the sentencing of section 33 cases that sets out the various considerations that judges should be aware of when assessing the harm caused by the breach of the protective order, the various levels of culpability of the convicted person, and the range of aggravating and mitigating factors that should be considered when assessing the overall level of seriousness of the offence. The guideline should also offer clarity on the range of personal factors and circumstances that might legitimately be considered in terms of mitigation of headline sentence.
- Sentencing guidance for District Court judges on how to assess the harm caused by the breach of the protective order and/or involved in cases involving domestic abuse should focus on helping judges to recognise and assess the impact of the various harms that are evidenced in a particular case including psychological, emotional, financial, and physical harms. The assessment of harm caused by the offence goes directly to the question of the seriousness of the case which along with culpability is a major component of the arriving at the headline sentence in accordance with the principle for proportionality in Irish sentencing law.
- Sentencing guideline for District Court judges on what action, if any, is appropriate for District Court judges to take when child welfare concerns arise in during a criminal prosecution for domestic abuse such as in a prosecution of and/or sentencing for a section 33 offence. The guidance should set out specifically where judges stand vis-à-vis the requirements of all adults to report child welfare concerns under the Children First National Guidance 2017.