



THE BAR
OF IRELAND

The Law Library

BARRA NA hÉIREANN

An Leabharlann Dlí

The Bar of Ireland Pre-Budget Submission 2025

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PRE-BUDGET SUBMISSION

BUDGET 2025

GOVERNMENT, THE BALL IS YOUR COURT

The case for investment and resourcing in publicly funded frontline criminal advocacy services

About The Bar of Ireland

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,100 practising barristers.

The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards.

The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

BUDGET 2025 CONTEXT

The operating and resourcing environment that applies to front line, publicly funded criminal advocacy services is as follows:

- **Low fees:** Payment of fees at a rate comparable to 2002 levels.
- **Public Service Pay Increases:** Link to public service pay unilaterally severed by Government in 2008, meaning that fees have been at a flat rate since 2008.
- **Cooperation with flexibilities and reform:** Members of the criminal bar have long cooperated and continue to cooperate with a wide range of reforms and practices.
- **Positive budgetary position:** Exchequer returns that indicate surplus of over €8bn ahead of projections.

PROGRESS MADE? INCOMPLETE RESTORATION OF CUTS

Since, and prior to, Budget 2024, the Government has acknowledged the work undertaken by criminal barristers, and the value they bring to the administration of justice and application of the rule of law, as well as delivering a significant public service.

The Bar of Ireland has campaigned since 2016 to have the draconian FEMPI-era cuts unwound. During Budget 2024, Minister Helen McEntee announced a reversal of the 10% cut that was uniquely applied to barristers in 2011. This was a minimal/partial restoration having regard to the full suite of cuts that were applied to the Bar during the period 2008 – 2011, the high level of inflation that has persisted over the last few years and the continued erosion of the real value of pay for professional legal services in the criminal justice system.

FEMPI-ERA CUTS APPLIED TO THE BAR | 2008 - 2011

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| September 2008 | Non-payment of 2.5% increase (per public service pay agreement) and unilateral break by Government in 2008 of the link between fees and public service pay increases. |
| March 2009 | Reduction of 8% in fee levels (at the same time as FEMPI cuts imposed) |
| April 2010 | Reduction of 8% in fee levels (at the same time as FEMPI cuts imposed) |
| October 2011 | Reduction of 10% (<u>no equivalent cut</u> was imposed on the public sector) |

The cuts applied during the period 2008-2011, ranging in the order of 28.5% - 69%, mean that the current professional fee rates reflect 2002 levels and in real terms, having regard to the inflationary impact, the buying power of professional fees today is significantly less than it was prior to the financial crisis.

The Budget 2024 announcement by Minister McEntee TD was framed as part of a pathway towards full restoration and further engagement to examine the fee structure and rates to reflect work undertaken and delivered in 2024.

COMMENTS FROM GOVERNMENT ON RESTORATION

“This 10% increase is a starting point in a wider process and should be considered the first step on a pathway to further restoration. I fully expect the Government will make further progress in this year’s budget.”

An Taoiseach, Simon Harris TD, Letter to The Bar of Ireland, 11 July 2024

“I am working to secure the remainder of the restoration of the fees, namely the two 8% cuts within the context of the budget. I will be writing to Minister [Donohoe] 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.”

Minister Helen McEntee, Letter to The Bar of Ireland, 8 July 2024

“In conjunction with the increase in fees, the intention is to build on the strengths of the criminal legal aid scheme while addressing any issues relating to how it is structured. **Engagement will now begin with the legal professions for the purpose of working together to identify reforms to the fees.”**

Minister Helen McEntee, Budget 2024 announcement

“I want to make it clear that this 10% is the starting point in a much wider process. It is the first step on a pathway to further engagement with the profession and with the Department of Public Expenditure, National Development Plan Delivery and Reform. As I said, this is the start of a process. **I want to make sure that a fair system is in place that allows for fair restoration for those who provide a very valuable service to the State.”**

Minister James Browne TD, 11 October 2023 *Parliamentary Question*

*“I see **no good reason** why those in the legal profession are left waiting for crisis era reductions to be restored, while public and civil servants have had their pay restored. It is very much on my agenda for the upcoming budgetary process and my discussions with Minister Donohoe.*

*I hope you are reassured that **I will do my utmost to support you all in your work.”***

Minister Helen McEntee, July 2023

FLEXIBILITIES & CHANGED WORK PRACTICES ALREADY BEING DELIVERED

Since the imposition of the professional fee cuts of 2008-2011, the Bar has continued to cooperate with efficiencies and reforms in work practices to improve the administration of criminal justice, as outlined in our 2024 Pre-Budget Submission.

The impact of the Bar's cooperation with these efficiencies and reforms include:

1. Facilitating the expeditious and efficient conduct of proceedings, including cooperation with the introduction of preliminary trial hearings.
2. Review of Disclosure - the proliferation of digital data has increased exponentially in respect of evidential matters. A fee is only paid for 'significant' disclosure and where sanctioned, but the vast majority of cases contain a much greater level of disclosure when compared to 2008 that is unremunerated. Counsel have effectively adopted this additional workload in the absence of adequate compensation.
3. Implementing the reforms recommended by the O'Malley Report of July 2020 on the Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences. Arising from this review, barristers now have an additional obligation placed on them by the State to undertake specialised training. They have to undertake this training on a regular basis, in their own time and at their own expense.
4. Consultations with victims of crime and prosecution witnesses pursuant to the Criminal Justice (Victims of Crime) Act 2017.
5. Adoption of Paperless Briefs – Barristers have accommodated the Office of Director of Public Prosecutions in accepting electronic briefs, which have administrative, financial and regulatory data protection benefits for the State, without any cost to the State. In circumstances where the extent and availability of technological supports in the courts is not uniform or where a barrister is relying on paper (as advocacy and case preparation lends itself to), they assume that task and cost and confer those benefits on the State, entirely at their own expense.
6. Increasing the number of trials taking place through the Bar's cooperation with case management and listing of trials in court venues outside of Dublin, without any recompense for the additional cost of travel and subsistence incurred by counsel to run a trial in regional venues.
7. Significant savings in time and resources of other state bodies including the ODPP, CSSO, Garda Síochána, Probation Services, Prison Service etc., for example through increased cooperation with the use of video links, as appropriate.

8. Participation in a review of the criminal legal aid scheme led by the Department of Justice to adopt a user-led approach and identify further reforms to modernise and improve the operation of the criminal legal aid scheme.

The cooperation of the Bar with reform in the administration of criminal justice has never been found wanting and has been acknowledged as far back as 2018 by several Government Ministers, senior civil servants and Office of the Director of Public Prosecutions, as the following statements outline:

“I would also like to acknowledge the crucial role played in the administration of justice by barristers and solicitors who undertake criminal legal aid work.

Their work ensure that the Constitutional and ECHR rights to the presumption of innocence and to due process are fully respected which limits avenues for appeal or prohibition of the prosecution.

That was why it was a priority to secure a 10% increase in the fees payable to legal professionals under Budget 2024 and we are committed to continuing to engage with all stakeholders as the reforms to the scheme progress.”

*Minister Paschal Donohue, February 2024
Parliamentary Question*

“... 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.”

Office of Director of Public Prosecutions, March 2021
To the Department of Public Expenditure and Reform

“... 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 the accepted as justification for pay restoration to staff employed in the criminal justice system and to restoration for State Solicitors ... we are now at a point where a political decision is required”

Office of Director of Public Prosecutions, March 2021
To the Department of Public Expenditure and Reform

“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.”

Review by the Office of Director of Public Prosecutions, 2018
Sanctioned by the Department of Public Expenditure & Reform

EMERGING MANPOWER CRISIS

Since the financial crisis of 2008 – 2011, barristers who conduct criminal cases in the higher courts both for the prosecution (instructed by Director of Public Prosecutions) and on behalf of accused persons (paid under the Department of Justice, Criminal Justice Legal Aid Scheme) have remained committed to the delivery of vital court services and to cooperation with the implementation of a continuous process of improvement to the delivery of those services.

However, as a direct consequence of the deep cuts that were applied to criminal fee rates during the financial crisis of 2008-2011, a career choice in criminal practice for recently qualified junior barristers has become unattractive when compared to opportunities in other areas of law.

Barristers are leaving and transferring to more sustainable career routes

The evidence shows that two-thirds of criminal barristers leave practice after just six years at the criminal Bar, due to the remuneration and conditions that currently exist in criminal practice. Retention rates drop to less than a third of those who set out to pursue a career in criminal law and this points to a real and developing concern within the criminal bar as the numbers of junior barristers with experience in crime are simply too low to replenish the loss of senior barristers who take silk or leave the profession through retirement, judicial appointment etc. Because barristers in criminal practice cannot make a sustainable living after a few short years in criminal practice, they leave criminal practice and their experience and expertise gained up to that point is lost to the administration of criminal justice.

The effects of this exodus are felt on both sides of the criminal Bar. A skilled and experienced criminal prosecution Bar can only emerge after many years of practice in the junior ranks of the criminal defence Bar. It takes many years of practice at the Bar to acquire the necessary experience to effectively and skilfully prosecute serious cases on behalf of the State and it is imperative that newly-qualified, talented barristers are encouraged to practice in the area of criminal law. An essential form of such encouragement is to be fairly and reasonably remunerated for their services.

The Consequences

A continued exodus of criminal practitioners has created the conditions for a grave and serious man-power crisis in respect of frontline advocacy services. This scenario was flagged to Government as far back as 2018. Lack of availability of Senior Counsel is now presenting as a common occurrence in the prosecution and defence of serious offences in the Circuit and Central Criminal Courts. Evidence of this situation first began to emerge in July 2021 and unfortunately, the situation now persists all around the country - a direct consequence of the failure to unwind the FEMPI-era cuts.

POSITIVE BUDGETARY POSITION ON THE EVE OF BUDGET 2025

The Government is expecting a surplus of €8.6 billion this year, as the Department of Finance and the Department of Public Expenditure, NPD Delivery and Reform confirmed in the mid-year Exchequer figures. Gross revenue to end of June stood at €54.7 billion, which is an increase of €3.5 billion or 6.8% compared to the same period last year.

The Bar has been clear that expenditure in the field of criminal justice is an investment in the future of our administration of justice, and its place within a functioning society and economy.

Fiscal Monitor June 2024

- Tax revenues in the first half of the year are up on last year by €3.8 billion (9.3%)
- Strong performances were recorded in all three of the largest tax headings, namely income tax, VAT and corporation tax.
- €12.2 billion of corporation tax revenue, a 15.4% increase from 2023
- Total gross voted expenditure in the period amounted to €47.1 billion, €5.2 billion (12.4%) above the same period in 2023 and €1.5 billion or 3.3% above profile;
- An Exchequer surplus of €3.1 billion was recorded in the first half of the year;
- While this was an improvement of €2.8 billion on last year, the annual year comparison is skewed by the transfer of €4 billion to the National Reserve Fund last year.

2024 Summer Economic Statement

According to the Summer Economic Statement, “For Budget 2025, an overall package of €8.3 billion is being made available, consistent with expenditure growth of 6.9 per cent. The adjustment to the strategy is primarily a reflection of the need to accommodate higher capital spending and to provide additional public services against a backdrop of a larger population”.

THE UNWINDING OF FEMPI – ANNUAL REPORT 2024

In June 2024, the Minister for Public Expenditure, National Development Plan Delivery and Reform published his final Annual Report on the review, and operation of the FEMPI Acts, having regard to the overall economic conditions in the State, the revenues of the State and State commitments in respect of public service pay and pensions.

Within the Report, he confirmed ‘*a phased unwinding of FEMPI acts was negotiated with relevant staff interests through [successive Public Pay Agreements since 2018]*’, and the measures given effect through a number of Public Service Pay and Pension Acts.

The report concludes:

*“The provisions of the Financial Emergency legislation relating to **reductions in public service pay and pensions have now been fully unwound**. The final element of restoration to ... public servants...was provided for on 1 July 2022.*

*Having reviewed the relevant Act and considered the matter in accordance with section 12 of the 2013 Act, **I find that the FEMPI legislation has achieved its objective in this regard”***

OUR SUBMISSION TO BUDGET 2025

FEMPI-era cuts were applied to barristers, originating from the same set of circumstances and rationale as the FEMPI legislation. The rationale and basis of FEMPI-era cuts that continue to apply to the Bar now no longer arises, due to improved economic context as well as improvements in productivity and our continued cooperation with modernisation and reform of criminal legal aid. There is no good reason why the FEMPI-era cuts should continue to apply to barristers who practice criminal law.

Furthermore, evidence of a manpower crisis is now emerging with an insufficient supply of suitably experienced senior barristers to prosecute and defend serious offences in the criminal courts. The cuts that the criminal bar continue to endure is the primary contributor to the crisis. This situation must be urgently addressed to preserve and support the administration of criminal justice.

The Bar of Ireland calls on the Government to restore the full range of FEMPI-era cuts, in addition to restoration of the link with national wage agreements to prevent further erosion of the real value of pay for professional legal services in the criminal justice system. It is imperative that the appropriate budget allocation is provided to both the Office of the Director of Public Prosecutions and the DOJ Criminal Legal Aid Scheme to ensure that they can fully deliver on their role to facilitate the prosecution and defence of serious criminal offences in Ireland.

A failure to address **full restoration** of FEMPI-era cuts, and **restoration** of the link with national wage agreements, will mean that victims of crime and accused persons will not have their rights vindicated in a timely manner due to a lack of experienced criminal practitioners to prosecute and defend serious offences. This will have a significantly negative affect on the administration of justice and the upholding of individual’s rights in the democratic order.



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