



THE BAR
OF IRELAND

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An Taoiseach, Leo Varadkar TD

Dáil Éireann

Leinster House

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12th May 2023

Dear Taoiseach

I write to you arising from a number of media reports this week where it has been reported that the Government intends to engage with our profession in relation to the cuts ranging from 28.5% - 69% that were applied to the professional fees paid to criminal barristers during the period 2008 – 2011.

From the outset, I wish to formally welcome the intention of Government to finally engage meaningfully with The Bar of Ireland on this matter. As you are no doubt aware, we have been seeking to have this issue addressed since 2016.

Both the Office of the Director of Public Prosecutions and the Department of Justice have indicated their support for such fee restoration.

In July 2018, following a detailed review process led by the Office of the Director of Public Prosecutions in conjunction with the Department of Justice and sanctioned by the Department of Public Expenditure & Reform, the review concluded as follows:

'The ongoing flexibility being delivered by prosecuting counsel, documented above, is considered comparable to the flexibility delivered by other groups to justify the reversing of cuts imposed during the financial emergency'.

I have enclosed the full outcome of that review for your ease of reference.

In addition, since July 2018, the Bar has continued to cooperate with additional changes in work practices, including the introduction of preliminary trial hearings, which provide significant improvements in the efficiency of jury trials and reduce substantially the burden placed on members of the public carrying the burden of jury service, and implementation of the recommendations of the O'Malley Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences, to name just two examples.

To date, the approach being taken in relation to the unwinding of cuts applied to the professional fees of barristers has been at odds with the approach taken in relation to other groupings. For example, State Solicitors, who are independent contractors (similar to barristers), and are engaged by the Office of the Director of Public Prosecutions to work on the same cases prosecuted by barristers have had a process of pay restoration implemented

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since 2017. This is an obvious anomaly and demonstrates a clear unfairness in the approach of Government in its pay policy.

Further, up until 2008, the fees paid to barristers were linked to the increases applied under public sector pay agreements and the Department of Public Expenditure & Reform has unilaterally broken this link. All other groups of workers who were subjected to the emergency FEMPI cuts throughout the justice system cuts have since had their cuts reversed and no other group of workers in the State is having to endure a pay level that was in place 21 years ago (in nominal terms; in real terms, of course, it is much less).

In welcoming your intention to engage with The Bar of Ireland on this important issue, I felt it important to draw to your attention to the flexibilities and efficiencies that have been delivered by the Bar over the last several years as the media reporting seemed to suggest that you were unaware of the efficiencies and reforms already achieved in the administration of criminal justice with the support and cooperation of the Bar.

I wish to draw your attention, in particular, to the position of the Office of the Director of Public Prosecutions, as set out in their letter of 30 March 2021:

*“The arguments have been well rehearsed regarding the fact that **counsel have been treated differently to other groups in the criminal justice process** and, indeed, the economy at large. All other groups have seen a restoration of cuts. This Office has highlighted on a number of occasions the **very significant flexibility delivered by counsel and their ongoing co-operation with change initiatives** – flexibilities and co-operation **which is comparable with that accepted as justification for pay restoration to staff employed in the criminal justice system and to restoration for State Solicitors**. Rather than there being a need for further detailed examination by officials in our two organisations, this Office considers that **we are now at a point where a political decision is required**.”*

I have enclosed a copy of that letter for your ease of reference.

The Bar of Ireland will, of course, always be a willing and engaged participant in any discussions on reform and improvement of the criminal justice system and the administration of justice and we are happy to engage in discussions on those issues. But there should be no misunderstanding of the present position: The Bar has already provided flexibility and efficiencies comparable to those provided by other groups in return for reversal of cuts and has long ago satisfied the relevant front-line Departments of that.

Our ask of your Government has been to immediately restore the link with public sector pay agreements and engage in a process to unwind the cuts applied to the professional fees of criminal barristers. The Bar of Ireland is simply asking that the profession is treated fairly and reasonably, consistent with the approach taken in relation to other groups of workers and independent contractors where the State is the paymaster.

I look forward to hearing from Minister Donohoe in the coming days and confirm our willingness to positively engage.

Yours sincerely



Sara Phelan SC
CHAIR, COUNCIL OF THE BAR OF IRELAND

Cc Minister Paschal Donohoe, Minister for Public Expenditure & Reform