

## 'LACK OF CONSTRAINTS ON JUDGES CAUSES INCONSISTENT SENTENCES'

THE lack of constraints on judges can result in 'inconsistencies' in sentences handed down to violent criminals, a criminal law expert has said.

Professor Shane Kilcommins, head of the School of Law at the University of Limerick, says the sentencing process in Ireland is relatively unstructured.

Speaking to the Mail, he said: 'Particularly when compared with other common law jurisdictions such as England and Wales, Northern Ireland and the USA, the lack of constraints can result in disparities, inconsistencies, capriciousness and disproportionate sentences.'

Prof. Kilcommins added that there is a very broad judicial discretion within the bands of minimum and maximum sentences. He said: 'Over the years, and unlike other jurisdictions, the Irish legislature has provided very little guidance on sentencing principles and policies.'

'This is compounded by a lack of settled agreement on sentencing rationales.'

Should a sentence for a violent crime be based on rehabilitation of the offender or retribution for the crime? Should it be based on individual deterrence, general deterrence, or on public protection?

'There is little consensus or guidance. Different judges will approach sentencing with different rationales in mind.'

He added that there have been some measures introduced to limit inconsistent sentences. Prof. Kilcommins said: 'Since 1993, the DPP has the power to appeal unduly lenient sentences. In 1999, presumptive mandatory offences were introduced for the sale or supply of drugs. This was extended to organised crime offences in 2007. The Court of Appeal and the Supreme Court have also sought in recent years to provide guidelines in relation to rape and manslaughter cases.'

'In general, however, sentencing practices remain notable for their lack of sentencing grids, sanction hierarchies, or guidelines.'

