



Houses of the
Oireachtas Commission
Coimisiún Thithe
an Oireachtais

**Guidelines on Inquiry Legal Costs
for the information of witnesses and other
persons affected by a Part 2 inquiry under the
Houses of the Oireachtas
(Inquiries, Privileges and Procedures) Act 2013**

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GUIDELINES ON LEGAL COSTS¹

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Introduction

1. The Oireachtas Commission (“the Commission”) is the body charged with the running of the Houses of the Oireachtas. It is in charge of the Houses of the Oireachtas Service, and is effectively the governing board which oversees the administration of services to the Houses of the Oireachtas. Its functions include managing the payment out of certain monies incurred in the administration of the *Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013* (“the Inquiries Act”). The Commission is mindful of its duty as a public service body to use public monies in the most cost effective manner possible.
2. Legal costs will only be awarded if they meet the strict criteria laid out below.
3. Persons claiming legal costs under these Guidelines should note that, except in exceptional circumstances,² details of costs paid out will be published on www.oireachtas.ie. Details of costs paid may also be releasable under the Freedom of Information Acts.
4. Persons seeking to make a claim should use the forms set out in the Appendices to these Guidelines.³ Failure to make the application in accordance with these Guidelines and the specified forms may result in the application being refused.

¹ These Guidelines have been approved by the Oireachtas Commission following consultation with a Taxing Master and the Bar Council of Ireland.

² If you believe there are exceptional circumstances why details of legal costs paid to you should not be published, please set same out in any application for legal costs.

³ See s.42 which provides that ““specified”, in relation to a form or document, means specified under section 63”. Section 63 gives a power to the Oireachtas Commission to specify forms of documents. Section 47(1) refers, *inter alia*, to the fact that a witness whose good name is or may be impugned may apply “in the specified form” to the Oireachtas Commission. See also, s.48(4) and s.51(1).

Who may apply to the Commission for their legal costs and when may they apply?

5. An application for legal costs⁴ from the Commission may be made by a witness⁵ whose good name is or may be directly impugned.⁶ If you are unsure whether your good name is or may be directly impugned in an inquiry, you may apply to the Committee of Inquiry for a determination of this question.⁷ Applications for costs will not be considered from any person whose good name is not and may not be impugned.
6. An application for legal costs may be made at any time during the course of an inquiry. However in the majority of cases an applicant will be in the best position to fully substantiate and support their final bill of costs after the termination of the inquiry. In order to apply, please use the Form in **Appendix A**.

When will the application be decided by the Commission?

7. The application will, in the absence of exceptional circumstances, be decided upon by the Commission as soon as is practicable after whichever of the following first occurs:
 - a. The final report of the Committee has been finalised; or,
 - b. The termination of the inquiry.⁸
8. If there are “exceptional circumstances”, an earlier decision⁹ may be made by the Commission on whether the person will, on the face of it, be entitled to their costs. If the Commission is satisfied that there are exceptional circumstances, it may make a decision that, subject to full cooperation with the inquiry, the person will be entitled to a payment of reasonable legal costs. In general, persons seeking an earlier decision should first obtain a determination from the Committee of Inquiry as to whether they are a person whose good name is or may be impugned.¹⁰

When will payment be made by the Commission?

9. Irrespective of the point at which a person received a successful decision from the Commission, payment of legal costs will only take place:
 - a. following the finalisation of the final report of the inquiry, or the termination of the inquiry, whichever first occurs; **and,**
 - b. once a signed bill of costs has been provided to the Commission.
10. Further, payment will only be made once an agreement has been reached between the person and the Commission on the amount of costs.¹¹ Negotiations may take place between the person and the Commission for up to 40 days (or such longer period as agreed between

⁴ Section 42 provides a definition: “Part 2 inquiry legal costs”, in relation to a Part 2 inquiry, means fees, charges, disbursements and other costs incurred that arise from the inquiry and that are for services of a legal nature provided by a legal practitioner;

⁵ Witness is defined in s.2 as follows: ““witness”, in relation to relevant proceedings, includes a prospective witness.”

⁶ See s.47(1) of the Inquiries Act

⁷ See s.47(4)(a). The Committee must determine an application as soon as is practicable (s.47(4)(b)(i)) and must cease to inquire into the person until it has provided notice in writing of its decision (s.47(4)(b)(ii)).

⁸ See s.47(2)

⁹ This may include, where appropriate, a decision prior to the person’s attendance as a witness.

¹⁰ s.47(4) and in particular, s.47(4)(b)(ii).

¹¹ See further s.49 of the Act and in particular, s.49(1).

the parties).¹² If agreement is not reached within this period, the Commission shall act as if an application had been made to it to send the matter to adjudication.¹³

11. Alternatively, a person may apply using the Form in **Appendix B** to send the matter to adjudication not less than 3 months after the furnishing of a signed bill of costs. In such a case, payment will be made following an adjudication by the parliamentary legal costs adjudicator on the amount of costs.¹⁴
12. Following the aforementioned agreement or adjudication, payment will be made as soon as practicable or, in any event, not later than 60 days following the agreement or adjudication.¹⁵

What are the criteria to meet for an award of costs from the Commission?

13. A decision to award costs is at all times at the discretion of the Commission, having regard to whether such an award would be fair, reasonable and/or proportionate. Any application made for costs may be refused, in whole or in part, if the circumstances in s.48(1) or (4) apply.¹⁶ In effect this means that, in the view of the Commission, following consideration of the final report, the applicant has engaged in certain conduct which has led to the committee of inquiry¹⁷ or an aggrieved third party witness¹⁸ incurring legal costs that it/they would not otherwise have incurred. The aforementioned conduct includes:¹⁹
 - a. failing, without reasonable excuse, to comply with any direction under the Act;
 - b. failing, without reasonable excuse, to comply with a requirement that the committee was entitled to issue;
 - c. engaging in conduct that is unreasonably prolix, dilatory or evasive or which otherwise results in the inquiry being needlessly prolonged or in unnecessary inquiry legal costs being incurred;
 - d. acting in a manner that has resulted in a finding of relevant misbehaviour²⁰ being made in respect of him or her; or,
 - e. otherwise obstructing the inquiry.
14. In making a decision on whether to award costs the Commission may take into account whatever matters it deems relevant, including interim reports or any other documentation arising from the inquiry.
15. Before making an application for costs, a witness should consider whether it is reasonable and/or appropriate for them to be awarded legal costs, whether it is more appropriate for their employer to discharge their legal costs (where relevant), and whether it is in the public interest for the Commission to consider making an award of costs to them.

What kinds of legal costs can be claimed from the Commission?

16. Where the Commission decides to award legal costs, that award will normally only cover the cost of one legal representative briefed in relation to the inquiry. If a witness is assisted by more than one legal practitioner, the Commission will in exceptional circumstances pay for

¹² This 40 day period commences running once the final report is finalised or the inquiry has terminated and the signed bill of costs has been provided to the Commission. The Commission may seek the assistance of the State Claims Agency within this period (s.49(2)).

¹³ In other words, it will deem an application to have been made to it. See s.51(1)

¹⁴ See s.49(1)

¹⁵ Therefore and as outlined, it is envisaged that this process of the award of costs will take place without the need for recourse to the Courts under s.50 or s.97.

¹⁶ See s.47(3).

¹⁷ See s.47(3) and s.48(1)

¹⁸ See s.47(3) and s.48(4)

¹⁹ See s.47(3)

²⁰ See s.14 of the Act

up to two legal practitioners. Exceptional circumstances in this case normally will mean where it was necessary in the interest of fair procedures to have such legal assistance **and** the person is not in a financial position to pay that second practitioner.²¹

17. In general, legal costs may only be claimed for work done in connection with the defence of the person's right to their good name. Subject to this, work done under the following heads may be the subject of an award:²²
- a. Considering initial instructions;
 - b. Advising a witness in relation to the making of a witness statement, and/or otherwise providing evidence requested by the Committee to the inquiry/complying with any directions under Part 6 of the Act;
 - c. Considering the material provided to the witness by the inquiry;
 - d. Making an opening statement;
 - e. Representing the client during their oral evidence or the oral evidence of others;
 - f. Cross examination of witnesses;
 - g. Making final submissions.

Maximum Amount of Costs that may be Claimed from the Commission²³

18. These are the maximum rates payable by the Commission for the following categories of work:
- daily attendance rate (including any work associated with such attendance, for example, consultation with the client or the legal team for the inquiry): €850
 - considering initial instructions: €528 (including a consultation with the client) or €264 (excluding a consultation with the client)
 - advising a witness in relation to the making of a witness statement, and/or otherwise providing evidence requested by the Committee to the inquiry/complying with any directions under Part 6 of the Act: €528
 - considering the material provided to the witness by the inquiry: €264
19. Rates for legal representatives for work falling outside of the above categories are subject to a maximum hourly rate of €264.
20. Any successful application for legal costs is subject to an overall limit of €10,000 in respect of any one inquiry.

Recoupment of Costs by the Commission and “Aggrieved Persons”

21. If you fail to cooperate with the inquiry, you may be subject to an application from the Commission or an “aggrieved person” to pay for any costs incurred by the inquiry Committee or the aggrieved person which would not have been incurred but for your lack of cooperation.²⁴ Any costs applied for under this process are not subject to the maximum thresholds set out at paragraphs 18 to 20 above.
22. In the case of an aggrieved person, they must commence this process by sending a request to the Commission in the Form set out at **Appendix C**.²⁵

²¹ A person making such a claim must provide supporting evidence to show that they were not in a financial position to discharge this cost themselves.

²² The following list does not constitute a representation that any of the following items of work can in fact be carried out by the legal representative, particularly in respect of any matters which would be carried out in the course of the meetings of the inquiry. Whether a legal representative can, for example, cross examine will be determined in accordance with law (see for example s.24(1)(b)), and in the absence of any legal right to same, will at all times remain at the discretion of the Committee of Inquiry.

²³ See s.46(1)(c). The figures listed are exclusive of VAT.

²⁴ See s.48 and in particular ss.(1) and (4).

²⁵ See s.48(4)

23. The Commission may give the person a notice in writing of its belief that they have engaged in certain misconduct which has led the Committee of Inquiry or an aggrieved person to incur these additional costs.²⁶
24. A Court must confirm the belief²⁷ and the Commission may then send a written request to the person to pay the costs to the Commission²⁸ or aggrieved person.²⁹
25. The person may comply with the request within 60 days. If they do not, or if they object to the amount, the matter will go to adjudication.³⁰ For full details on this procedure please have reference to the Inquiries Act.
26. If it is the case that certain amounts claimed by an aggrieved person overlap with amounts previously paid out by the Commission to the aggrieved person, the Commission reserve the right to seek reimbursement of those monies in the event that the aggrieved person successfully recovers same from the person whose acts or omissions were at issue.

Taking Proceedings to Recoup Costs

27. In general,³¹ a person cannot take proceedings to recover their costs until 3 months after they have delivered their bill of costs,³² or if the matter has gone to adjudication, until the costs are certified.³³

Bill of Costs

28. If it is necessary to prepare a signed bill of costs, this should be prepared in accordance with these Guidelines.³⁴ A bill of costs is simply a detailed statement of legal costs. It will generally be provided to a client by his legal practitioner.
29. The bill of costs should contain:
 - a. a summary of the legal services provided;
 - b. the total amount of any monies recovered; and,
 - c. details of all the charges incurred and the nature of same.
30. A bill of costs comprises of pages that are split into seven separate columns. The columns will contain information as follows:
 - **Column 1** dates
 - **Column 2** the number of the items of cost. Each item should be given an individual number
 - **Column 3** the particulars of the services charged for
 - **Column 4** the amount in respect of disbursements - i.e. the payments made by the solicitor on behalf of the client
 - **Column 5** deductions for the amounts claimed in respect of disbursements if it is considered by the Parliamentary Costs adjudicator that the amounts claimed are higher than that which could be considered fair and reasonable.
 - **Column 6** the amounts claimed in respect of professional charges

²⁶ See s.48(1) and (4). In the case of an aggrieved person, it will also send a notice to the aggrieved person within 45 days outlining the steps it plans to take (s.48(8)(a)) and if it send a notice to the person who caused additional costs to be incurred, it must send a copy to the aggrieved person (s.48(8)(b)).

²⁷ See s.48(1) and (4) and s.96

²⁸ See s.48(2). The request will be accompanied by the "relevant documents" (see s.48(10)).

²⁹ See s.48(5). The Commission will send a copy of the request to the aggrieved person (s.48(8)(b)). The request will be accompanied by the "relevant documents" (see s.48(10)). Please see s.48(9) for details of the kinds of requests that the Commission may make in terms of costs.

³⁰ See s.48(3) and (6).

³¹ This is subject to the right in s.97 to take proceedings at an earlier stage.

³² See s.50(a)

³³ See s.50(b) and s.52 for details of the certification procedure.

³⁴ This may arise under e.g. s.48(5). "Relevant documents" includes a bill of costs (See s.48(10)).

- **Column 7** deductions that the Parliamentary Costs Adjudicator has made, if any.

The Parliamentary Costs Adjudicator

31. In certain circumstances³⁵ the bill of costs will be adjudicated on by the parliamentary legal costs adjudicator³⁶ (“the adjudicator”). These circumstances include where agreement as to the amount of costs has not been reached between the party to whom legal costs is due and the party charged with payment of such costs following the delivery of a signed bill of costs.
32. The party claiming costs must justify why they were incurred and why those costs should be allowed. The adjudicator must be satisfied that any costs claimed were proper and reasonable in all the circumstances.
33. When a bill of costs is adjudicated on, the bill will show whether particular items have been allowed in part or in full and the amount of any deduction will appear in Column 7 of the bill.
34. In respect of deductions the amount deducted is placed in the Column 5 next to the item to which it refers and the amount allowed is computed by subtracting the amount deducted from the amount claimed.
35. Providing false or misleading evidence or documents in an adjudication may constitute a criminal offence.³⁷
36. For further detail on the process involved in the adjudication of a bill of costs please have reference to the Act.³⁸
37. Please note that there is no fee for having the bill of costs adjudged by the parliamentary legal costs adjudicator.

³⁵ These circumstances are outlined in the Act. See e.g. s.51(1).

³⁶ See s.2 and s.42 of the Act which defines a parliamentary legal costs adjudicator as “a legal costs accountant appointed under section 44(2) to carry out an adjudication referred to in section 51(1), 57(3) or 58(3)”.

³⁷ See s.64

³⁸ In particular, please have reference to s.51 which sets out the procedure for adjudication.

APPENDIX A: CLAIM FORM FOR LEGAL COSTS

Name: _____

Address: _____

Occupation³⁹: _____

Please attach a submission to this form which covers the following matters and enclose supporting documentation where relevant:

1. Please confirm whether you are a witness to an inquiry whose good name is or may be directly impugned. If you have received a determination from the Committee of Inquiry that you are a person whose good name is or may be directly impugned,⁴⁰ please give details of that determination. If you have not received such a determination, please provide details of why you fall into this category.
2. Please include any factors which you believe warrant a decision by the Commission to exercise its discretion in favour of awarding costs. Please address whether, in your view, the circumstances in s.48(1) or (4) of the Inquiries Act arise.
3. Please include a signed bill of costs, or, if legal costs have not been incurred at the time of the application, please include a detailed fee estimate from your legal practitioner.

This application will not, in the absence of exceptional circumstances, be decided upon by the Oireachtas Commission until after whichever of the following first occurs:

- a. The final report of the Committee has been finalised; or,
- b. The termination of the inquiry.⁴¹

If you believe that there are exceptional circumstances which warrant an earlier decision, please include details of same in the submission.

As set out in the Guidelines, payment will only be made once an agreement has been reached between the person and the Commission on the amount of costs.⁴² Negotiations may take place between the person and the Commission for up to 40 days (or such longer period as agreed between the parties).⁴³ If agreement is not reached within this period, the Commission shall act as it an application had been made to it to send the matter to adjudication.⁴⁴

By submitting a claim for legal costs you acknowledge and accept that the details of amounts paid may be published by the Commission and may be releasable under the Freedom of Information Acts. If you believe that there are exceptional circumstances why details of legal costs awarded to you should not be published, please set same out in your application.

I hereby declare that the particulars contained in this form, the enclosed submission and supporting documentation are in all respects true and correct to the best of my knowledge and belief and that the legal costs claimed therein are in strict accordance with the Houses of the

³⁹ If unemployed, insert "none" here

⁴⁰ See s.47(4)(a)

⁴¹ See s.47(2)

⁴² See further s.49 of the Act and in particular, s.49(1).

⁴³ This 40 day period commences running once the final report is finalised or the inquiry has terminated and the signed bill of costs has been provided to the Commission. The Commission may seek the assistance of the State Claims Agency within this period (s.49(2)).

⁴⁴ In other words, it will deem an application to have been made to it. See s.51(1)

Oireachtas (Inquiries, Privileges and Procedures) Act 2013, the Legal Costs Guidelines and with any other relevant guidelines or legal provision.

Signed: _____ Date: _____

Completed forms should be addressed as follows: Legal Costs Claim, Claims Management Section,
Leinster House

APPENDIX B: FORM TO SEND ISSUE OF COSTS TO ADJUDICATION

Name: _____

Address: _____

Please indicate whether you are:⁴⁵

A person to whom legal costs are due

A person who has been charged with, but who objects to, legal costs as stated in a bill of costs

Important: You may only make an application for an adjudication of legal costs if you have sent a signed bill of costs to the party to be charged with the costs or you have received a bill of costs⁴⁶. Please include a certified true copy of the signed bill of costs⁴⁷ and any other relevant information in this application.

Please note that details of applications for adjudication may be releasable under the Freedom of Information Acts.

I hereby declare that the particulars contained in this form, the enclosed bill of costs and any supporting documentation are in all respects true and correct to the best of my knowledge and belief and that the legal costs claimed therein are in strict accordance with the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, the Legal Costs Guidelines and with any other relevant guidelines or legal provision.

Signed: _____ Date: _____

Completed forms should be addressed as follows: Legal Costs Claim, Claims Management Section, Leinster House

⁴⁵ See s.51(1) of the Inquiries Act.

⁴⁶ See s.51(2) of the Inquiries Act.

⁴⁷ See s.51(3)

APPENDIX C: CLAIM FORM FOR AGGRIEVED PERSONS

Name: _____

Address: _____

This form must be used by any aggrieved person as the basis for their request⁴⁸ to the Oireachtas Commission to send a notice in writing to the person who has caused the aggrieved person to incur additional costs. The Commission will not take any steps on behalf of an aggrieved person without receipt of such a request.

Please schedule legal costs incurred as follows and append that schedule to this form:

- (1) Specify which acts or omissions under section 48(1)(a) to (e) you are relying on;
- (2) Provide a signed bill of costs (this will be necessary if the Commission go on to make a request to the person under s.48(5)).⁴⁹ If certain of the amounts in the bill of costs have been previously reimbursed by the Commission or another body, please give details of such payments;
- (3) Outline in as much detail as possible, the reasons why you believe you would not have incurred the legal costs but for the action of the person concerned.

Please note that the Commission will take into consideration whether a claim is fully and properly substantiated in line with (1) to (3) in deciding whether to issue a notice in writing under s.48(4) and/or in applying to the Court under s.96(1).

Please note that details of claims under this procedure may be releasable under the Freedom of Information Acts.

I hereby declare that the particulars contained in this form, the enclosed submission and supporting documentation are in all respects true and correct to the best of my knowledge and belief and that the legal costs claimed therein are in strict accordance with the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, the Legal Costs Guidelines and with any other relevant guidelines or legal provision.

Signed: _____ Date: _____

Completed forms should be addressed as follows: Legal Costs Claim, Claims Management Section, Leinster House

⁴⁸ See s.48(4)

⁴⁹ Please see the definition of relevant documents in s.48(10) which includes a signed bill of costs.