



ASSOCIATION OF  
JUDGES OF IRELAND

16<sup>th</sup> November 2017.

Mr Kevin Duffy  
Chairman  
Public Service Pay Commission  
3<sup>rd</sup> Floor, St Stephen's Green House  
Earlsfort Terrace  
Dublin 2



**Re issues relating to recruitment and retention**

Dear Chairman,

You will recall that this was an issue that I and my colleagues Donal O'Donnell and Catherine Murphy raised with you and your colleagues on the Commission when we made a presentation to you during the first phase of your work. We explained to you that we had major concerns in the area focused on the issue of recruitment, rather than retention but we explained that while anecdotally this was a significant problem at certain levels of the judiciary that we were not in a position to offer a statistical analysis to support our case. That remains the situation and so we are not in a position to address the template that you have provided.

As you are aware, appointments to the judiciary are a matter for government. However, the bulk of applications come to government through the Judicial Appointments Advisory Board. The proceedings of JAAB are confidential and we do not know who has or has not applied. I think, that at the meeting where we made our presentation we explained that our concern was not necessarily with the number of applicants but with the quality of applications. Some limited information does come into the public arena with the publication of the annual reports of the Judicial Appointments Advisory Board in relation to the number of applications but this is of limited assistance. For some courts at some periods there are very few applications but this is not necessarily a problem if the individuals applying are persons of the highest calibre. By way of example, it appears from reports that when there are vacancies on the Supreme Court that there are usually very few if any applications. This is probably explained by the fact that few practitioners would see themselves in line for appointment directly to the Supreme Court and so would probably not see any point in submitting an application.

The concern now is that fewer applications are coming forward from really highly qualified candidates. At our meeting with you we explained and I would now reiterate that we believe that may be attributable to the cumulative effect of a number of decisions that were taken that affected the judiciary. If these decisions are considered in isolation then it is probably difficult to quarrel with any one of them. However, the cumulative effect has been very severe indeed and as an association we are convinced that the cumulative effect is having a significant adverse impact on recruitment. Following the passage of the constitutional amendment the salary of judges has been cut very significantly, the Irish Times in an editorial referred to this as "swingeing cuts". At a time before the referendum was passed it was decided to apply Class K PRSI to judges as a "gesture of solidarity". This means that judges pay PRSI at 4% but do not receive any direct benefit whether Dental Benefit, Optical Benefit or anything else. In the past, judges of the Circuit Court, High Court and Supreme Court qualified for a full judicial pension after 15 years service but this has been changed by legislation to require 20 years service. There are other adverse changes such as career averaging. However, the most dramatic impact arises from the fact that a judicial pension is now deemed to have a particular value for pension threshold purposes. The notional value of a High Court judge's pension is equal to or exceeds the threshold limit. If the judge has a private pension fund from his or her time as a solicitor or barrister in private practice, that private fund is aggregated along with the judicial pension fund and the excess is subject to very high taxes indeed. The effect of this is to make a judicial appointment less attractive for a practitioner who has been responsible and has sought to make provision for their pension from their early days in practice. On the other hand, judicial appointment will be relatively more attractive for someone who chose not to or was not in a position to make provision for their retirement when in private practice. The points that I am making now are essentially the points that we made when we met with the Commission during Phase 1.

However, there is one development, on receipt of your template I decided to bring it to the attention of the Chief Justice who acts as Chairman of the Judicial Appointments Advisory Board as he would have up to date information about the number of applications that are being received and the background and calibre of the applicants. I understand that he is likely to be in touch with you in that regard in the near future.

If I can be of any assistance to you or if there are matters on which you would like me to expand, I would be glad to do so.

Kind regards,

Yours sincerely,

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George Birmingham  
President of the Association of Judges of Ireland