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Presenter (Mary Wilson):

Well we're being told that change is at hand for the legal profession in this country and if the avalanche of complaints from clients of solicitors and barristers that have flooded into Drivetime over the past two weeks is any measure, change cannot come quickly enough.

I suppose, understandably, there will be many solicitors and barristers who feel aggrieved at this continuing tales of overcharging. So, will they welcome change? Well I'm joined by Gerry Durcan, senior council, former chairman of the Bar Council, by Donald Binchy who is Vice President of the Law Society and a practitioner in the family law offices of his family in Clonmel in County Tipperary and by our own Fergal Keane who has been following this story for the past couple of weeks.

Fergal before I bring in Gerry Durcan and Donald Binchy, would you give us a brief summary of sorts of costs you were hearing about over the last few weeks.

Fergal Keane:

Yeah, we took a look at this, the costs of the legal profession and we have been really inundated by the number of people who have been calling us. Now a few examples of cases we've dealt with, in an estate which went to probate valued at eight hundred and twenty thousand, the will was challenged by a third party – it never actually went into court but the legal bill there was three hundred and seventeen thousand. An example on that one, the barristers charged a brief fee of forty two thousand for a senior council, twenty eight thousand for a junior. Two months later they gave another bill for nearly ten thousand for entering pleadings. Less than a week later they charged a consultation bill for fifteen hundred and then on the same day they charged a refresher fee of four thousand and two thousand seven hundred and twenty plus VAT. And the bill for the estate in that case for the barristers was three times the bill for the other party.

Fergal Keane:

Two weeks ago we heard complaints from people who were charged between twenty and thirty thousand for a divorce, after they would have been told it would have been maybe half or a third of that. But the figures have been growing ever since.

Yesterday I spoke to a man and I've seen his legal bills, I actually have them – who was charged fifty seven, five hundred and seventy thousand in legal bills for separation. The solicitor originally told him, at the end of the first part of the case, that the legal costs would be seven hundred thousand but that was then reduced to three hundred and fifty thousand when he challenged it. But...

Presenter:

Did he challenge it through the Taxing Master?

Fergal Keane:

No he just challenged it directly to the solicitor. In that case he had no argument at all with the barristers charging him maybe up to three or four thousand a day for the High Court and two senior councils who billed him thirty thousand each for the Supreme Court appeal. He was delighted with the barristers.

A man told me, a man who was told in writing that his divorce would cost between ten and fifteen thousand – it ended up costing him nearly a hundred and thirty thousand in his own legal fees, and when he took a loan there to pay his former wife a settlement and to consolidate his own mortgage, the solicitor took possession of the bank cheque and before passing it on he deducted ninety eight thousand in his own fees and the costs on the other side were a quarter of his. People, thirty six thousand for a divorce with an amicable separation, no court case, that's absolutely typical of the people...

Presenter:

Alright, before we go on to talk about the Competition Authority and the IMF memorandum and what proposals, I'd like to bring in Donald Binchy, who is the Vice President of the Law Society and a practicing solicitor himself. And then Ger Durcan, senior council.

People are staggered by these figures, Donald Binchy, that they're being charged. And I think that one of the complaints, and Fergal could bear it out, is that they didn't realise when they set off on this route that they were going to end up with the sorts of bills that they ultimately got.

Donald Binchy:

Yeah, good afternoon Mary. Firstly Mary, I have to say, it's difficult, if not impossible for me to comment on any of these cases when I've heard only one side of the argument. But I would like to correct the impression...

Fergal Keane:

Most of the cases that we've dealt with have been brought to the attention of the Law Society by the individuals involved already.

Donald Binchy:

Yeah but I would like to correct the impression that may be given to listeners that fees of six figures are maybe commonplace for solicitors because nothing is further from the truth in the current environment. That level of fee is exceptional and is reserved for exceptional cases. Very many practicing solicitors, like the rest of the country, are struggling desperately to stay in practice, while whole sections of income have been wiped out. There have been reductions in fees and difficulty in recovering fees. And we also have more than a thousand solicitors unemployed which represents about eleven percent of the profession. So I would like to disabuse the listeners of this notion that these fees are commonplace.

Presenter:

Well fair enough Donald Binchy but the listeners, and we've seen it with the avalanche of texts and emails and correspondents that Fergal has received, at the very least there is the perception out there that the legal profession is charging exorbitant fees. And if that's wrong then you have a serious problem about getting your message out that you're not.

Donald Binchy:

Yes that may be correct Mary, as Fergal has fairly pointed out during his series of programmes, there is a mechanism and it is an utterly independent mechanism for determining fees where there is a dispute. Now it is quite unique to the legal profession and I say it's unique because I'm not aware of any other occupation or profession that is subject to such a regime. And the process which Fergal has dealt with briefly is known as taxation of costs and it frequently does result in reductions and sometimes very substantial reductions being applied to bills. So there is a system for challenging bills and that is...

Fergal Binchy:

Mary can I just say something on that? We dealt with a couple of these cases with the Taxing Master. And the Taxing Master, he dealt with some cases, last year he reduced charges brought to him by forty percent in total. But there was some notorious cases. There was one case we talked about where the State ended up picking up the bill for a case where the County Kildare residents association won a case, their firm of solicitors charged four hundred and fifty euros an hour and didn't differentiate between legal work and photocopying. They billed the same for everything – that was reduced massively by the Taxing Master but there's no record of the Law Society doing anything about that afterwards.

Donald Binchy:

Well...

Presenter:

Donald Binchy....

Donald Binchy:

Well if I may say to that Fergal, the Law Society can only do something about it afterwards if a complaint is made to the Law Society.

And if a complaint is made to the Law Society it is made to the solicitor or the complaints committee which comprises now of majority of lay members...

Presenter:

Do you think that your society which, indeed, on the question of regulation, is going to undergo a significant change in the not-too-distant future, do you think you should have been more proactive on issues like this?

Donald Binchy:

Well, to be fair about it I think the Law Society has been very proactive. We've moved from a system which was largely self-regulatory up until the last ten years or so to a system that is now really almost completely independent in the sense that the complaints committees now are made up of a majority of lay members. There is an appeal from the, from a decision of the complaints committee to an independent adjudicator. That independent adjudicator has consistently over the years praised the Law Society for its handling of complaints. And there is also an opportunity for clients to refer matters to the disciplinary tribunal.

Presenter:

Alright, but I don't want to get caught up in too much of this regulatory framework; we'll be coming to what the Competition Authority is proposing in a minute. And I don't want to let the barristers off the hook either. Gerry Durcan, senior council is here, former chairman of the Bar Council. I know you were a personal friend of Brian Lenihan's and before we maybe talk about costs, you want to say something about Brian Lenihan.

Gerry Durcan:

Yes I was, practiced with Brian Lenihan and I did cases against him and cases in which he was involved. I know, and I remember him as a very good barrister and a very good colleague and I just wanted to say that he'll be deeply missed by his colleagues in the Law Library.

Presenter:

Did you always know that he was only temporarily at the Bar, that he was going to into politics?

Gerry Durcan:

Well we knew obviously that he had a political background and that was another area in which he had talents but believe me he had very considerable talents as a barrister. I remember doing a case as a senior council against him, he was the junior against me and I have to say he came out on top in it. He was a very talented man in many different areas and an extraordinarily nice man.

Presenter:

Gerry we're going to turn to the whole question of costs, how is it possible that a senior council and I think Fergal, you had figures where the Taxing Master reduced the daily refresher fee, is that what it's called, which a barrister gets it court, from five thousand to four thousand.

Fergal Keane:

Yeah, this is a case, just again recently, where a barrister's fee for taking on a case, the brief fee as they call it, was sixty thousand for a senior council and forty thousand for a junior council and the Taxing Master allowed that. But they both then, or the senior council claimed five thousand a day in refresher fees and that wasn't allowed and the Taxing Master said, in the present economic climate I do not believe that this is appropriate and I believe that a sum of four thousand per day is more appropriate for the time and work spent, for the time spent and the work undertaken. And you have to ask, what planet are these people on, four thousand a day after being paid sixty thousand for taken on the fees, the case.

Gerry Durcan:

Well when I look at this case, what I say to you is that it's an example that the system actually works in the sense that there is somebody independent looking at the bill and saying, that's appropriate, or that's not appropriate. Now I want to make one thing clear, I would be the first person to say that the taxation process for costs is somewhat outdated. It needs to be updated, changes need to be made. We need to get a system that works well, that work efficiently, that's fair to everybody and can be used as cheaply as possible. But even as the system...

Fergal Keane:

We'll go into it in a minute but it is an expensive process if in individual takes a case there and loses.

Gerry Durcan:

Certainly I'm not saying and I don't believe any barrister would say that the taxation system is perfect, but it is a mechanism that can be used and as we've been seeing in the examples you've given during the week, can bring about very significant reductions...

Presenter:

But isn't it deeply complicated and convoluted and it meanders around the place and for the ordinary man on the street who finds himself caught up in massive costs that they never expected in the first place, to be then told, now you're going to have to go through a taxing process. It's just adding further to the frustration and ultimately to the bad public perception of your business Gerry Durcan.

Gerry Durcan:

I think even the wording of the system, the taxation of costs, is a somewhat unfortunate one. Nonetheless the point remains, there is a process, it is an independent process. It's a process which brings about, in cases, very considerable reductions.

Fergal Keane:

But what about, but then Mary, there's another notorious case there last year where the Taxing Master, he described a bill of two point one million as revolting in the extreme - this is the Taxing Master. And there are three well known barristers put in bills, they denied they put the figures on themselves, of up to seventy five thousand each. They were reduced to sixteen thousand each and the overall reduction of over eighty percent in the bill. But what happened those people afterwards?

Gerry Durcan:

The answer to that is, firstly I don't know individual cases, and I feel somewhat...

Fergal Keane:

It was all over the Irish Times Gerry, you must know it.

Gerry Durcan:

Well I'm afraid it may have been all over the Irish Times but...

Presenter:

Well let me ask you this...

Gerry Durcan:

But it's invidious to be going into particular...

Presenter:

Is there any disciplinary procedure if, after the Taxing Master has ruled on costs, it is found that an individual, whether it is a solicitor or a barrister had been overcharging to the tune of twenty thousand, thirty thousand or a hundred thousand, two hundred thousand.

Gerry Durcan:

The Bar Council has a comprehensive disciplinary code. If anybody behaves in an unprofessional way a complaint can be made to the Bar Council.

Presenter:

And what happens?

Gerry Durcan:

And there is by the way again, an independent process. Ultimately there's a whole range of sanctions that can come into play.

Presenter:

But is it the situation and...

Fergal Keane:

If I'm right Mary, maybe only one barrister, if any, has ever been struck off.

Presenter:

But...

Gerry Durcan:

Well striking off is done by somebody else, by the King's Inns. But there are a number of disciplinary complaints against barristers. Actually, if you inquire, surprisingly few, and, but there is a process which can be invoked by people if they want.

Presenter:

Well let me bring Donald Binchy in on this as well and it is this question of, when the Taxing Master reduces huge costs, and we've seen it from the days of the beef tribunal and before that the really massive costs bills put into the Taxing Master and they have been massively reduced by him. Does anybody go back ultimately to the solicitors and barristers who put in those costs and say why did you do that, why did you put people through that? Some of these costs were levelled against the State, or is there a situation where costs are upped before they go for taxing? Donald Binchy...

Donald Binchy:

Well no Mary, I don't believe there is. I mean, I think that the system is there to deal with bills that are presented and there is a very significant incentive on solicitors to make sure the bills are taxed broadly in line with what is presented. And that is that if the bill is reduced by more than one sixth then the solicitor bears the entire cost of the taxation process. So that's a very significant incentive for a solicitor to make sure that his bill is reasonable when he presents it. It's not to say there won't be exceptions that, whereby, more significant reductions...

Presenter:

Do you agree with Gerry Durcan that the whole issue of taxing needs to be changed?

Donald Binchy:

I do indeed Mary and the Law Society would fully favour a system that is updated, improved and in a sensible way in order that the whole process is more transparent and predictable...

Presenter:

And as regards your own organisation, the Law Society, is it time that you were not self regulated anymore?

Donald Binchy:

Well as I said Mary, I believe at the moment that we're not self regulated. I think the perception is that we are but I, the reality is otherwise. I believe that it is likely that the minister is going to bring in proposals that will take most of the remaining regulatory functions away from the Law Society but I don't believe it will actually improve the handling of complaints but it will probably improve the perception.

Presenter:

But isn't it time to divide your functions, you know if you take, the Medical Council is given as an example and the IMO, the Medical Council regulates, the IMO represents. You, at the moment you're trying to represent and you're trying to regulate.

Donald Binchy:

Yes that's the appearance of it, but again as I say, the reality is somewhat different because the regulation at this stage is in the hands of a majority of laypeople, overseen by an independent adjudicator and in turn overseen by the president of the High Court, all of whom are completely independent of the Law Society. So while I appreciate the point in terms of perception, I don't believe that in terms of practicality it will make much difference to...

Presenter:

But that smacks of the what we have we hold, you know, we don't want, it will be taken screaming from you.

Donald Binchy:

No...

Presenter:

You're not going to give it up yourselves...

Donald Binchy:

It won't Mary. The minister has yet to produce, as so far as we are aware, he is currently working on a bill and when we receive a draft of that bill we will engage positively with the minister in the public interest to agree hopefully a different procedure for regulation...

Fergal Keane:

Well Mary over the years there have been various attempts made to change the way the legal system is regulated and all have more or less failed and just earlier this year there was a public accounts committee hearing into this and it went almost unnoticed because the election came on straight away. And a few things from the findings from that public accounts committee, the self regulation of the legal profession is a significant problem. That's just one thing, restrictive practices among lawyers keep fees artificially high – one statement from them. The normal rules of accountability do not apply in the legal profession. And it just goes on and on and it says that the overall the system of legal charges will have to change completely and that just goes in line with what the IMF recommended in their, in the bailout deal last year. And in the third quarter they said they want to see the establishment of an independent regulator for the profession, the legal profession and the implementing of the recommendations of the Competition Authority to reduce costs and of an earlier group the Legal Costs Group. But they, in reality the legal profession have fought radical change tooth and nail over the years.

Donald Binchy:

But I Mary, I'd have to say I don't accept that. There have been extraordinary changes in the legal profession in the last ten or fifteen years but there is also quite a significant difference between the issue of regulation and the issue of charging. And as to the issue of charging, we operate in an extraordinarily competitive environment, solicitors are hanging on by their fingernails in practice and there is huge variations in charges and clients should seek different quotes from different solicitors and they will discover the significant variations that are out there and that is demonstrative of competition...

Fergal Keane:

What has been happening to dozens of people that have been onto us, they go and they get, their solicitor is obliged to give them an outline of what the fees might cost in a family law case. I've yet to come across a case where the fees came even remotely near the actual cost, typically it's double.

Presenter:

In fairness I think it is important to add into the equation there something that was said earlier this week by the Director of Public Prosecutions, seventeen million was wasted last year in Garda overtime to attend court for cases where the cases never got on.

Fergal Keane:

And this is just utter inefficiency...

Presenter:

There are other factors adding to these huge costs and I presume, what happens, Donald Binchy, when a solicitor attends court and a case doesn't get on? Do you charge anyway?

Donald Binchy:

That very much depends upon the basis upon which the solicitor has agreed to charge the client. In a lot of cases the solicitor won't charge extra but if you have an agreement with the client whereby you're charging on the basis of time spent on the matter, there probably will be some charge for the time spent on the matter on that day so...

Presenter:

So, if for example, you've sent a solicitor from Clonmel to attend case in Dublin, you'll be charged for a full day's work, even though, and it's not your fault...

Donald Binchy:

Yes...

Presenter:

Because the judge is not available or something happens...

Donald Binchy:

Well it varies from case to case and solicitor to solicitor Mary but there is likely to be some charge, albeit that it would not be a charge of the full rate. Because it's important to understand that solicitors have extremely high overheads, it's a very labour intensive business and when you engage a solicitor you're really engaging a whole team...

Presenter:

But is your advice to clients to shop around, do the deal, strike a lump sum figure and nail it down and not leave themselves open to the sorts of costs that Fergal Keane has been giving to us.

Donald Binchy:

Well speaking as a consumer as well as a solicitor Mary, my advice to clients would be to shop around, certainly. But I have to say that there can be great difficulty in hammering down a final figure for any kind of litigation or indeed any...

Presenter:

That is the problem...

Donald Binchy:

It is and for the very kind of reasons that you've outlined Mary and at the beginning of a matter it is far from clear the extent of work that will be undertaken and I sometimes use the analogy that it's like going to a builder and asking a builder to build you a house except that when you ask him to price it you can't tell him how big the house is going to be and you can't give him any specifications.

Fergal Keane:

Well, now now now!

Presenter:

I don't think you're comparing like with like in that situation in fairness Donald Binchy. Ger Durcan, if I wanted to employ you directly, I can't do it.

Gerry Durcan:

No, you can't...

Presenter:

I'd have to go through Donald Binchy...

Gerry Durcan:

Or his equivalent...

Presenter:

So I'd have to pay him and then I have to pay you.

Gerry Durcan:

Well my attitude to this is very straightforward, there are a number of people involved in litigation, as long as everybody is adding value, and reasonable value to the litigation, I don't think there's a problem. If there are people who are not adding value in it then we should look at the efficiency of the system.

Presenter:

Should I not be able to phone you up directly and employ you to do the job I want done and cut out the middle man?

Gerry Durcan:

Well, paradoxically, cutting out the middle man might actually cost you more. If you rang me up and asked me to sit down with you and take details from you about various different things, it may be much more efficient to do it in a different way. Now speaking personally and I think it's speaking on behalf of barristers; we're all in favour of doing things as efficiently as they can be done, as fairly as they can be done and in accordance with justice.

Fergal Keane:

Well two...

Gerry Durcan:

In other words, I'm not against the concept of change, the system is inefficient in some respects; I don't think anybody is saying we shouldn't make changes that would make it more efficient.

Fergal Keane:

Two changes you're facing Gerry, under the IMF where, if we are to go ahead with the Competition Authority recommendations, is that you would have direct access to barristers but also that the rule would be broken that barristers must be sole traders. That is that, RTE for example, could hire their own barristers to take cases on for them or other companies to take cases on for them, but the Bar Council is...

Presenter:

But why can't...

Fergal Keane:

Is dead set against that...

Presenter:

But why can't they do that at the moment?

Gerry Durcan:

Well could I explain firstly...

Presenter:

Please...

Gerry Durcan:

The Competition Authority made fifteen main recommendations; of those the Bar Council has implemented twelve. We have difficulties with...

Fergal Keane:

But that is...

Gerry Durcan:

Hold on a minute now...

Fergal Keane:

That is the most important one...

Presenter:

Hold on a minute Fergal, let him answer that...

Gerry Durcan:

In reality we have problems with some other ones. The concept of barristers practicing together in partnership may actually, paradoxically, make the market less efficient because if various barristers get together and you can only get particular barristers who are in partnership with each other, it may make it more difficult to get...

Fergal Keane:

Ah now!

Presenter:

But if you go back to the whole idea of shopping around and changing the whole access to the law for people...

Gerry Durcan:

Could I say I was struck by your examples by a couple of things. One, people don't seem to have enough information, if people had more information, if they shopped around in advance if they went, got quotes from different barristers in regard to what price work would cost, it would be much more, it would work much better. Secondly, if there is to be changes in the prices, or things are going to cost more, if people were given more information, that would also be helpful...

Presenter:

Should there be a price list?

Gerry Durcan:

It's impossible to have a price list but I should say that, one thing the Bar Council did within the last two years is introduce a compulsory system of fee estimates. Barristers now have to issue...

Fergal Keane:

But how can you justify four thousand euros a day?

Gerry Durcan:

Four thousand euros a day, now...

Fergal Keane:

After you get the brief fee. One got a brief fee of fifty, of fifty or sixty thousand a couple of weeks before...

Gerry Durcan:

Fergal, who set the four thousand? An independent adjudicator. Now do you not accept the outcome of the independent system?

Presenter:

The Taxing Master was given a fee of, was it five thousand?

Fergal Keane:

Five thousand...

Gerry Durcan:

And he adjudicated on what was fair. Now do you not accept what the independent...?

Fergal Keane:

But, No I don't accept and I don't think anybody listening is going to accept that four thousand a day is justifiable for anything.

Presenter:

We have to finish this off. Change is coming.

Gerry Durcan:

Change is coming I think. And change must be welcomed in some respects.

Presenter:

You have an awful lot of underemployed and unemployed barristers who could probably share the largess that's there at the moment among the very small few, what are known as like super barristers, they're like super models.

Gerry Durcan:

Well, could I make the point, because sometimes the view that comes across about the Bar is quite incorrect. The vast majority of barristers are operating, they're under seven years in practice. I will guarantee you that the majority of those people under seven years are earning less than the minimum wage. That is the reality of the Bar at the moment. There are a very small number of high fliers who make a lot of money but there are very large numbers of people who make very little and who, like everybody else out there are finding things extraordinarily difficult...

Presenter:

So it should be

Fergal Keane:

But that's no argument then for somebody that goes into court and is still being billed four thousand a day...

Presenter:

I just want to go back briefly to Donald Binchy because I think that, like the point Gerry Durcan is making there, there are a large number of underemployed barristers, there is now a large number of underemployed solicitors as well. So in fact it should be a time when people are going to get real value for money the same as they're now getting probably if they want to put an extension on their house.

Donald Binchy:

Yes Mary, I think it is and I think, as I said earlier on, if clients shop around they will see quite striking variations in price. But I think it also needs to be bourn in mind that when you're selecting a legal advisor it's not just about price, quality of service also features in the equation and I would advise people take that into account when they are shopping around.

Presenter:

Alright, well we're going to leave it there. Donald Binchy, Vice President of the Law Society, Gerry Durcan, senior council and former chairman of the Bar Council and our own Fergal Keane, thank you all very much. It's twelve minutes to five o'clock.

ENDS

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