

Criminal Procedure CPD: Thursday Feb 11th 5.30pm-7.30pm, via Zoom

Silence at Interview, Prepared Statements, and Evidence at Trial

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This Criminal Procedure CPD session will focus on the right to silence in garda custody, and the making of a prepared statement. Dr Yvonne Daly will provide contextual information arising from the empirical research which she has carried out with her colleague Dr Aimee Muirhead, as part of the EU-funded 'EmpRiSe' study. This will detail divergent views and experiences of practitioners in the Irish criminal process on the appropriate use of a prepared statement as an aspect of the defence response to garda interview, and its value or otherwise at later trial.

The presentation will link the findings emerging from the empirical research to two relatively recent cases: **DPP v M** [2018] IESC 21 and **DPP v JD** [2021] IECA 14.

In **DPP v M**, the accused gave a prepared statement to gardaí which addressed certain matters and denied the relevant allegations. In response to follow-up questions from the gardaí he stated that he had nothing further to add, other than what was in the statement. A dispute arose as to whether this was an exercise of his right to silence which ought not to be revealed to the jury at trial, or if it was relevant and probative evidence, which would be admissible, as he was referring back to his denial of the allegations within the statement. The Court of Appeal and the Supreme Court arrived at different conclusions on this question.

In **DPP v JD**, the accused argued that he had not been given an opportunity to state his account of events, as he had not been arrested and detained for questioning by gardaí in relation to the indictable charge against him. While the Circuit Court trial judge directed the jury to return a verdict of 'not guilty' because fair procedures were not observed, the Court of Appeal disagreed, contending that the accused "had no entitlement to be detained and questioned, and no entitlement to put forward a version of events which would be immune from challenge or interrogation."

The empirical research seems to suggest that the provision of a prepared statement may be increasing in use. This session will give practitioners an opportunity to consider some of the potential benefits and pitfalls of such an approach.

The Right to Silence and Related Rights in
Pre-Trial Suspects' Interrogations in the EU

EmpRiSe

