

Mr. Brian O'Malley  
Principal Officer  
Central Votes Expenditure Policy Division  
Department of Public Expenditure and Reform  
Upper Merrion Street  
Dublin 2

### **Fee Rates Paid to Prosecution Counsel**

Dear Brian,

I refer to previous communications in relation to seeking a way forward to resolve long running issues arising from:

1. Cuts made to fee rates of prosecution counsel during the financial emergency and, also,
2. The breaking of the established link between increases in salary rates for the Assistant Principal grade and increases in fee rates of prosecution counsel.

This Office and the Bar Council have considered in detail the request from your Department for additional statistical information with regard, in particular, to numbers by year of those who commenced practice at the criminal bar and attrition rates by year. Unfortunately, the Bar Council is unable to provide greater details. As you will appreciate the holding of records electronically is a relatively recent occurrence. The Bar Council, while having very detailed electronic information on the last 10 years with regard to numbers entering and leaving the profession, simply is not in a position to provide similar data in relation to earlier periods.

As the additional statistical information sought by your Department is not available to the Bar Council, or elsewhere, it appears to this Office that a redirection of approach is required in order to resolve this long running issue.


#### **Way Forward and Next Steps**

This Office strongly considered that as a first step the link between increases in the salary of the Assistant Principal grade and fees rates paid to prosecution counsel should be restored. While not resulting in any significant or immediate increase for prosecution counsel, this would give certainty for the future and would ensure that fee rates don't continue to fall further behind the earning power of other key players in the criminal justice system and the economy at large. Restoring the link would, this Office believes, go a long way to displaying that the State recognises the key role which independent counsel play in the criminal justice system. It would also give a clear indication that the State recognises the importance of returning to a system which gives some certainty to those considering a career at the criminal bar that future earnings will be linked to earning increases approved by Government for the public sector.

I would turn next to the issue of restoration of the cuts imposed during the financial emergency. 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 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 the point where a political decision is required. It seems to this Office that the political decision required is whether restoration of all or any of the cuts imposed on counsel fee rates during the financial emergency is in fact to take place. In the event that a political decision to restore cuts is made, then officials in your Department and this Office might engage with the Bar Council with regard to the extent and timing of such restoration.

Yours sincerely



Declan Hoban  
Head of Administration

30 March 2021