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OPENING STATEMENT TO THE JOINT COMMITTEE ON JUSTICE ON THE GENERAL SCHEME OF THE CRIMINAL JUSTICE (LEGAL AID) BILL 2023

Tuesday, 3rd October 2023 at 4.00 pm

Chairman,

At the outset, I would like to extend a thank you to you and the members of the Committee for your invitation to us, as representatives of The Bar of Ireland, to participate in this public session of the Oireachtas Joint Committee on Justice to establish our views on the General Scheme of the Criminal Justice (Legal Aid) Bill 2023. As you are aware, the Council made a written submission to the Committee in August of this year, and we look forward to addressing key points made in that submission.

Whilst this afternoon's session provides an opportunity to discuss the reform of the criminal legal aid system, it would be remiss of me if I did not acknowledge the significance of today, October 3rd, 2023, as the day on which criminal barristers have withdrawn their professional services to highlight the unfairness and inequity in the professional fees paid to them and their concerns for the consequent availability of criminal barristers to prosecute and defend serious criminal cases.

WHY THIS SHOULD BE OF CONCERN TO PUBLIC REPRESENTATIVES?

And why should this matter to you in your respective roles as public representatives? Why should it matter to your constituents?

- **It is a national issue;** regarding the functioning of our criminal courts. One only needs to pick up the local newspapers in all our communities to understand the importance of local justice; and the reassurance that a functioning court system gives to the community. That is under threat.
- **No more than health;** until it comes to our own family's door, we might not necessarily fully appreciate the services on hand. Just this week the CSO reported a significant increase in violent crime, robbery and thefts. The need for you, your loved ones, your friends and colleagues to have access to criminal advocacy services be it as victims or as an accused, may arise at any time. And already there have been instances where there has been a shortage of counsel of sufficient seniority and experience, to handle cases of serious offences against the person. So that is under threat.
- **It's an international reputation issue;** the rule of law, a somewhat abstract concept, in the context of what we are discussing today, relates in part to the integrity of, and the trust of the public in, an independent courts system. We have seen, in jurisdictions closer to home than we would like, how the crippling of the courts system has been directly or indirectly achieved; with a negative impact on citizens and certain sections of society. So, the rule of law is also threatened.

FLEXIBILIBITIES DELIVERED

Let it be clear that the Council's recommendation for members to withdraw their professional services today was not a decision made in haste, rather it is the culmination of countless attempts by the Council over several years to engage with Government in the restoration of professional fees. Since July 2018, the Council has been asking the Government to implement the outcome of a detailed review process which was sanctioned by the Department of Public Expenditure and Reform and led by the Office of the Director of Public Prosecutions (DPP) in conjunction with the Department of Justice . This review concluded that the flexibility delivered by barristers, and their cooperation with reform of the criminal justice system over the previous decade, had enabled a range of improvements and efficiencies to be implemented for the benefit of all stakeholders and that these were at least equivalent to efficiencies provided by others in return for pay restoration. These include, but are not limited to:

- a) Implementation of Victims' Rights Directive.
- b) New measures to protect vulnerable witnesses.

- c) Implementation of digital briefing, producing administrative efficiency and financial savings for DPP.
- d) New pre-trial procedures to assist victims of crime and save time and effort of members of the public serving on juries.

THE CUTS APPLIED

Cuts applied to professional fees for criminal barristers in the period 2009-2011, ranging in the order of 28.5% - 69%, mean that the current professional fee rates reflect 2002 levels in nominal terms. In real terms, having regard to the inflationary impact, they are in fact much lower. As a result, barristers are being treated differently to other actors involved in the administration of criminal justice in relation to fee restoration.

Further, in 2008, Government unilaterally broke the link between professional fees and public sector pay agreements. This link has never been restored, which is of particular importance in inflationary times.

If the issue of barrister fee restoration is not addressed, it will undoubtedly have a profound effect on the administration of justice and the application of the rule of law. As the Committee is aware, the expertise and skills required to advise and advocate in criminal trials is of a specialised nature, only capable of being acquired over long years of practice, and there is a strong public interest in ensuring that the best advocates are attracted to practice at the criminal bar.

The fact that two-thirds of barristers who commence practice at the criminal bar leave the criminal bar within six years, means that the pipeline of young practitioners is affected and the diminishing numbers of barristers practising in criminal law will have a growing adverse impact on the ability of the State to prosecute criminal cases, and vindicate the rights of victims of crime, and to ensure the proper defence of those cases, and vindicate the rights of accused persons to have their innocence or guilt determined.

As already mentioned, the Council greatly regrets having to pursue today's course of action and is acutely conscious that the disruption caused will impact on victims of crime, those accused of criminal offences, juries and other stakeholders involved in the administration of criminal justice.

OUR ASK

I remind the Committee that today's hearing ultimately focuses on ways to improve the support and protection of victims, vulnerable witnesses and accused persons through the reformation of criminal legal aid in Ireland. A failure by the Government to implement a process of fee restoration to barristers represents a decision to not adequately fund the criminal justice system nor support the improvements in the criminal justice system – which could not have been achieved without the cooperation and flexibility of practising barristers. The inevitable conclusion thus reached is that the goodwill of our members is being taken for granted.

The Council appreciates the invitation today and welcomes discussion on reforming criminal legal aid and the significance improving the criminal justice system through the restoration of professional criminal fees for barristers. The Bar of Ireland is asking Government to:

1. Immediately restore the link with public sector pay agreements and
2. Engage in a process to unwind the cuts applied to the professional fees of criminal barristers.

The Bar of Ireland is simply asking that the profession be treated fairly and reasonably, consistent with the approach taken in relation to other groups of workers and independent contractors where the State is the paymaster. I look forward to addressing queries that members of the Committee may have on this issue and on our submission on the General Scheme of the Criminal Justice (Legal Aid) Bill.

Sara Phelan S.C.
Member of the Inner Bar - Barrister
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