



Ms Sara Phelan
Chair, Council of the Bar of Ireland
Distillery Building
145-151 Church Street
Dublin 7, D07 WDX8

8 July 2024

Re: Barristers' withdrawal of professional services in criminal law

Dear Ms. Phelan,

Thank you for your correspondence dated 21 June.

I note, with regret, the recommendation of the Council of the Bar of Ireland that its members withdraw their services during July of this year.

As you recognise in your correspondence, last year I secured funding of €9m to increase the fees payable to legal professionals for criminal legal aid by 10% from 1 January 2024. This 10% increase is the starting point in a wider process. It is the first step on a pathway to further engaging with the profession and with the Department of Public Expenditure, NDP Delivery and Reform.



Last summer I told the Bar Council that I saw no good reason why those in the legal profession are left waiting for crisis-era reductions to be restored. I can assure you, and as I have put on the record of the Dail, this is still my position. I said last summer that I wanted to make progress on criminal legal aid in last year's budget and I did just that. I will be equally clear regarding my intentions this year and I will again seek to make progress in this year's budget in relation to restoration of criminal legal aid fees.

I am working to secure the remainder of the restoration to the fees, namely the two 8% cuts within within the context of the budget. I will be writing to the Minister for Public Expenditure, NDP Delivery and Reform (DPENDER) in that regard. However, while I understand that from your perspective that it is less than ideal, I know you will appreciate that any decision regarding this can only be announced on budget day.

I can also assure you that my officials have commenced a review of Criminal Legal Aid. The publication of the General Scheme of the Criminal Justice (Legal Aid) Bill on 18 July 2023 is an important step in modernising its operation. The Bill will modernise the operation of the Criminal Legal Aid Scheme, introducing strengthened oversight and governance structures.

I now have a dedicated team of officials working solely on the modernisation of criminal legal aid, with the intent of shaping and implementing necessary reforms.

Presently, they are laying the foundations for an improved, more efficient system of administering legal aid and intend to work with all relevant stakeholders, including legal professionals working in criminal legal aid, thus



ensuring the appropriate voices are heard when working on these reforms. The restructuring of fees will be part of this reform process.

I would like to highlight here that the modernisation of criminal legal aid is a complex process, involving multiple stakeholders, extensive research and analysis, therefore completing this work will take time.

I note your reference to meeting with representatives of the Council. My officials met with representatives of the Council of the Bar of Ireland and Law Society of Ireland on Tuesday 25th June. This meeting highlighted the importance of my officials and legal profession working collaboratively to reform criminal legal aid.

My officials intend to meet again with the Council of the Bar of Ireland and Law Society of Ireland this week in order to further work towards identifying key areas for reform, including areas within the structure of fees.

I hope the knowledge that my officials are working on the above mentioned reforms and restructuring of fees provides reassurance that progress is being made in this area.

Yours Sincerely,

Helen McEntee, T.D.
Minister for Justice



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10th July 2024

RE: BARRISTERS' WITHDRAWAL OF PROFESSIONAL SERVICES IN CRIMINAL LAW

Dear Minister McEntee

I refer to your letter of 8th July 2024.

I wish to again acknowledge all of your efforts to date, and your continuing efforts, to secure the unwinding of the FEMPI-era cuts that were applied to the criminal bar. The Bar of Ireland notes your commitment to resolving this long-outstanding issue and does not doubt your intentions in this regard.

I also wish to again reiterate our continued cooperation with the work underway to modernise criminal legal aid and to improve the criminal justice system, in particular as it is experienced by citizens and members of the public who interact with it. As you are no doubt aware, the vast majority of modernisation relates to the internal administrative and system requirements of your Department and other agencies of the State who have a role in administering criminal legal aid.

Your correspondence states that you are *'working to secure the remainder of the restoration to the fees, namely the two 8% cuts within the context of the budget. I will be writing to the Minister for Public Expenditure, NDP Delivery and Reform (DPENDER) in that regard. However, while I understand that from your perspective that is less than ideal, I know you will appreciate that any decision regarding this can only be announced on budget day'*.

A number of concerns arise from this statement, where your further response would be appreciated:

1. The full range of professional fee cuts that were applied to the criminal bar are as follows:
 - September 2008 - Non-payment of an agreed 2.5% increase
 - March 2009 – 8% reduction in fees
 - April 2010 – 8% reduction in fees

- October 2011 – 10% reduction in fees
- Link with National Wage Agreements unilaterally broken

To date, the only restoration that has been implemented was the 10% reduction applied in October 2011. The Bar of Ireland expects full restoration of all of the cuts outlined above along with the reinstatement of the link with national wage agreements as was the case up to September 2008.

There should be no misunderstanding that the re-establishment of the link to public sector pay is of fundamental importance. Even if the FEMPI-era pay cuts were completely reversed immediately, barristers practising criminal law would still have suffered an approximately 16% pay cut in real terms since 2008. The connection to public sector pay is essential to prevent further erosion of the real value of pay for professional legal services in the criminal justice system.

2. We note your intention to write to the Minister for Public Expenditure, NDP Delivery and Reform. However, a statement issued by the Minister for Public Expenditure, NDP Delivery and Reform in response to media requests on foot of the withdrawal of professional services by the criminal bar of 9th July 2024 states:

'It should be noted that legal professionals operating under the Criminal Legal Aid Scheme are not Public Servants and the fees for the scheme are a matter for the Minister for Justice under the relevant legislation. The fee rates that apply were not changed through FEMPI legislation.....In relation to professional fees, the 2017 Act provides relevant Ministers with the authority to set and vary fees, where contracts permit, following appropriate consultation with relevant parties. It is the responsibility of the relevant sector to ensure measures in relation to pay, pensions and fees provided for under the relevant legislation has been correctly administered.'

This statement from the Minister for Public Expenditure, NDP Delivery and Reform suggests that it is a matter for you as the Minister for Justice to 'set and vary fees' following appropriate consultation with relevant parties. As you know, this consultation was completed in July 2018 where it was agreed that:

'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'

We are therefore at a loss to understand why it is now necessary for you to write to the Minister for Public Expenditure, NDP Delivery and Reform as, according to the statement

from your colleague in Government, the Minister for Public Expenditure, NDP Delivery and Reform, it is within your gift as Minister for Justice to 'set and vary fees'.

3. The Bar of Ireland is also at a loss to understand how it is possible to negotiate and conclude a public sector pay agreement outside of 'budget day'. Your statement that 'any decision regarding this can only be announced on budget day' is at odds with the approach taken in relation to other groups of workers and independent contractors where the State is the paymaster. We are at a loss to understand why a similar arrangement cannot be concluded in respect of the professional fees of criminal barristers where a timeline for restoring the cuts outlined above can be discussed and agreed with The Bar of Ireland.

An opportunity remains for you as Minister for Justice to intervene to avert further withdrawal of services by the criminal bar on 15th July 2024 and 24th July 2024. I urge you to again consider arranging an urgent meeting with representatives of the Council to avoid the disruption that will inevitably impact on victims of crime, those accused of criminal offences, juries and other stakeholders involved in the administration of criminal justice.

Yours sincerely



Sara Phelan SC
CHAIR, COUNCIL OF THE BAR OF IRELAND

CC Mr Paschal Donohoe, Minister for Public Expenditure, NDP Delivery & Reform
Ms Oonagh McPhillips, Secretary General, Department of Justice
Mr John O'Callaghan, Deputy Secretary General, Department of Justice
Ms Carole Sullivan, Head of Service Delivery, Department of Justice

