

Our Ref: 17/0070/PER

July 2017

Mr Justice Birmingham
President of the Association of Judges of Ireland
The Four Courts
Dublin 7

COPY

Dear Justice Birmingham

I wish to refer to your correspondence dated 12th July to Paschal Donohoe TD, Minister for Finance and Public Expenditure and Reform and to my response letter, on behalf of the Minister, dated 18 July to your previous correspondence of 22nd June. It appears that the recent correspondences of 12th and 18th July may have crossed in the post.

Further to my letter dated 18 July, I understand that a meeting with officials from this Department and the Department of Justice and Equality has been scheduled to take place on Tuesday, 25th of July at 5 pm concerning matters arising in connection with remuneration matters and related issues in respect of the Judiciary.

It is furthermore the case that the Minister will be keeping himself fully apprised of developments in relation to these important policy matters in respect of the Judiciary.

Yours sincerely

MICHELLE O'CONNOR

Michelle O'Connor
Private Secretary to the Minister for Finance and Public Expenditure and Reform



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ASSOCIATION OF
JUDGES OF IRELAND

12th July 2017

Paschal Donohoe, T.D.
Minister for Finance and Public Expenditure & Reform
Government Buildings
Merrion St.
Dublin 2



Re Public Service Pay Commission proposals

Dear Minister,

There has been no contact with the judiciary since the conclusion of the public sector pay talks and there has been no indication how it is envisaged that the outcome of those talks will impact on the judiciary. I would make some observations. It should not be assumed that considerations that apply across the public service apply without the need for specific consideration in the case of the judiciary. For the most part judges were appointed to the bench at a time when there was an unqualified constitutional guarantee that their remuneration would not be reduced during their period of service. That position has of course been altered as a result of the referendum of October, 2011. However, that simply provides for a derogation from the general and as the country emerges from the financial emergency judges look to see a restoration of their terms and conditions of service.

There have been media reports, some, though not all of which, have referred to the judiciary stating that in the case of persons who joined the public service pre 2013 and were in receipt of old style accelerated pensions, that what is intended is that the Pension Levy Deduction will be converted into a permanent contribution. I do not believe that the position of judges can be equated with others in the public service such as gardaí and the Defence Forces who receive a pension after less than 40 years service. In the cases of gardaí and the Defence Forces, this happens because they are required to retire early. The position of judges, on the other hand, is quite different in that, far from having an early retirement age, most judges retire at 70. A combination of the requirement to have a number of years in practice as a solicitor or barrister before appointment and the retirement age means that in practice it is impossible for a judge to accumulate 40 years service.

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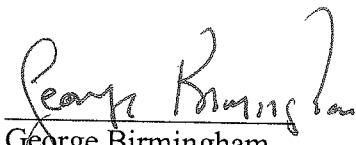
President: Mr Justice George Birmingham
Secretary: Mr Justice John Edwards
Treasurer: Judge Catherine A. Murphy

There is a further consideration and it is one which applies almost uniquely to the judiciary. Public service pensions, in this case judicial pensions, and any private pensions an individual may have from their time in private practice as a lawyer are aggregated. If the aggregate amount exceeds the pension threshold then the excess is subject to punitive taxation. The effect of all of this is that the pension regime for judges is far less attractive than might appear at first sight.

To exclude judges from the general ameliorating provisions in relation to the Pension Levy would be quite unfair. I would ask you to give this matter careful consideration. I would be glad to meet with you and/or with your officials to discuss this issue.

Kind regards,

Yours sincerely,

A handwritten signature in cursive script, appearing to read "George Birmingham".

George Birmingham
President of the Association of Judges of Ireland

Our Ref: 17/0070/PER

18 July 2017

Mr Justice Birmingham
President of the Association of Judges of Ireland
The Four Courts
Dublin 7

COPY

Dear Justice Birmingham

I refer to your recent correspondence to Minister Paschal Donohoe T.D. concerning matters arising in connection with the remuneration and related issues concerning the Judiciary.

The Minister has asked me to say that he regrets that he will not be in a position to meet with you personally to discuss your particular issues of concern. However, the Minister has requested his officials to arrange a meeting with you and your colleagues at the earliest opportunity in order to address the matters outlined in your correspondence. I understand that officials will be directly in touch with you on foot of this correspondence. It is furthermore the position that the Minister will be keeping himself fully apprised of developments in relation to these important policy matters in respect of the Judiciary.

Yours sincerely



Michelle O'Connor

Private Secretary to Minister for Finance and Public Expenditure and Reform



ASSOCIATION OF
JUDGES OF IRELAND

22nd June 2017

Paschal Donohoe, T.D.
Minister for Finance and Public Expenditure & Reform
Government Buildings
Merrion St.
Dublin 2

Re Public Service Pay Commission proposals

Dear Minister,

I refer to my recent correspondence to you seeking an opportunity to meet with those involved on behalf of the Government in the recent pay talks. That meeting took place and I am grateful to you for your assistance in facilitating it. At the meeting I made the point that we would be happier to be meeting with an independent body tasked with dealing with issues relating to remuneration and the terms and conditions of service of judges. Such a body was recommended by GRECO and that recommendation was specifically accepted by Government. However, to date it has not been implemented.

In the course of that meeting I made the point that while initially while judges were regarded as exempt from the impact of some of the changes that were taking place against the background of the financial crisis, that ultimately all changes impacted on judges and that the cumulative effect of the various changes meant that the judiciary were impacted upon in a very severe way indeed. No other group has been impacted by quite the same range of measures.

The AJI has not had any formal feedback following the conclusion of the recent pay talks but some media reports, though not all, have suggested that it is envisaged that judges, certainly those appointed pre 2013 will not benefit from the changes proposed in relation to the pension levy deduction. Any suggestion of excluding judges from the benefit of the changes would be greeted with dismay.

It should also be pointed out that any such proposal would be unjustified. That would be so because judicial pensions are not nearly as attractive as might appear at first

sight. There have been a number of changes to judicial pensions in recent years. Without consultation or discussion the period of service required to benefit for a full pension was increased in the case of judges of the Circuit, High, Court of Appeal and Supreme Court from 15 years to 20 years. Recent appointees pay contributions at a higher level than was previously the case and the pension that will be paid will for various reasons, such as career averaging, be less than previously applied.

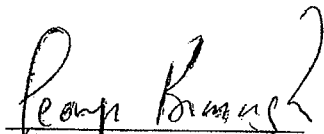
An area of particular concern is the way in which public service or judicial pensions and private pensions are aggregated. Judges are with very few exceptions recruited in mid to late working life from the private sector. As most will have been self employed it is to be hoped and expected that they will have made provisions for their pensions but as a result of recent changes their private pensions and their public judicial pensions will be aggregated and the private pension subject to confiscatory taxation. The reality of this is that the pension provisions are not remotely as attractive as would seem otherwise.

Linking judges to groups in the public service who are in receipt of accelerated pensions is quite inappropriate. Other groups are required, by reason of government policy, to retire at an early stage. There is no question of judges being required to retire early, or indeed being in a position to retire early. Rather, the situation is that judges are not eligible for appointment until they have been in practice for a number of years. The number of years required varies from court to court but in practice individuals will usually have served far more than the minimum before they would even be considered for appointment.

I would ask for an urgent meeting with you and your officials to discuss how proposed changes will impact on the judiciary. I look forward to hearing from you in that regard as a matter of real urgency.

Kind regards,

Yours sincerely,



George Birmingham

President of the Association of Judges of Ireland

Our Ref: 17/0070/PER

26th
May 2017

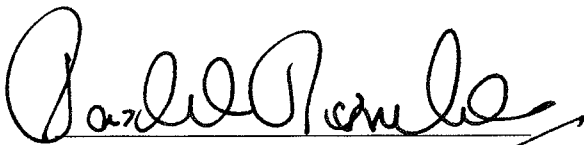
Mr Justice George Birmingham
President of the Association of Judges of Ireland
The Four Courts
Dublin 7

Dear Justice Birmingham

I refer to your recent correspondence and phone conversation with Mr Brian O'Malley an official from my Department regarding the Public Sector pay talks and note the issues raised.

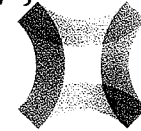
In an effort to further progress matters, I am writing to confirm that Mr Colin Menton, Assistant Secretary with responsibility for Remuneration and Industrial Relation matters will meet with you to address your concerns regarding these issues. Mr Menton's office will be in contact to schedule a meeting with you in the coming weeks.

Yours sincerely



Paschal Donohoe TD
Minister for Public Expenditure and Reform

17/00701PK
Peter Brogel
Referred for attention
Letter & Ack with Min



ASSOCIATION OF
JUDGES OF IRELAND

Mr Justice, Burren
We are still
Red down
19/5/17
22/5

16th May 2017

Paschal Donohoe T.D.
Minister for Public Expenditure and Reform
Department of Public Expenditure and Reform
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583



Dear Minister,

We note that following publication of the Report of the Public Service Pay Commission that you have invited the public service unions to talks which are expected to commence shortly with the public sector unions. When talks last took place, which resulted in the Lansdowne Road Agreement, there were discussions alongside those talks involving the Association of Judges of Ireland, with officials of your department and of the Department of Justice led by Ms Oonagh Buckley, the chief government negotiator in the talks. I would urge strongly that such an exercise should be repeated on this occasion. My colleagues and I on the Executive on the AJI will make ourselves available to engage.

This seems the appropriate time to address the issue of judicial remuneration in a wider context. The report of GRECO published in October/November 2014 recommended the establishment of an independent body to address issues relating to remuneration and terms and conditions of service of judges. That recommendation was specifically and publicly accepted by the Government. However, although the time for implementing the GRECO recommendations has long since expired, neither that nor indeed any of the other GRECO recommendations has been implemented. I would suggest respectfully that now is the time to act.

Very disturbingly, there has been some media speculation that, in the context of the public service pay talks that there might be moves to further disimprove the pension provisions that are applicable to members of the judiciary. I feel I should make it clear that any such suggestion would be quite unacceptable to members of the Association of Judges of Ireland. Recent years have seen a number of adverse impacts on pension arrangements. The period of service required to qualify for a full pension in courts other than the District Court was increased from 15 years to 20 years. This change took place without any discussion or consultation and apparently without regard to the impact it was likely to have on the capacity to recruit leading figures from the legal professions. Contribution rates for recent appointees were raised from 4% to 13% and this alongside the imposition of the Pension Levy. It will be recalled that when the levy was first introduced, the view was taken by the

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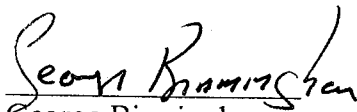
President: Mr Justice George Birmingham
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Government of the day that the Constitution prevented it from being applied to members of the judiciary. Nonetheless the overwhelming majority of judges opted to pay the levy on a voluntary basis. A further and very particular difficulty arises from the manner in which private pensions and public pensions are aggregated. Public pensions are deemed to have a notional value for personal threshold purposes. If a judge has a private pension fund from his or her time as a barrister or solicitor, then the combined fund is likely to exceed the threshold, this is certain in the case of the Superior Courts, and will be liable to punitive, confiscatory taxation. In these circumstances, references to judges having gold-plated or platinum pensions are very wide of the mark indeed.

The changes that have taken place in recent years across a range of areas effecting the terms and conditions of service of judges has impacted adversely on the ability to attract applications from the very best potential candidates. As the economy strengthens, and with it the market for legal services, that situation can only be expected to worsen. The coming months offer an opportunity to address these issues and I would urge that it be taken.

Kind regards.

Yours sincerely,


George Birmingham
President of the AJI

Our Ref: 17/0070/PER

10th
May 2017

Mr Justice Birmingham
President of the Association of Judges of Ireland
The Four Courts
Dublin 7

Dear Justice Birmingham

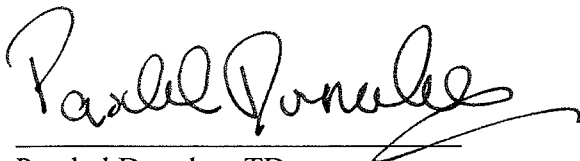
I refer to your recent correspondence regarding Judicial Pay and in particular the application of Section 6C (3) of the Financial Emergency Measures in the Public Interest Act 2015.

In accordance with the relevant provisions of the 2015 Act, I can confirm that pay restoration due to members of the judiciary effective from 1 April 2017 has been paid to these members from 1 April 2017 in line with that of other public servants.

My Department is currently in the process of finalising a Government Order to give full legislative effect to these arrangements. However, I am fully conscious that the completion of this Order should not delay payments that are due to members of the judiciary which are effective from 1 April 2017. In that regard, my officials have instructed Payroll Shared Services Centre to apply the appropriate FEMPI revised pay rates from 1 April 2017.

I trust this to be in order.

Yours sincerely



Paschal Donohoe TD
Minister for Public Expenditure and Reform

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Our Ref: 17/0146/PER

11 12
April 2017

Mr Justice George Birmingham
President of the Association of Judges of Ireland
The Four courts
Dublin 7

Re Section 6C(3) of FEMPI Act 2015

Dear Justice Birmingham

I wish to acknowledge receipt of your letter dated 28 March 2017 in relation to the restoration of salary cuts that were introduced by Section 2A of FEMPI Act 2013.

Yours sincerely



Paschal Donohoe TD
Minister for Public Expenditure and Reform

George,

noted and I will revert back



170070PER

28th March 2017

Paschal Donohoe T.D.
Minister for Public Expenditure and Reform
Department of Public Expenditure and Reform
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583



ASSOCIATION OF
JUDGES OF IRELAND



Re Section 6C(3) of FEMPI Act 2015

Dear Minister,

As you are aware that section provides for the partial restoration of salary cuts that were introduced by section 2A of FEMPI Act 2013. It has been indicated that applying the measure to the judiciary requires a Government Order and that the Order will not be drafted in time in order to allow payment to the judiciary at the same time as all other public servants who come within the relevant section. Apparently what is proposed is that when the Order is eventually drafted and made that the due payment will then be made retrospectively.

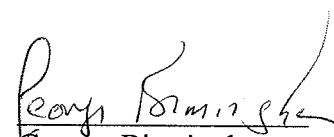
This is not at all a satisfactory situation. First of all, it is the case that there are members of the judiciary who are struggling to get by and can ill afford to wait. Moreover, because the restoration will not take place on the due date and on the same date as all the other public servants that are benefiting there is a real risk that when the restoration eventually takes place that it will be misreported in the media as representing some sort of special increase for judges.

I would urge you to do all you can to ensure that payment for judges takes place at the same time as all other public servants in the relevant category and if that proves utterly impossible that payment should take place at the earliest possible date and sufficiently proximate to the payment to others that there will be no misunderstanding about this being a special or particular increase.

I am available to discuss this if required.

Kind regards.

Yours sincerely,


George Birmingham
President of the AJI