



11 July 2024

Ms Sara Phelan SC
Council of The Bar of Ireland
Distillery Building 145-151
Church Street
Dublin 7
D07 WDX8

Reference Number: DOT-TH-04128-2024

Dear Sara

Thank you for your correspondence regarding Barristers' withdrawal of professional services in criminal law. I understand that you have also written to the Minister for Justice, Helen McEntee T.D. on this matter and that she has responded to you directly.

The Government certainly recognises the important role played by barristers and solicitors in the administration of criminal justice – both in the context of working to defend those accused and working with the Office of the Director of Public Prosecutions in respect of prosecutions.

As you recognise in your correspondence, last year the Government provided 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 and should be considered the first step on a pathway to further restoration.

While it is not possible to make Budget Day commitments outside of the estimates process, I fully expect the Government will make further progress in this year's budget.

Separately, I understand that Department of Justice officials continue to engage with relevant stakeholders including the Bar of Ireland on work towards identifying key areas for reform, the structure of fees, and laying the foundations for an improved, more efficient system of administering Criminal Legal Aid.

I expect this work will continue in the period ahead and I hope confirmation that Department of Justice officials are working on the above mentioned reforms and restructuring of fees provides reassurance that progress is being made in this area.

Yours sincerely

Simon Harris, T.D.
Taoiseach



THE BAR OF IRELAND

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18th July 2024

RE: BARRISTERS' WITHDRAWAL OF PROFESSIONAL SERVICES IN CRIMINAL LAW

Dear Taoiseach

Thank you for your letter of 11 July 2024 noting the intention of your Government to make further progress on the fees payable to barristers by the Director of Public Prosecutions and under the Criminal Justice (Legal Aid) Scheme.

While your intentions are welcome, unfortunately, expressions of intention have been stated and re-stated on numerous occasions since 2018, in response to our request for an unwinding of the FEMPI-era cuts. Despite these intentions, criminal barristers continue to endure the FEMPI-era cuts, while every other category of worker who provides services to the State has had their reductions unwound, as confirmed by the Minister for Public Expenditure, NDP Delivery & Reform in June 2024.

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
- September 2008 - Link with National Wage Agreements unilaterally broken
- March 2009 – 8% reduction in fees
- April 2010 – 8% reduction in fees
- October 2011 – 10% reduction in fees

To date, the only partial restoration that has been implemented, following our day of action on the 3rd October last, was the reversal, in Budget 2024, of the 10% reduction applied in October 2011.

Your letter references our engagement with the Department of Justice officials *'on work towards identifying key areas for reform, the structure of fees, and laying the foundations for an improved, more efficient system of administering Criminal Legal Aid'*. For the avoidance of doubt, The Bar of

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Ireland is cooperating with the work underway to modernise criminal legal aid and to improve the criminal justice system, as we have always done. Indeed, significant and ongoing improvements and efficiencies in the criminal justice system cannot be achieved and implemented without that cooperation.

But improvements in the efficiency of the administration of the criminal legal aid system are no substitute for reversal of financial emergency era pay cuts.

It should be recalled that the Department of Justice and the Office of the Director of Public Prosecutions, in a review sanctioned by the Department of Public Expenditure and Reform as it then was, concluded in July 2018 that

“all parties are in unequivocal agreement that the ongoing flexibility being delivered by barristers is considered **comparable to the flexibility delivered by other groups to justify the reversing of cuts** imposed during the financial emergency”

and that

“the **process to examine and discuss the restoration of professional fees paid to barristers ... is now concluded**”.

The failure to act on those conclusions, until the partial and incomplete “first step” taken in Budget 2024, and the continuing failure to complete the process of pay restoration imperil the quality and long-term sustainability of the criminal justice system.

Furthermore, since, as your colleague the Minister for Justice, Deputy McEntee, has acknowledged there is “no good reason” for withholding pay restoration from barristers, this continuing failure is therefore both irrational and dangerous.


The Bar of Ireland also notes that the Government recently negotiated and concluded a public sector pay agreement outside of ‘budget day’. Your statement that ‘*it is not possible to make Budget Day commitments outside of the estimates process*’ is at odds with the approach taken in relation to the conclusion of this public sector pay agreement and the treatment of 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 and restoring the link to public-sector pay can be discussed and agreed with The Bar of Ireland.

On behalf of the Council of The Bar of Ireland, I wish to express our extreme disappointment that, despite our repeated requests to meet with either yourself or a senior Minister of Government to avert the three days of disruption in the administration of criminal justice, no such meeting has been forthcoming.

In the absence of any urgency or meaningful dialogue with Government to resolve the dispute, let there be no doubt whatsoever that 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, which link is essential to prevent further erosion of the real value of pay for professional legal services in the criminal justice system.

An opportunity remains for you as Taoiseach to intervene to avert further withdrawal of services by the criminal bar on 24th July 2024.

Yours sincerely



Sara Phelan SC
CHAIR, COUNCIL OF THE BAR OF IRELAND

