

An Roinn Airgeadais
Department of Finance



Ms Éilis Fallon
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

Your Ref: PAC32-I-1573
Our Ref: FIN-SG-00123-2019

 October 2019

Dear Ms Fallon

I refer to your letter of 4 October 2019 referring to the meeting of the Committee of Public Accounts of Thursday 26 September 2019.

That letter sought a note from the Department in relation to fees paid to barristers and information as to whether they have any other public sector jobs. In addition, from the transcript of the meeting it is understood that the context of this query are fees paid and Counsel engaged in the Apple case.

It is important to provide some context to this issue.

Deputy Alan Kelly asked a Parliamentary Question on 18 June 2019 (24623/19). Deputy Kelly sought the following in respect of Apple

- the cost to date of legal fees incurred in the case being pursued by the State relating to the decision of the European Commission regarding the alleged grant of state aid to a company
- the names and amount of fees paid to date to each law firm, senior counsel and barrister;
- if the senior counsel or barristers are full-time employees of universities here; his views on whether such payments are in breach of the one person, one salary principle

The response provided details of aggregate legal fees for all relevant parties but did not break down payments to individual barristers. It did not reference the issue of the one-person one salary principle.

Deputy Kelly subsequently raised a query with the Ceann Comhairle's Office in June and July 2019 regarding the content of the response to the Parliamentary Question on the grounds that the names and individual fees of the barristers involved in the case were not provided and queried non-provision of information relevant to the one-person one salary principle.

A letter issued to the Ceann Comhairle's Office on 3 July 2019, which provided an explanation of the reason why the names of individual counsel were not included in the response to the parliamentary question. Deputy Kelly in a follow up query to the Ceann Comhairle's Office queried whether any of the barristers involved were employed in universities in Ireland. A response issued to the Ceann Comhairle's Office on that specific issue on 10 July 2019. I would say that the content of this note reflects the material already provided to the Office of the Ceann Comhairle.

Firstly, I am including the following cost for external Counsel in respect of the Apple case from 2013 to 2019.

2013	€4,113.12
2014	€174,497.94
2015	€326,258.60
2016	€487,090.00
2017	€1,129,736.00
2018	€446,290.00
2019	€265,248.72
Total	€2,833,234.28

As regards the issue of the release of names of individual barristers involved in the Apple case, advice was sought from the Attorney General's Office as to whether it was possible to release the names of personal data including the names of such counsel in a response to a Parliamentary Question.

The advice received from the Office is that the disclosure of information relating to professional fees paid to named barristers on foot of a Parliamentary Question is likely to be in breach of the GDPR and the Data Protection Act. On the other hand, the Office advised that it should be possible to provide anonymised or aggregated information regarding Counsels fees provided that this is done in such a way as to protect the identity of the individual barristers. This approach was adopted and information provided in that format in the response to Deputy Kelly's parliamentary question and is also updated and provided above. Prior to the receipt of such advice, the names and costs related to specific Counsel were released in response to parliamentary questions but following receipt of this legal advice the release of such information is no longer considered possible.

The second issue raised is as regards the one-person one salary principle and whether any of the barristers involved in the Apple case were employed in universities. As regards the one-person one salary principle I understand that this issue is covered by letters issued by the Department of Finance on 24 January 1986 and 18 January 2006 and clarified by the Department of Public Expenditure and Reform in 2011.

I understand, based on advice from the Attorney General, that a barrister acting on behalf of the Attorney General, on foot of a nomination by the Attorney General, is not "undertaking a duty in the public service" nor is he or she "undertaking work in the public sector" which are criteria set out in the relevant circulars. Therefore, it is considered that the one-person one salary does not apply when engaging private contractors such as barristers to provide a particular service in relation to a specific legal case.

Thus, a barrister, accountant, engineer or any other professional hired under contract from the private sector to carry out a project or task in the public sector is not considered to be carrying out work in the public sector in respect of this hiring from the private sector.

As regards the detail of any public sector employment which barristers may be undertaking, neither the Minister nor the Department has an employment relationship with any of the barristers involved in the Apple case and indeed has no basis for an employment relationship with them.

Any such information that may exist around the employment status of any individual which is in the public domain is at best anecdotal and is not likely to be able to be relied on as an indication of any particular person's employment or employment status. In this context, such anecdotal information is considered to be that as could be identified by the use of an internet search engine.

Finally as has been indicated in the response provided to the Ceann Comhairle's Office on 10 July 2019, if the Minister was to respond by disclosing the relevant information available to him this would reveal personal data i.e. information relating to an identified or identifiable natural person. This may amount to an interference with individuals' rights to respect for their private life and their right to the protection of their personal data.

The Office of the Attorney General has advised the Minister that section 38 of the Data Protection Act could provide a legal basis for processing such personal data as has been requested to the extent that it was necessary and proportionate for the performance of a function of the Minister.

The response of 10 July to the Office of the Ceann Comhairle indicated that the Minister was of the view that given the potential interference with the privacy of any individual identified or identifiable as a result of the processing or release of such information it would be disproportionate and ultimately potentially unlawful to carry out such an action. It was indicated therefore that the Minister did not propose to release the limited anecdotal information available to him.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Derek Moran', written in a cursive style. The signature is positioned above a horizontal line.

Derek Moran

Secretary General