

**Notice of Public Hearing and Invitation to Make Submissions  
on the Powers of the Tribunal in relation to Interim Orders for Costs at the  
Completion of the First Module**

**1. Introduction**

Full legal representation has been granted to two parties appearing before the Tribunal, namely, the Minister for Defence and the Chief of Staff of the Defence Forces. These grants of representation subsist for the entirety of the Tribunal's inquiry.

The Tribunal has also made grants of limited legal representation to certain groups and individuals during the private investigative phase for the purpose of assisting group members and individuals with the preparation of statements, attending upon them if and when invited for interview and the making of written submissions where necessary.

The Tribunal has also granted limited legal representation to several parties in respect of the public hearings stage of its inquiry. The purposes for which such limited grants were made have been set out in correspondence with the solicitors on record for the parties concerned and are available on the Tribunal's website.

Requests have been made to the Tribunal on behalf of several persons with limited legal representation, to consider making orders for costs on a modular basis. As recently as 5 June 2026, the Tribunal was copied in on correspondence sent to the Minister for Defence by Coleman Legal Solicitors. That firm represents approximately 115 former members of the Defence Forces who have come forward to provide information to the Tribunal during its investigative phase, some 23 of whom are scheduled to give evidence during the first module of the Tribunal's public hearings ('the first module').

It has been acknowledged that the retention of lawyers by private individuals appearing before a Tribunal may inflict a heavy financial burden. In 2002, Mr. Justice Morris, took the view that a tribunal was not vested with any power to relieve that burden. Whilst as the Sole Member of a tribunal, he sympathised with the financial position faced by such parties, he considered that he did not have any power to remedy the situation. He

concluded that whatever grievances a witness may have, whether it be suggested deficiencies in a tribunal's Terms of Reference or an inability to fund legal representation before the tribunal, such issues did not diminish that person's legal duty to attend as a witness before the tribunal or give evidence when called upon in accordance with law.<sup>1</sup>

In 2010, Fennelly J. in *Murphy v. Flood* [2010] 3 I.R. 136 also commented on the burden which certain individuals may face when engaging with a tribunal. He observed that:

*"A tribunal of inquiry is established to serve the public interest. It is in the public interest that every person in possession of relevant information should cooperate with the inquiry. It is beyond question that the obligation to cooperate may impose greatly on individuals and expose them to very substantial legal expense. They must incur those costs without any advance assurance of reimbursement. I think that the ordinary presumption should be in favour of reimbursement. Otherwise, the obligation to cooperate with Tribunals would impose loss without compensation on individuals."*<sup>2</sup>

## **2. Power of a Tribunal to Award Costs**

The Tribunal's powers in relation to costs are governed by section 6 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979, as amended ('the 1979 Act'). Section 6(1) of the 1979 Act, as amended, provides in relevant part:

*"(1) Where a tribunal or, if the tribunal consists of more than one member, the chairperson of the tribunal, is of opinion that, having regard to the findings of the tribunal and all other relevant matters (including the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the tribunal or failing to co-operate with or provide assistance to, or knowingly giving false or misleading information to, the tribunal), there are sufficient reasons rendering it equitable to do so, the tribunal, or the chairperson, as the case may be, may, either of the tribunal's or*

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<sup>1</sup> See citations from the Tribunal's correspondence as set out in *McBrearty v. Morris* [2003] IEHC 154 at pages 7 and 8.

<sup>2</sup> *Murphy v. Flood* [2010] 3 I.R. 136 at 230.

*the chairperson's own motion, as the case may be, or on application by any person appearing before the tribunal, order that the whole or part of the costs—*

*(a) of any person appearing before the tribunal by counsel or solicitor, as taxed by a [Legal Costs Adjudicator], shall be paid to the person by any other person named in the order;*

*(b) incurred by the tribunal, as taxed as aforesaid, shall be paid to the Minister for [Public Expenditure, Infrastructure, Public Service Reform and Digitalisation] by any other person named in the order.”*

The amendment to section 6 of the 1979 Act that was made by section 3 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997 consisted of the insertion of the provisions that are in parentheses. Thus, when a tribunal is considering whether there are sufficient reasons rendering it equitable to award costs, the ‘*relevant matters*’ in any such consideration include whether a party failed ‘*to co-operate with or provide assistance to, or knowingly [gave] false or misleading information to, the tribunal*’.

### **3. The ‘Findings of the Tribunal and All Other Relevant Matters’**

As to what constitutes a tribunal’s ‘*findings*’, it is well established that a decision to award costs cannot depend upon the substantive findings of a tribunal.<sup>3</sup> This principle was first articulated in 1992 in the Supreme Court’s judgment in *Goodman International v. Mr. Justice Hamilton* (‘*Goodman*’).<sup>4</sup> In *Goodman*, McCarthy J. (at page 605) interpreted section 6 of the 1979 Act as follows:

*“The liability to pay costs cannot depend upon the findings of the Tribunal as to the subject matter of the inquiry. When the inquiry is in respect of a single disaster, then, ordinarily, any party permitted to be represented at the inquiry should have their costs paid out of public funds. The whole or part of those costs may be disallowed by the Tribunal because of the conduct of or on behalf of that party at, during or in connection with the inquiry. The expression ‘the findings of the tribunal’ should be*

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<sup>3</sup> *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542 at 605; *Murphy v. Flood* [2010] 3 I.R. 136 at 165 and at 201 and at 232.

<sup>4</sup> *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542.

*read as the findings as to the conduct of the parties at the tribunal. In all other cases the allowance of costs at public expense lies within the discretion of the Tribunal, or, where appropriate, its chairman.”<sup>5</sup>*

Although the amendment to section 6 was made after the decision in *Goodman*, the Supreme Court, in 2010, considered the amended section and confirmed that regard may not be had to the substantive findings of a tribunal when considering the issue of costs. The rationale for the principle is clear. When conducting an inquiry, a tribunal is not ‘administering justice’ but is, rather, finding facts and reporting those findings to the legislature thereby providing information to improve public administration and mitigate risks to good governance. If a decision on costs were to be based on a tribunal’s substantive findings that would entail, impermissibly, the importing of a liability for a party thus trespassing upon the exclusive responsibility of the courts in the administration of justice. Accordingly, a tribunal’s decision to award or refuse costs may only be based upon a finding in respect of the conduct of a party. Considerations in respect of conduct include ‘*failing to co-operate with or provide assistance to, or knowingly giving false or misleading information to, the tribunal*’.

In *Murphy v Flood*, Denham J. (at para. 80) held:

*“Ordinarily any party permitted to be represented at a tribunal should have their costs paid out of public funds. However, this may be lost if the party fails to cooperate with the tribunal. Thus a chairman has to consider the conduct of, or on behalf of, a party before a tribunal. The power to award costs is affected by a lack of cooperation, by non-cooperation, with a tribunal. Non-cooperation could include failing to provide assistance or knowingly giving false or misleading information.”<sup>6</sup>*

It follows that before making any order as to costs, the Tribunal would be obliged to consider all relevant matters as to conduct of a party seeking its costs. In considering the cooperation of a party with a tribunal and/or the deliberate giving of false information

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<sup>5</sup> *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542 at 605.

<sup>6</sup> *Murphy v. Flood* [2010] 3 I.R. at 136 at 164.

thereto, the Tribunal would be required to afford every such party an opportunity to make representations in relation to such matters.

#### **4. When a 'Finding as to Conduct' Can be Made**

An important question arises as to when such a finding might be made. With reference to represented parties before a tribunal, the High Court has confirmed that the right to fair procedures under Article 40.3 of the Constitution '*cannot be regarded as including the right to have their legal representation funded or provided for in advance of the tribunal reaching findings*'.<sup>7</sup>

The question of whether an award of costs could be made by a tribunal on a modular basis was considered, but not expressly decided, by the High Court in *McBrearty v. Morris* [2003] IEHC 154. Peart J. noted that the legislature (in 1997)\* had revisited the question of the costs of those appearing at tribunals and had decided how the matter is to be dealt with. In terms of the legislature's approach, he said:

*"It has decided to strike a balance between the right of some parties to whom representation has been granted to have their costs paid for, and the public's right to be protected from a situation where all witnesses who have been granted representation at the Tribunal would have their costs discharged from public funds, regardless of whether they had co-operated or not, or given false or misleading information. In so deciding, due regard is had to the right of persons to have their costs paid, provided that they have co-operated."<sup>8</sup>*

#### **5. Question of Law and Procedure**

Given that a tribunal's 'findings' grounding an award of costs must be interpreted to mean '*findings as to the conduct of the parties*' and bearing in mind the requests made to the Tribunal for it to consider making orders as to costs on a modular basis, two questions arise for consideration:

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<sup>7</sup> *McBrearty v. Morris* [2003] IEHC 154 at page 90 (with emphasis added).

<sup>8</sup> *Ibid* (with emphasis added).

\*This is a corrigendum of the version issued to parties.

- (i) whether such a 'finding' could, permissibly, be made by the Tribunal at the end of the first module of public hearings and in advance of the provision of its Report; and
- (ii) if permissible, whether it would be appropriate for the Tribunal to proceed to determine applications for interim orders as to costs in respect of the first module, on the basis of such findings.

The Terms of Reference of this Tribunal require that it uses its best endeavours to complete its work within three years of the date of its establishment. Given the 41-year period of review, the voluminous body of documentation to be examined and the hundreds of interviews that were required to be conducted, the Tribunal was obliged to devote substantial time to the private investigative phase of its inquiry. Its investigations are ongoing in tandem with the first module. Public hearings commenced on 3 June 2026. If there is to be a challenge to evidence adduced during the first module, the Tribunal expects that such a challenge would be made during the course of public hearings in relation to that module. This would allow the Tribunal to come to a view on the body of the evidence before it in relation to the first module.

It is expected that the first module will finish before the end of July 2026. As the immediate focus of the Tribunal's work is on the completion of all public hearings, it is not anticipated that the Tribunal will provide a Report to the Taoiseach at the end of the first module. Instead, its focus will be on the preparation for and the completion of the remaining modules of public hearings in advance of the preparation of its Report.

If the Tribunal were satisfied, in advance of furnishing its Report on its substantive findings, that a party had cooperated with and had not, knowingly, given false or misleading information to the Tribunal during the first module, then, as a matter of law, is there any legal impediment to the Tribunal making an award of costs in favour of such a party on the basis of such a finding?

The Tribunal is open to considering whether it could proceed in this fashion at the completion of the first module of public hearings. An argument against such an approach

might be that findings of cooperation or of knowingly providing false or misleading information might be influenced by evidence adduced in later modules but prior to substantive findings being set out in the Report. Given what has been stated in relation to the body of evidence adduced during the first module and bearing in mind that the focus of the Tribunal's work is on certain *processes* within the Defence Forces rather than on particular individuals, it might be argued that the likelihood of such an event transpiring is minimal. However, to accommodate such an eventuality, if an issue as to 'conduct' were to arise in the context of an application for an interim costs order, the Tribunal could retain its discretion in relation to the terms of any such order and could take one of several courses of action. It could decide to adjourn the application to a later stage, or it could decide to grant the application either, wholly, or in part or, if satisfied that it were appropriate to do so, it could refuse the application in its entirety. Whilst these options would remain open to the Tribunal, it anticipates, for the reasons set out above, that co-operation and assistance are likely to be straightforward matters.

## **6. Public Hearing and Invitation to Make Submissions**

To assist the Tribunal in its consideration of the questions set out at (5) above, the Tribunal intends to hold a public hearing on **Monday, 13 July 2026**. Those to whom grants of legal representation have been made are invited to make submissions to the Tribunal on whether:

- (i) *'findings as to conduct'* could, permissibly, be made by the Tribunal at the end of the first module of public hearings and in advance of the provision of its Report; and
- (ii) if permissible, whether it would be appropriate for the Tribunal to proceed to determine applications for interim orders as to costs in respect of the first module, on the basis of such findings.

Submissions should be sent to the Solicitor to the Tribunal by no later than close of business on **7 July 2026**.