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6 January 2011 **Ref: 2010/04807**

Mr. Ciarán Connolly,
Secretary General,
PSMD,
Department of Finance,
Merrion Street,
Dublin 2.

Re: Public Service Agreement (Croke Park Agreement)
Implementation Action Plan

Dear Ciarán,

I attach for your information Revised Action Plans in respect of this Office, the Chief State Solicitor's Office and the Law Reform Commission (LRC). As requested, I have arranged for an electronic version also to be sent to Ms. Victoria Cahill of your Department. While the Plans have been updated where necessary, there were three substantive changes required. The first relates to the National Recovery Plan 2011 – 2014, the second arises in relation to the implementation of the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) and the third relates to facilitating client Departments in providing aid to the development of industry. The Offices see these as the key areas of work for the next few years and has amended their Action Plans accordingly.

As I explained in my letter which included the original version of our Action Plan, I completely support the need to reduce the cost of public services but find it impossible to offer cuts further than have already been yielded by the Offices. Neither Office funds programmes that can be eliminated or scaled back and neither has huge levels of staff that can be rationalised or redeployed. The LRC has already had its 2009 budget reduced by 33% for 2010 and then by a further 8.1% for 2011. The requirement to reduce it by 10% for 2012 has serious implications for maintaining the level of outcomes at an efficient cost.

Both the AGO and CSSO are demand-led, providing essential legal services to the Government and Departments. It is not an option that we can unilaterally scale back on this work as it would expose the State to huge and costly risk. All measures taken to date to achieve savings in the Offices have been arranged to minimise the impact on the vital services we deliver and further cuts will have a negative effect. As you can attest, in the past two years and particularly since September 2010, there has been a large increase in complex and urgent work arriving in this Office. Notwithstanding the cut in resources, the work has been carried out successfully and usually in very pressurised circumstances. This is evidence of the Office increasing productivity to meet the challenges facing the State. There is little evidence that the demand for our services is likely to abate in the foreseeable future. Adherence to the MoU is going to be the key driver of change in many critical areas. Accordingly, the legal services of the Office will be in great demand by many Government Departments. Indeed the Offices have recently dealt with one of the largest and most significant cases ever taken against the State i.e. the challenge to NAMA, and continues to prepare legislation and give legal advice arising from the financial crises e.g. the Credit Institutions Stabilisation Act 2010. Considerable resources were required in both the AGO and in the CSSO and it is a testament to the commitment and flexibility of staff that these matters were handled in a very professional manner without affecting the extensive other work of the offices.

The Law Reform Commission has, notwithstanding the huge cut in its budget, over the past two years made an outstanding contribution to essential work for the State in a number of areas. For example the Commission's recent Report on the *Consolidation and Reform of the Courts Acts* will enable the streamlining and enhancement of the effectiveness in court processes. The project will feed directly into the legislation currently being prepared by the Department of Justice with a view to saving on legal costs. Their work on *Alternative Dispute Resolution* will also lead to cost savings for the State. Legislation based on the Commission's Report on *Personal Debt* will enable the State to meet its mandated commitment under the ECB/IMF Financial Support Agreement and the *Assisted Human Reproduction* project will enable the State to address criticisms from the Supreme Court in a number of recent cases. The Commission is compiling a Legislation Directory for Statutory Instruments which will have a major beneficial impact for the many users of the Statute book not least Government Departments, the judiciary and legal offices. The project will result in a significant savings in costs.

Following on from cuts of 33% for 2010 and 8% for 2011 the demand for a further 10% cut from the Commission's budget is not practical. I believe that such an imposition will have a large and disproportionate effect on the efficiency of the Commission if it is not able to capitalise fully on the research and reporting structures it has successfully developed in the past few years.

In any event, the Commission is a statutory body and it would require a Government decision to wind it up. Notwithstanding that the Commission is funded by a Grant-in-Aid through the AGO Vote, without Government direction on the issue this Office is not in a position to impose on the Commission any cut in its financing that could lead to its discontinuance.

To date, in order to meet the demands placed on the AGO and CSSO, staff of all grades have been very flexible. Many have had to remain available out of working hours and many have put in considerable extra hours over a prolonged period. You yourself are aware of the contribution and dedication of certain staff members involved in the work on the banking crisis and it is through staff such as these that the critical work has been delivered. Whilst maintaining this effort the AGO has lost 13 posts or 17% of its administrative staff –

equivalent to 10% of its serving numbers. Their loss, particularly from key support tasks such as research and legal secretarial services is beginning to have an effect on the legal capacity of the Office. The CSSO has lost 24 posts including 15 legal posts. A further reduction in staff for either office as the quantity, complexity and urgency of work increases as well as the requirement to be able to attend court and other hearings in any part of the country is not a sustainable proposition.

While some of the savings returned to the exchequer by the AGO reflect issues largely outside of our control, such as the process of filling vacancies, a significant amount represents the Office's active management of costs wherever possible. Savings of €400k in our A2, A3 and A9 Budget Subheads are a direct result of restraint and the desire to reduce expenditure wherever possible. Notwithstanding cuts in our budget we will maintain this cost-saving approach in 2011. The CSSO has also returned significant savings for 2010 particularly in the area of expenditure on fees to counsel where strict management controls and renewed policies on the engagement of counsel have been applied. Expenditure in this area has been reduced from a high of €17.7m in 2008 to a provisional outturn of €12.3m in 2010, i.e., a total reduction in cost in the order of 44% since start 2009. On the administrative side the office has also further reduced its costs and shows savings of €1.5m over the 2010 Estimate. However, some cuts are not sustainable in the longer term. Training and ongoing professional development for instance, are areas which due to the nature of our work, cannot be scaled back indefinitely. It is also clear that the CSSO is likely to continue to have a requirement for short term contract legal staff to handle peaks in demand for legal services from Departments and Offices and flexibility in this regard will be very necessary.

As a proportion of both budget and staff numbers the reductions experienced to date have been severe and represent real and ongoing savings. In the case of the AGO Vote (which includes the LRC Grant-in-Aid) our annual net expenditure was approximately €4 million (or 22%) lower in 2010 than in 2008, and a further cut of 8.1% has been taken for 2011. For the CSSO the reduction in expenditure for 2010 is in the region of €10 million (or 25%) compared to 2008 expenditure.

For the AGO and CSSO there is no scope to increase the level of savings without impacting on the level of service we are delivering. The Offices' greatest contribution to reducing public expenditure lies in their ability to provide a professional and effective service. Without such a service it is likely that the State will incur significantly greater costs in the longer term as well as being exposed to reputational risk.

The plans of the CSSO to accelerate its operations in the area of recovery of legal costs and to tackle the cost of engagement of external legal costs accountants and to reduce the overall cost of the State in its liability for party and party costs have potential to bring real costs saving for the State. The Chief State Solicitor is anxious to be able to progress initiatives in 2011 and throughout the life of this plan to realise these savings and to have the support of the Department of Finance in achieving targets that are both tangible and quantifiable. I share the Chief State Solicitor's view on this.

The cost of private sector legal advice in relation to banking stabilisation measures has proved to be very costly particularly when compared to the cost of the AGO which provides a wider range of services across a much wider range of topics. It would be a false economy to restrict resources to the legal offices if the alternative is to pay significant fees to private sector firms. It is worth pointing out that in each case the advice provided by those firms in relation to financial issues necessitated this Office to examine and approve the final product. Thus the risk involved remains with the State and taxpayers notwithstanding the high fees paid. Similarly, the CSSO provides its services at a cost to the State significantly lower than that charged by private sector solicitor firms. It is inevitable that current clients of the CSSO would be forced to resort to such firms if the CSSO is not able to continue to provide its current level of service.

As set out when submitting our original Action Plans the lack of options to effect staff reductions or other direct savings means that our plans had to focus on measures to enhance efficiency. The Offices have always fully engaged in modernisation initiatives such as Client Service, IT enhancements, promotions on merit etc and consequently do not need to promise such measures as part of future plans.

If necessary, I am willing to discuss any of the above issues with you at your convenience.

Yours sincerely,

Liam O'Daly

Liam O'Daly
Director General

C.c. Victoria Cahill, Department of Finance

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