

Memo:

Speaking Note/Submissions to the Public Service Pay Commission from the Association of Judges of Ireland

27th January, 2017.

An independent Commission to deal with levels of remuneration and terms and conditions of service of members of the judiciary.

The judiciary is an independent organ of Government and it is not appropriate that it should be subservient to the executive or legislative branches of Government when it comes to fixing levels of remuneration, and in making provision for the terms and conditions of service. International best practice would require that there would be an independent Commission to address these issues. The Council of Europe Group of States Against Corruption (GRECO), report of October 2014, recommended that such Commission should be established. The Government's response to the publication of the report was to state that it was accepting the recommendations, but despite that commitment, the report has not been implemented.

Substantive issues

A number of decisions taken during the recession have impacted very severely on the judiciary. Judges are fully aware of the extent of the crisis that faced the country and many of the decisions are understandable if taken in isolation. However, the cumulative effect of the decisions has been very grave. By way of example the pre-cut salary of a High Court judge was €243,080 and of a judge of the District Court was €147,961, while those appointed today would be appointed at salaries of €172,710 and €114,771. The starting salary of newly appointed judges is significantly lower than their colleagues who are serving on the same court. It is true that the issue was addressed in s. 11 of the Financial Emergency Measures in the Public Interest Act 2015, which means that new appointees can move to the same salary scale as longer serving colleagues over a two year period. That measure was welcome, but nonetheless the situation where judges sitting in the same courts, hearing the same cases receive different levels of remuneration is anomalous and deeply unsatisfactory.

Judges are in a very unusual position in not receiving increments or any form of performance related remuneration. In addition, they are in the unique position in that there is a constitutional prohibition on them holding any office or position of emolument. The headline figures while stark actually significantly understate the situation. All judges are in the small class of office holders who pay K Class PRSI at the rate of 4%. There are no direct benefits for this deduction. But it does of course mean that the income of judges is lower than the gross salaries would suggest.

Pension changes

Judges are of course subject to the general Pension Related Deduction, but there are a number of other measures that impact particularly on the judiciary. Judges are of course subject to the general Pension Related Deductions but there are a number of measures that impact particularly on the judiciary.

Service Requirements

In the past judges of the Circuit Court and the Superior Courts acquired an entitlement to a full pension after fifteen years of service, without consultation this was changed for new entrants to twenty years. This is a significant disincentive to recruitment. Traditionally, judges in these courts are drawn from the ranks of senior Barristers and solicitors. It is now difficult for people to reach the top of their profession, occupy that position for a period and still hope to serve the public by serving as a judge.

Pension Contributions

A further change introduced by s. 22 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, is that newly appointed judges are required to pay a pension contribution of 13% instead of the 4% contribution that was paid previously. Again this is a further reason why focusing on headline gross salaries can be quite misleading.

Aggregating Public and Private Pensions

A further and particular difficulty arises from the manner in which private pensions and public pensions are aggregated. Public pensions are deemed to have a value for personal pension threshold purposes. If a judge has a private pension fund

from his or her time as a Barrister or a solicitor, then the combined fund will exceed the threshold and will be liable to punitive, confiscatory taxation. Again, there has been some effort by way of legislation to ameliorate the worst effects of this measure, but the situation remains very serious. The fact that it was unintentional is no consolation. The measure was introduced to respond to company executives who in some cases had multi million euro pension pots as a tax efficient way of topping up their salary. The measure was never intended to apply to the judiciary, but it does and almost uniquely so. Judges are among the very few people in the public sector who are likely to have private pensions. Again, this is a very significant disincentive to recruitment. It means that applying for the Bench is unattractive for those who, while in practice have built up a pension by putting money aside as they would have been advised to do from their earliest days in practice. Conversely there would be no disincentive in the case of those who did not seek to provide for their pension.

General

Most judges were appointed at a time when the Constitution contained an unqualified guarantee that the remuneration of a judge would not be reduced during his or her continuance in office.

That position has of course been modified as a result of the passing of the 29th Amendment of the Constitution. However, that provides for a limited derogation only. As the country emerges from the financial emergency judges are entitled to look to the guarantee under which they were appointed. Accordingly, judges look to see a speedy restoration of pre-crisis terms and conditions.

Judges would hope that their legitimate concerns will be addressed. We note that in the United Kingdom 210 judge successfully brought a legal challenge to pension changes introduced by the Government which left newly appointed and younger judges on terms that were significantly inferior to those that applied to their longer serving and older colleagues. The outcome of that litigation has been watched with interest here. Judges hope that the merits of their situation will be recognised and that individuals will not be tempted to initiate similar litigation.