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**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.¹

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."*²

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

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

² *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.³ This principle was first articulated in 1992 in the Supreme Court’s judgment in *Goodman International v. Mr. Justice Hamilton* (‘*Goodman*’).⁴ 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

³ *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.

⁴ *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.”*⁵

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.”*⁶

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

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

⁶ *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*'.⁷

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."*⁸

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:

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

⁸ *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**.

**IN THE MATTER OF THE DEFENCE FORCES TRIBUNAL ESTABLISHED PURSUANT
TO THE TRIBUNALS OF INQUIRY (EVIDENCE) ACTS 1921-2002**

WRITTEN SUBMISSIONS ON BEHALF OF THE COLEMAN LEGAL LLP

**IN RESPONSE TO THE 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 and Representation

1.1 These submissions are made on behalf of those persons represented by Coleman Legal LLP who have been granted limited legal representation before the Defence Forces Tribunal ("the Tribunal"). The parties on whose behalf these submissions are made ("the Applicants") comprise approximately 115 former and current members of the Defence Forces who came forward during the investigative phase of the Tribunal's work to provide information, some 23 of whom have been scheduled to give evidence during the first module of the Tribunal's public hearings.

1.2 In response to the Tribunal's Notice dated 17 June 2026 ("the Notice"), the Applicants respectfully make submissions in support of:

- (i) an affirmative answer to each of the questions posed at paragraph 5 of the Notice, namely that it would be both permissible and appropriate for the Tribunal to make findings as to conduct at the conclusion of the first module and to make interim orders for costs on the basis of such findings; and
- (ii) a submission that any such order should be expressed in terms sufficiently comprehensive to encompass all costs properly incurred by the Applicants in connection with the Tribunal's work, including but not limited to the categories identified at paragraph 5.4 of these submissions below.
- (iii) a submission that the Tribunal give express guidance as to the categories of represented party in respect of whom interim costs orders may be made at this stage, including parties whose participation in the Tribunal's process is now

concluded and those who participated in the investigative phase but who may appear in subsequent modules.

2. The Statutory Framework

- 2.1 The Tribunal's power to award costs is grounded in section 6(1) of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979 ("the 1979 Act"), as amended by section 3 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997 ("the 1997 Act").
- 2.2 The Tribunal's jurisdiction to award costs is engaged where it is of the opinion that, "having regard to the findings of the tribunal and all other relevant matters", there are sufficient reasons rendering it equitable to do so. As is confirmed by the Notice itself, the term "findings" in this context is to be understood as a reference to findings as to the conduct of the parties, and not to the substantive findings of the Tribunal.
- 2.3 That interpretation was first articulated by McCarthy J. in *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542 and was confirmed by the Supreme Court in *Murphy v. Flood* [2010] 3 I.R. 136. The principle is well settled: a decision on costs may only be based upon a finding in respect of the conduct of a party, and relevant considerations include whether that party failed to co-operate with or provide assistance to the Tribunal, or knowingly gave false or misleading information to it.
- 2.4 Further support for this construction is found in section 4 of the 1979 Act, which provides that "[a] tribunal may make such orders as it considers necessary for the purposes of its functions, and it shall have, in relation to their making, all such powers, rights and privileges as are vested in the High Court or a judge of that Court in respect of the making of orders". A judge of the High Court enjoys an inherent jurisdiction to make orders for costs of the kind under consideration in these submissions, including orders apportioning costs by reference to discrete periods, modules or stages of proceedings before it. That inherent jurisdiction is now reflected, and given statutory expression, in section 168 of the Legal Services Regulation Act 2015, which empowers a court to order costs "at any stage in, and from time to time during" civil proceedings, including costs "relating to one or more particular steps in the proceedings". While section 168 is framed by reference to "a court" in "civil proceedings" and is not of itself directly applicable to the Tribunal, it nonetheless illustrates the established scope of the costs jurisdiction which a High Court judge, and, by extension, under section 4 of the 1979 Act, the Tribunal, may exercise. There is no principled basis upon which the modular, interim approach to costs sought by the Applicants could be regarded as falling outside the powers thereby conferred.

- 2.5 This construction is reinforced by principles of statutory interpretation. The Oireachtas cannot be taken to have intended that persons in the position of the Applicants, who came forward to assist the Tribunal in the discharge of its public function, should as a result be placed at a disadvantage in relation to their legal expenses. In this regard we refer the Tribunal to section 5 of the Interpretation Act, 2005. A construction of the 1979 Act which permitted such a disadvantage to arise, whether through delay in the making of costs orders or otherwise, would sit uneasily with the object which the costs jurisdiction under section 6(1) is evidently intended to serve, namely to ensure that those who co-operate with a tribunal of inquiry are not left to bear, without recourse, the financial burden of having done so.

3. Whether Findings as to Conduct May Permissibly be Made at the Conclusion of the First Module

- 3.1 The Applicants submit that, as a matter of law, the Tribunal is empowered to make findings as to conduct at the conclusion of the first module and in advance of the provision of its Report.
- 3.2 The statutory language of section 6(1) of the 1979 Act does not restrict the making of a costs order to the conclusion of the Tribunal's entire inquiry. The section is cast in permissive and flexible terms. It empowers the Tribunal to make an order "either of the tribunal's or the chairperson's own motion... or on application by any person appearing before the tribunal." There is nothing in the text of the section which confines the exercise of this jurisdiction to a single point in time, namely the conclusion of the inquiry and the delivery of the Report.
- 3.3 As was observed by Peart J. in *McBrearty v. Morris* [2003] IEHC 154, the legislature has struck a balance between the right of parties who have been granted representation to have their costs paid, and the public interest in ensuring that costs are not awarded to those who have failed to co-operate.¹
- 3.4 A modular approach to costs is entirely consistent with this balance. It does not require the Tribunal to express any view on the substantive merits of the matters being investigated. A finding that a witness who gave evidence in the first module co-operated with and provided assistance to the Tribunal during that module is a finding as to conduct - and only as to conduct - of a discrete and identifiable kind, referable to a defined period of the Tribunal's work.

¹ *McBrearty v. Morris* [2003] IEHC 154 at p.90, per Peart J.

- 3.5 The constitutional principle against the importation of a liability based on substantive findings is not infringed. As McCarthy J. stated in *Goodman*, the allowance or disallowance of costs is governed by the conduct of parties at, during or in connection with the inquiry.²
- 3.6 It follows that the conduct upon which an award of costs may be founded is not confined to conduct at the public hearings. McCarthy J.'s reference to conduct "*at, during or in connection with the inquiry*" is deliberately broad and embraces a party's co-operation with the Tribunal during its private investigative phase. The co-operation of a party who provided a statement, attended for interview and assisted the Tribunal during the investigative phase is itself a discrete and complete matter of conduct, capable of being assessed now and independently of whether that party has given, or will give, evidence at any module of the public hearings. This is of particular relevance to those Applicants whose engagement with the Tribunal was confined to, or has concluded at, the investigative phase, as addressed at paragraph 6 below.
- 3.7 Nor is such a course precluded by the observation, noted in the Notice, that the right to fair procedures does not extend to having representation funded in advance of the Tribunal reaching findings. That observation is directed to the funding of representation before any relevant finding has been made. It has no application where the Tribunal has made a finding as to the conduct of a party referable to a defined phase or module of its work. An interim order founded upon such a finding is not an award made in advance of findings at all; it is an award made upon a finding already reached, the only distinction being that the finding relates to conduct rather than to the substantive matters under inquiry. The making of such a finding as to conduct is precisely what section 6(1) of the 1979 Act contemplates.
- 3.8 Fennelly J. in *Murphy v. Flood* emphasised that the ordinary presumption should be in favour of reimbursement, on the ground that it is in the public interest that persons in possession of relevant information should co-operate with a tribunal, and that the obligation to co-operate ought not to impose loss without compensation on individuals.³
- 3.9 That reasoning applies with particular force in the present case. The Applicants are individuals who came forward voluntarily, in significant numbers, to assist the Tribunal in the discharge of its important public function. Many of them have incurred substantial legal costs. They are not in a position analogous to corporate entities or State bodies with access to in-house legal resources. To require these individuals to wait until the entirety of the Tribunal's work is complete - potentially a considerable time away given the 41-year period under review - before any costs

² *Goodman International v. Mr. Justice Hamilton* [1992] 2 I.R. 542 at 605, per McCarthy J.

³ *Murphy v. Flood* [2010] 3 I.R. 136 at 230, per Fennelly J.

relief is available would, in the circumstances, be unduly oppressive and would be difficult to reconcile with the principle articulated by Fennelly J.

- 3.10 The Tribunal has itself acknowledged that it anticipates that cooperation and the absence of false or misleading information are "likely to be straightforward matters" in the context of the first module. This acknowledgment reflects the character of the evidence to be given by these parties and fortifies the submission that interim findings as to conduct can and should be made at the conclusion of the first module.

4. Whether it would be Appropriate to Proceed to Determine Interim Cost Applications

- 4.1 Having established the legal permissibility of interim costs orders, the Applicants submit that it would also be appropriate for the Tribunal to proceed on this basis.
- 4.2 The Tribunal's Terms of Reference require it to use best endeavours to complete its work within three years of establishment. The first module is expected to conclude before the end of July 2026. Its subject matter is self-contained and the evidence of the relevant witnesses will have been tested and completed.
- 4.3 The Applicants and their legal representatives have incurred costs from the outset of the Tribunal's work. These costs arise from preparatory work during the investigative phase, from the process of attending upon individuals invited for interviews, from preparation of statements and written submissions, from attendance at the Tribunal's public sittings in July 2025, from attendance at the opening of the public hearings on 3, 4 and 5 June 2026, and from attendance at the first module of the public hearings themselves. These costs are real, present and verifiable. In these circumstances, justice and equity strongly favour addressing the question of costs at the earliest opportunity.
- 4.4 Denham J. (as she then was) stated in *Murphy v. Flood* that ordinarily any party permitted to be represented at a tribunal should have their costs paid out of public funds.⁴
- 4.5 The Applicants are parties to whom limited representation has been granted. They engaged fully and in good faith with the Tribunal's investigative phase. They have assisted the Tribunal. They

⁴ *Murphy v. Flood* [2010] 3 I.R. 136 at 164, per Denham J.

are not parties against whom any adverse conduct findings are anticipated. Accordingly, the ordinary presumption in favour of recovery of costs applies to them without qualification.

- 4.6 A further consideration of practical importance is the following. If interim costs orders are made at the conclusion of the first module, instructing Solicitors and Counsel will be in a position to submit fee notes and cost accounts in respect of the first module's work while the details remain fresh and the documentation is readily available. To defer such matters indefinitely creates unnecessary administrative difficulty and is inconsistent with sound management of what is a complex and lengthy inquiry.

5. The Terms of Any Order: Comprehensive Scope

- 5.1 The Applicants submit that, if the Tribunal is minded to make interim orders for costs, the terms of any such order should be expressed comprehensively and should specify with sufficient particularity the categories of costs in respect of which recovery is authorised.
- 5.2 Section 6(1)(a) of the 1979 Act provides that the Tribunal may order that "the whole or part of the costs... of any person appearing before the tribunal by counsel or solicitor, as taxed by a Legal Costs Adjudicator, shall be paid" to that person. The reference to taxation by a Legal Costs Adjudicator confirms that the costs to be recovered are those properly recoverable as between party and party or, as may be directed, on a more generous basis.
- 5.3 Given that Bills of Costs in respect of a large number of individuals will fall to be drawn and assessed, it is to be anticipated that the process of taxation will be scrutinised carefully. In those circumstances, it is important that the order itself provides a clear and comprehensive framework by reference to which individual items can be assessed. An order expressed in bare or generic terms which leaves issues of scope to be resolved on taxation creates uncertainty, potential delay, and the risk of unnecessary disputes before the Legal Costs Adjudicator. An order in comprehensive and specific terms will facilitate the efficient assessment of costs and will serve the interests of all parties.
- 5.4 The Applicants submit that any order should provide, in general terms, for the recovery of the whole of the costs reasonably and necessarily incurred by them, and by their solicitors and counsel, of and incidental to their engagement with the Tribunal from the commencement of the investigative phase to the conclusion of the first module, such costs to be adjudicated in default of agreement by a Legal Costs Adjudicator. So framed, the order would capture the entirety of the work properly done for the purposes for which limited representation was granted. It is neither

necessary nor appropriate for the order itself to enumerate individual items of work; the recoverability and reasonableness of individual items is a matter for adjudication.

- 5.5 Without prejudice to the generality of the foregoing, the Applicants ask that the order put beyond doubt that the recoverable costs include the costs of attending upon and reviewing the evidence of, and the transcripts of, witnesses other than the party concerned, where relevant to that party's interests, and the costs referable to the investigative phase of parties whose engagement with the Tribunal concluded at that phase or who have not yet been called to give evidence. These two matters are identified expressly because they may not obviously be captured by a general formula, and not by way of any limitation on the scope of the order sought.
- 5.6 The Applicants respectfully submit that the scope of any order should be stated expressly and in writing in the order itself, and that the Tribunal should expressly direct that such costs are recoverable under section 6(1)(a) of the 1979 Act as costs incurred in connection with the Applicants' participation in the inquiry the inquiry for the purposes of taxation.

6. Scope of Parties Covered by Any Interim Costs Order

- 6.1 The Notice indicates that the Tribunal is considering making interim costs orders at the conclusion of the first module of public hearings. The Applicants respectfully invite the Tribunal to give express guidance on the categories of represented party in respect of whom such orders may be made at this stage. Three distinct categories arise for consideration.
- 6.2 First Category - Parties who gave evidence in the first module: Their participation in the public hearings of the first module will be complete by the end of July 2026. The Applicants submit that these individuals clearly fall within the scope of any interim costs order made at the conclusion of the first module, and that such an order should encompass all costs incurred by them from the commencement of the Tribunal's investigative phase through to the conclusion of the first module.
- 6.3 Second Category - Parties whose engagement with the Tribunal is now concluded: A number of the Applicants participated in the Tribunal's investigative phase - including by providing statements, attending interviews and co-operating fully with the Tribunal's process - but have not been called forward to give evidence at the public hearings and whose involvement with the Tribunal has therefore concluded. The Applicants submit that this category of party is entitled to the benefit of an interim costs order now. Their co-operation with the Tribunal is complete. There is no prospect of any subsequent conduct issue arising in respect of them. To

defer consideration of their costs until the conclusion of the entire inquiry would serve no purpose and would impose an unnecessary and inequitable burden on individuals who have already made their full contribution to the Tribunal's work.

6.4 Third Category - Parties who participated in the investigative phase and may appear in subsequent modules: A further category of the Applicants participated in the investigative phase and may be called to give evidence in subsequent modules (from October 2026 or later), or in respect of whom it is not yet known whether they will be called. The Applicants submit that the Tribunal should, at the conclusion of the first module, make an interim costs order in respect of the investigative phase costs of these individuals referable to the period up to and including the conclusion of the first module, with liberty to apply in respect of costs arising from subsequent modules as and when those modules are completed. This approach is consistent with the modular structure the Tribunal is already contemplating and avoids the accumulation of unrecovered costs over a potentially lengthy period.

6.5 In each of the three categories identified above, the applicable test is the same: whether the party concerned co-operated with and did not knowingly give false or misleading information to the Tribunal during the relevant period. The Applicants submit that a positive finding in those terms can properly be made in respect of all three categories at the conclusion of the first module.

7. Conclusion

7.1 For the reasons set out above, the Applicants respectfully submit:

- (i) It is permissible as a matter of law for the Tribunal to make findings as to the conduct of the Applicants at the conclusion of the first module of the public hearings and in advance of the provision of its Report.
- (ii) It would be appropriate and equitable 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.
- (iii) Any interim costs order should be expressed in comprehensive terms so as to encompass all costs of and incidental to the Applicants' engagement with the Tribunal, on the general basis set out at paragraph 5 above, and should in particular put beyond doubt the two matters identified at paragraph 5.5 above.

- (iv) Any interim costs order should expressly cover all three categories of represented party identified at paragraph 6 above, with appropriate provision for reservation of costs arising from subsequent modules in respect of the third category.
- (v) The Tribunal should give express guidance confirming the categories of party eligible for costs relief at this stage, so as to avoid unnecessary uncertainty in the process of drawing and assessing Bills of Costs.

7.2 The Applicants reserve their rights to make further oral and/or written submissions on any of the matters set out herein, up to and at the hearing of the intended Public Hearing or as may be directed by the Tribunal.

Louis Masterson
Patrick Marron
Alan Brady
Gareth Compton SC
John J. Gordon SC

Coleman Legal

Coleman Legal LLP

6 July 2026

OUTLINE SUBMISSIONS

To: The Defence Forces Tribunal

Re: 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. These outline submissions are made on behalf of Women of Honour and its associates in response to the Tribunal's 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.
2. Women of Honour and its associates support an affirmative answer to each of the questions posed in the Notice and respectfully invite the Tribunal to adopt a modular costs approach in respect of the first module.
3. These outline submissions are made without prejudice to, and with a full reservation of, the position of Women of Honour and its associates in the extant judicial review proceedings record No 2026 786JR. Women of Honour and its associates do not accept that the availability of any modular costs order would of itself answer the separate and continuing problem of day to day funding for effective participation in the Tribunal.

PRELIMINARY POSITION

4. The Notice records that full legal representation has been granted to the Minister for Defence and the Chief of Staff of the Defence Forces for the entirety of the Tribunal's inquiry, while limited grants have been made to other groups, individuals, and parties during the investigative phase and in respect of the public hearings stage.
5. The Notice also records that requests have been made on behalf of several persons with limited legal representation that the Tribunal consider making orders for costs on a modular basis.
6. The Notice further recognises the substantial financial burden that can fall upon private individuals who are required to cooperate with a tribunal and may have to incur very considerable legal costs without any advance assurance of reimbursement.
7. Women of Honour and its associates accordingly approach the present Notice on the basis that the Tribunal is now considering a form of partial and practical relief within its own costs jurisdiction, while expressly reserving the separate position that retrospective or modular costs do not provide the same thing as ongoing day to day funding.

QUESTION (i): WHETHER FINDINGS AS TO CONDUCT MAY PERMISSIBLY BE MADE AT THE END OF THE FIRST MODULE

8. The proper starting point in construing section 6(1) is the literal approach, namely to give the words used their plain and ordinary meaning.

9. In *Howard v Commissioners of Public Works* [1994] 1 I.R. 101, Blaney J. described the cardinal rule of statutory construction as requiring that statutes be construed according to the intention expressed in the Acts themselves and that, where the words used are precise and unambiguous, they should be given their ordinary sense.

10. Only where a literal construction gives rise to ambiguity, lack of clarity, self-contradiction, or absurdity does it become necessary to move beyond the ordinary meaning of the statutory text. Section 5 of the Interpretation Act 2005 reflects that approach by requiring a construction that reflects the plain intention of the Oireachtas where the provision is obscure or ambiguous, or where a literal interpretation would be absurd or would fail to reflect that intention.

11. Section 6(1) empowers the Tribunal to award costs where, having regard to the findings of the Tribunal and all other relevant matters, there are sufficient reasons rendering it equitable to do so.

12. On the construction advanced on behalf of Women of Honour and its associates, the relevant matters identified in section 6(1) are conduct based matters, namely whether a participant has cooperated with or provided assistance to the Tribunal, or has knowingly given false or misleading information to it.

13. Women of Honour and its associates accordingly submit that the costs jurisdiction is anchored in conduct rather than in the Tribunal's substantive conclusions on the subject matter of the inquiry, and that the relevant assessment includes whether a party failed to cooperate or knowingly gave false or misleading information.

14. That reading is also consistent with the proposition, referred to in the Notice, that a party permitted to be represented at a tribunal should ordinarily have costs paid out of public funds, but may lose that position where the party fails to cooperate with the Tribunal, fails to provide assistance, or knowingly gives false or misleading information.

15. Accordingly, whether the matter is approached on the literal construction set out above or, if necessary, on a purposive construction, a participant who has been granted legal representation and who has cooperated with and assisted the Tribunal should ordinarily receive costs, absent some conduct based reason to the contrary.

16. That distinction is critical, because if the legally relevant findings are findings as to conduct, there is no necessary reason in principle why they must await the final Report, provided the Tribunal can fairly assess the conduct of the party concerned for the relevant period.

17. The Notice identifies precisely that possibility, namely whether such a finding may permissibly be made at the end of the first module and in advance of the Tribunal's Report, so as to permit an award of costs on that basis.

18. In the respectful submission of Women of Honour and its associates, the answer to Question (i) should therefore be yes.

QUESTION (ii): WHETHER IT WOULD BE APPROPRIATE TO DETERMINE INTERIM MODULAR COSTS IN RESPECT OF THE FIRST MODULE

19. Women of Honour and its associates also submit that it would be appropriate for the Tribunal to proceed to determine applications for interim orders as to costs in respect of the first module once that module has concluded.

20. The Notice records that public hearings commenced on 3 June 2026, that the Tribunal's investigations continue in tandem with the first module, that the first module is expected to finish before the end of July 2026, and that the Tribunal does not anticipate providing a Report to the Taoiseach at the end of the first module because its immediate focus is on the preparation for and completion of the remaining modules of public hearings.

21. In those circumstances, if no modular determination is available until the eventual Report, parties who have cooperated in the first module may face a significant delay before costs can be considered, notwithstanding the recognised financial burden of tribunal participation and the ordinary presumption in favour of reimbursement referred to in the Notice.

22. The Notice also explains that the Tribunal can manage any concern that evidence emerging in later modules might affect an earlier assessment of conduct by retaining discretion as to the terms of any order and by adjourning the application, granting it in whole or in part, or refusing it altogether if that proves appropriate.

23. The Notice further states that, for the reasons there set out, the Tribunal anticipates that cooperation and assistance are likely to be straightforward matters.

24. That combination of factors supports the appropriateness of a modular approach. It allows the Tribunal to give timely and practical effect to its costs jurisdiction while retaining ample control to protect fairness and to address any later developed complication.

25. The present Notice also arises in a context where the Tribunal records that the Minister for Defence and the Chief of Staff have full legal representation for the entirety of the inquiry, while other parties and groups have only limited representation and have sought modular costs orders.

26. That context reinforces the desirability of a costs regime that operates in a timely and workable manner for parties who do not enjoy equivalent ongoing provision.

27. Further, if the Tribunal accepts the conduct based construction of section 6(1) advanced above, a modular determination at the end of the first module is the mechanism by which the Tribunal can give timely effect to that jurisdiction for represented participants who have cooperated with and assisted the Tribunal during that module.

RESERVATION AS TO ADEQUACY OF MODULAR COSTS

28. Women of Honour and its associates nevertheless emphasise that a favourable modular costs outcome would not, without more, eliminate the immediate representation difficulty faced by parties who require day to day funding in order to participate effectively as the inquiry proceeds.

29. A modular order made only at the end of the first module is, by its nature, retrospective in operation. It may reimburse, in whole or in part, costs already incurred. It does not of itself provide real time funding for the ongoing work of taking instructions, preparing witnesses, attending hearings, advising clients, or responding to day to day developments in an active tribunal.

30. Women of Honour and its associates therefore seek a modular costs outcome as desirable and beneficial relief within the Tribunal's own jurisdiction, but do so expressly without conceding that such an outcome fully cures the separate funding problem or renders any extant position on that issue academic.

RESERVATION AS TO SCOPE AND FUTURE MODULES

31. The present Notice is expressly directed to interim orders for costs at the completion of the first module, and the only module identified with any temporal definition in the Notice is the first module, which is expected to finish before the end of July 2026.

32. Women of Honour and its associates therefore respectfully submit that any determination now made should be expressed to be without prejudice to applications or submissions in respect of later modules as and when those modules are defined and completed.

33. It would be helpful if the Tribunal were to indicate, either in its ruling or by subsequent procedural directions, that the making of a modular order in respect of the first module is not intended to exhaust or preclude later modular applications in respect of further stages of the inquiry.

RESERVATION AS TO INVESTIGATIVE STAGE COSTS

34. The Notice records that limited legal representation was granted during the private investigative phase for the preparation of statements, attendance upon persons if and when invited for interview, and the making of written submissions where necessary.

35. Women of Honour and its associates reserve their position in relation to funding and or costs referable to that investigative phase. Any order confined to the first module would not satisfy costs incurred in that earlier stage.

36. Women of Honour and its associates accordingly submit that any modular regime adopted on foot of the present Notice should be stated to be without prejudice to a separate application, claim, or determination concerning costs incurred during the investigative phase.

RESERVATION OF RIGHTS IN EXTANT PROCEEDINGS

37. The participation of Women of Honour and its associates in the present process is protective and pragmatic. It reflects the fact that the Tribunal has invited submissions on a matter that may provide some immediate and desirable relief within the Tribunal's own costs jurisdiction.

38. Such participation should not be understood as waiving, compromising, narrowing, or prejudicing the position of Women of Honour and its associates in the extant judicial review proceedings, nor as an acceptance that a modular costs mechanism constitutes a complete answer to the distinct issue of ongoing funding and effective participation.

RELIEF SOUGHT

39. For those reasons, Women of Honour and its associates respectfully invite the Tribunal to determine as follows:

(a) That, as a matter of law, findings as to conduct may permissibly be made at the conclusion of the first module and in advance of the Tribunal's final Report.

(b) That, as a matter of appropriateness and fair procedure, the Tribunal should entertain and determine applications for interim orders as to costs in respect of the first module on the basis of such findings.

(c) That, in applying section 6(1), the Tribunal should proceed on the basis that where a participant has been granted legal representation, has cooperated with and provided assistance to the Tribunal during the first module, and has not knowingly given false or misleading information, an interim modular order for costs ought ordinarily to be made in that participant's favour in respect of that module.

(d) That any such determination should be made promptly upon the conclusion of the first module, on a procedure directed by the Tribunal.

(e) That any order or regime adopted in respect of the first module should be without prejudice to any application or claim concerning costs incurred during the investigative phase.

(f) That any order or regimen adopted in respect of the first module should be without prejudice to applications or submissions concerning later modules of the inquiry as and when defined.

(g) That the participation of Women of Honour and its associates in the present costs process is without prejudice to their position in the extant judicial review proceedings and without any concession that modular costs alone resolve the separate issue of ongoing day to day funding.

40. Women of Honour and its associates accordingly invite the Tribunal to answer both questions posed in the Notice in the affirmative and to adopt a workable modular costs mechanism for the first module, while expressly preserving the matters reserved above.

Dated: 7th day of July 2026

Signed: *Malcomson Law LLP*

Malcomson Law LLP

Solicitors for Women of Honour CLG and their Associates

Iceland House

Arran Court

Smithfield

Dublin 7

SUBMISSIONS ON BEHALF OF 2LTB
IN RESPONSE TO THE TRIBUNAL NOTICE OF PUBLIC HEARING AND
INVITATION TO MAKE SUBMISSIONS ON COSTS

SUBMISSIONS ON BEHALF OF 2LtB

Background

1. These submissions are made on behalf of an individual who has the benefit of anonymity in respect of matters related to the Tribunal, and who is referred to by the pseudonym 2LtB. They are made in response to the Tribunal's Notice of Public Hearing and Invitation to Make Submissions ("Notice inviting submissions") on the powers of the Tribunal in relation to interim orders for costs at the completion of the first module of public hearings.
2. The notice invites written submissions on two matters; whether findings as to conduct can permissibly be made at the end of the first module in advance of the Tribunal's report and, if so, whether it would be appropriate for the Tribunal to determine applications for interim orders as to costs at that point.
3. Whether a party who is a witness before the Tribunal is entitled to recover his/her costs can be distilled down to an assessment of whether that party has co-operated with the Tribunal and has assisted it in discharging its statutory function. This is borne out by the case law, referenced in the Notice inviting submissions, and referenced also below.
4. 2LtB is a party against whom certain witnesses have made allegations of misconduct. The terms of reference of the Tribunal do not empower, or require, the Tribunal to make any findings of fact in respect of those allegations, a matter emphasized throughout the public

hearings, and prior to that. The issue of recovery of costs for 2LtB must turn on his conduct in connection with the Tribunal process.

5. It is also important to note that, whilst 2LtB has made complaints of what he says constitute abuse towards him, those have not been investigated by the Tribunal, and as matters stand, his only involvement in the Tribunal process, is wholly confined to the events that occurred in the Army Apprentice School in Devoy Barracks, Naas from 1989 to 1991. He has nothing whatever to do with the sexual abuse allegations, whether in the first module or later, and nothing whatever to do with Lariam, hazardous chemicals, or any associated complaints. His participation is therefore discrete and self-contained.
6. The Tribunal's letter records that the first module is expected to finish before the end of July 2026 and that the Tribunal does not currently anticipate furnishing a report at the end of that module, its immediate focus thereafter being on preparation for and completion of the remaining modules in advance of the final report.
7. In furtherance of answering the questions at paragraph 2 above, these submissions are directed to four matters. First, the statutory and jurisprudential basis upon which findings as to conduct may be made for costs purposes. Second, the evidence of 2LtB's cooperation and assistance to the Tribunal. Thirdly why 2LtB is entitled to an order for costs. Finally, why that order can and should be made now, on a modular basis, notwithstanding that no interim report is envisaged at the end of this module.

II. Relevant statutory framework and caselaw

8. The effect of Section 6(1) of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979, as amended, by Section 3 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997 are set out in the notice inviting submissions. In effect the test in assessing whether a party should recover its costs will involve an assessment of whether that party failed to co-

operate or provide assistance to the Tribunal, or knowingly gave false or misleading information.

9. It is important to point out that the legislation does not require findings to be made in a final report or in an interim report. Nor does it require that costs await the Tribunal's ultimate substantive conclusions on the matters under inquiry. The statutory trigger is the existence of findings on co-operation, assistance, and the absence of false or misleading evidence.
10. The notice inviting submissions points out that *Goodman International v Mr Justice Hamilton* 1992 2 IR 542 is authority for the proposition that the liability to pay costs cannot depend upon the findings of the Tribunal as to the subject matter of the inquiry, and that the expression '*the findings of the tribunal*' should be read as meaning the findings as to the conduct of the parties at the tribunal. Therefore, the findings relevant to costs are findings as to conduct at, during, or in connection with the inquiry.
11. The point is, as the notice to invite submissions outlines, re stated in *Murphy v Flood* 2010 3IR 136. There the Court there held that ordinarily any party permitted to be represented at a tribunal should have their costs paid out of public funds, but that this may be lost if the party fails to cooperate with the tribunal. She stated that the power to award costs is affected by a lack of cooperation with the tribunal and that non-cooperation could include failing to provide assistance, or knowingly giving false or misleading information.
12. *Murphy v Flood* also contains the clearest statement of the ordinary presumption in favour of reimbursement. As quoted in the Tribunal's own letter from Fennelly J, it is in the public interest that every person in possession of relevant information should cooperate with the inquiry, but that cooperation may expose individuals to very substantial legal expense and they must incur those costs without any advance assurance of reimbursement. Fennelly J stated that the ordinary presumption should be in favour of reimbursement.

13. A coherent set of principles emerge from the caselaw. Costs cannot depend on substantive findings on the subject matter of the inquiry. Findings relevant to costs are findings as to conduct before and in connection with the Tribunal. Costs may not be awarded in advance of findings. But once findings as to conduct have actually been made, the statutory jurisdiction exists and there is no express requirement in the legislation that they await a report. That is the legal basis upon which the present application is advanced.

Why findings as to conduct may be made at the end of the first module

14. Nothing in section 6 requires that the findings relevant to costs be contained in a final report or in any interim report. The statutory requirement is that findings have actually been made.
15. Once that distinction is maintained, there is no legal impediment to such findings being made at the end of a discrete evidential module. Indeed, if costs are to turn only on conduct relevant to engagement with the Tribunal process, it is difficult to see why those findings should be postponed until a later substantive report that is concerned with entirely different matters.
16. The proper conclusion is therefore that the Tribunal is empowered, at the conclusion of a discrete module, to make findings as to whether a party has cooperated with the Tribunal, has provided assistance to it, or has knowingly given false or misleading information, and is entitled to determine costs on that basis without waiting for a report on substantive matters.

Relevant facts concerning 2LtB's co-operation

17. Notwithstanding that addressing the gravity of the allegations has been difficult for 2LtB, it cannot but be said that he has fully engaged with the Tribunal process. The following all point to full co-operation and assistance:

On 30th September 2024 he provided a detailed statement with additional documentary material . He attended for interview before the Tribunal on 17 April 2026 and again on 23

April 2026. Those transcripts show detailed engagement by him with the Tribunal's questions concerning all matters, to include his service history, the Army Apprentice School, the relevant structures and procedures, the historical investigations, and later events.

18. Arising out of those interviews, he also expressly offered to furnish additional documents in his possession which he believed would be of assistance to the Tribunal in investigating matters within its remit. He provided additional documentation relevant to the process resulting in his admonition (post the investigation after the discharge of Apprentice Traynor), and documents relevant to that investigation.
19. On 2 July last 2LtB attended before the Tribunal and gave evidence that lasted a day. He engaged fully. He was subject to examination by all parties partaking in this module.

Why 2LTB is entitled to a costs order

20. The ordinary presumption (*Murphy v Flood*) is in favour of reimbursement. In the case of 2LtB there is nothing to sound against the presumption. There is no available basis for a finding of non-cooperation. On the contrary, the evidence available to the Tribunal points to extensive cooperation.
21. It is respectfully submitted that the Tribunal can and should make an express finding that he has cooperated with the Tribunal, provided assistance to it, and has not knowingly given false or misleading information. Once those findings are made, the ordinary presumption in favour of reimbursement applies and there is no lawful countervailing basis to refuse costs.

Why costs related to 2LTB can and should be determined on a modular basis

22. The Tribunal's letter records that it does not presently envisage preparing a report at the end of the first module. That is no barrier to a costs order now. Section 6 (as amended) does not require a report. It requires findings as to co-operation.
23. The notice to invite submissions touches on one point which may be posited as sounding against an order for costs being made at this point. It is that a finding of co-operation made

now, could, in theory, be undermined by later evidence adduced before the Tribunal prior to the publication of a substantive report.

24. The Notice suggests that the focus of the Tribunal, on process rather than findings of fact, makes that unlikely. That observation is correct. This is not a situation where a witness might knowingly withhold information relevant to the terms of reference, lest disclosure leads to adverse findings against him/her. That prospect does not arise here. Whilst the Tribunal will not determine the allegations against 2LtB, it is in his interests to provide any information or documentation that he can around the complaints process, and he has done that.
25. In truth, it is not remotely credible to suggest that a finding of cooperation in his favour, could be undermined by later evidence. First, the later evidence will be largely process-focused and, in any event, will not concern matters relating to the Army Apprentice School. It follows that the practical concern identified in the Tribunal's own letter, namely that later evidence might in some cases affect the position, does not arise here. So far as 2LtB is concerned, this is a module that is limited in its scope. The evidence is contained. His co-operation has been fulsome and the assessment can therefore be made now.
25. For those reasons, the Tribunal is both empowered and justified in making a finding at the end of the first module that 2LtB cooperated with and assisted the Tribunal and is invited to make a costs order at this point.

Dated 7th July 2026

Paul McGarry SC

Thomas P Hogan SC

Padraig D Lyons BL

Defence Forces Tribunal
The Infinity Building
Third Floor
George's Court
George's Lane
Smithfield
Dublin 7

Via email:

Our ref: CC/PB/DEF103001
Your ref:

7th July 2026

Re: 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 (the "Notice")

Our client – Sgt. Rena Kennedy

Dear Chairperson,

We are writing to you with respect to the above Notice. As you are aware, our client has been limited grant of legal representation.

It is noted from the Notice that the Tribunal is not proposing to provide a Report to the Taoiseach at the end of this first module, and will be preparing such a Report at the conclusion of the remaining modules.

The position in terms of the costs with respect to witnesses appearing at Tribunals of Inquiry is clear and the general legal position as set out by the Tribunal in the Notice is agreed with.

It is submitted that, in accordance with the above, the Tribunal is required to make findings in respect of a witness and their co-operation with the Tribunal and their conduct before the Tribunal. It is submitted that it is open to the Tribunal, at the end of this first module, to make such a finding based on:

1. The submission of a statement to the Tribunal;
2. The provision of documents to the Tribunal;
3. The attendance at the Tribunal for interview;

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4. Attendance at the Tribunal to give evidence; and
5. The conduct of the witness at the Tribunal when giving such evidence.

It is submitted that the Tribunal would be in a position to make a finding as to co-operation based on the above and the Tribunal would not be required to await the completion and publication of its Report. Indeed, as the Tribunal has noted in the Notice, that regards may not be had to the substantive findings of a tribunal when considering the issue of costs.

As the Tribunal itself points out, if there was to be a challenge to evidence adduced, it would be expected that such a challenge would have been made during that module. However, such a challenge would have to raise issue with the co-operation and conduct of the witness with the Tribunal, as opposed to challenge the evidence adduced.

It is submitted that there is no impediment in the case law as identified by the Tribunal, nor in the Tribunals of Inquiry (Evidence) (Amendment) Act 1979, as amended, to inhibit the Tribunal from making an interim Order as to Costs.

Consequently, it is submitted that the tribunal is within its power to consider and determine applications for interim orders as to costs in respect of the first module on the basis of findings as to conduct in respect of a witness before it that has a grant of representation.

Yours faithfully,

*O'Mara Geraghty McCourt**

O'Mara Geraghty McCourt

Solicitors and Notaries Public

** sent by email only*

**Tribunal of Inquiry into Issues Relating to the Complaints Processes in the Defence
Forces and the Culture Surrounding the Making of Complaints
(‘Defence Forces Tribunal’)**

**POWERS OF THE TRIBUNAL
IN RELATION TO
INTERIM ORDERS FOR COSTS**

Submissions of the Defence Forces

Office of the Chief State Solicitor

Word Count: 5095

7 June 2026

Introduction

1. On 15 June 2026, the Tribunal gave notice of its intention to hold a public hearing on the powers of the Tribunal in relation to interim orders for costs at the completion of the first module.
2. These submissions are made pursuant to the Chief of Staff's statement of assistance and co-operation and are designed to assist the Tribunal in its consideration of its powers. In making these submissions, the Defence Forces are conscious of the unique nature of the Tribunal and its relationship with many of its stakeholders.
3. This legal Submission on costs is made in circumstances where the Defence Forces is anxious to ensure that the Tribunal be fully informed as to the correct legal position. The making of findings by the Tribunal in advance of the provision of its Report would be impermissible and carry risks for the work of the Tribunal.
4. The Tribunal invited parties 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.
5. In order to properly consider these two questions, it is necessary to examine the power of a Tribunal of Inquiry to award costs.

The Power of a Tribunal to Award Costs

6. The Tribunal does not have an inherent power in relation to costs.
7. The *Tribunals of Inquiry (Evidence) Act 1921* as originally enacted did not deal with the issue of costs.

8. Section 6(1) of the *Tribunals of Inquiry (Evidence) Act 1979*, as amended by section 3(1) of the *Tribunals of Inquiry (Evidence) (Amendment) Act 1997* and section 2 of the *Tribunals of Inquiry (Evidence) (Amendment) Act 2004*, provides:

- “(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 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 Taxing Master of the High Court, 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 Finance by any other person named in the order*
- (1A) The person who for the time being is the sole member of a tribunal or is the chairperson of a tribunal consisting of more than one member*
- (a) may make an order under subsection (1) in relation to any costs referred to in that subsection that were incurred before his or her appointment as sole member or chairperson and that have not already been determined in accordance with that subsection, and*
- (b) shall, for that purpose, have regard to any report of the tribunal relating to its proceedings in the period before his or her appointment.*
- (1B) Paragraph (b) of subsection (1A) shall not be taken to limit the matters to which regard is to be had under subsection (1)*
- (2) The amendment effected by subsection (1) of this section applies to (a) tribunals appointed, and (b) costs incurred, before or after the passing of this Act.”*

9. Section 6(1) in its amended form was briefly considered by the High Court (Geoghegan J) in **Haughey v Moriarty [1999] 3 IR 1**. While Geoghegan J's observations were avowedly obiter dicta, they are nonetheless of significance, for reasons which will become apparent. In Geoghegan J's opinion set out at page 14:

“power to award costs under the Act of 1997 is confined to instances of non cooperation with or obstruction of the Tribunal but that of course would include the adducing of deliberately false evidence and that is why the statutory provision specifically requires regard to be had to the findings of the Tribunal as well as all other relevant matters.”

10. In **Goodman v Minister for Finance [1999] 3 I.R. 356**, the High Court held that a tribunal of inquiry has no power to make an order for costs other than in those circumstances.

11. Laffoy J. stated at page 367:

“...save and insofar as the Act of 1979, empowers it to make an order for costs, a tribunal established under the Acts of 1921 and 1979, has no power to award costs or other monies to a party represented before it. Moreover, such a tribunal is only empowered to direct payment by the defendant, pursuant to an order made under s.6, out of monies provided by the Oireachtas to the extent that is clearly so expressed in the Act of 1979.”

12. The decision of Goodman was followed by the High Court in **McBrearty v Morris [2003] IEHC 154**, where Peart J stated at page 61:

“I have already set out the terms of section 6 of the 1979 Act as substituted by section 3(1) of the 1997 Act. It is clear that the only power the Tribunal enjoys to make any order in relation to costs is contained in that section.”

13. He continued at page 62:

“The Respondent and the Attorney General submit that there can be no question but that the Tribunal has been given no power to make an order for the costs to be paid or at least guaranteed by the Tribunal ahead of its making findings at the conclusion of the Inquiry. This submission is based on the wording of the

section itself, which requires the Tribunal in its consideration of any application for costs to have regards to certain criteria, namely the findings of the Tribunal, the extent to which a party has failed to co-operate with the tribunal during the course of the hearings, and the extent to which a party may have given false or misleading information to the Tribunal. Clearly, they submit, the Oireachtas intended these matters to be taken into account before making any award of costs to a party, and that cannot be done until after the Tribunal has completed its work. ... I am completely satisfied that the Tribunal has no power under the section ... to make provision for, or at least guarantee in advance, the costs of the applicant's legal representation, or those of his family or his extended family."

14. Goodman and McBrearty were considered by the Supreme Court in **Lawlor v Tribunal of Inquiry into Certain Planning Matters and Payments [2009] 2 ILRM 400.**

15. In that case, the appellant's husband had been investigated by the respondent tribunal prior to his death in October 2005. The allegations against him were that he had engaged in corrupt practices while a public representative. The respondent granted the appellant the right to represent her husband following his death. The appellant sought inter alia an order directing the respondent to make all necessary financial arrangements to enable her to engage effective legal representations in the course of proceedings before the respondents. The High Court (Murphy J) refused the reliefs sought and the appellant appealed to the Supreme Court. The Supreme Court (Murray C.J.; Denham, Geoghegan, Fennelly and Kearns JJ. concurring) dismissed the appeal.

16. The Supreme Court held that the only power a tribunal enjoys to make any order in relation to costs is that outlined in section 6(1) of the *Tribunals of Inquiry (Evidence) Act 1979*, as amended, and that power only arises where findings have actually been made by the tribunal.

17. Murray CJ stated at page 416:

"The court does not believe it is necessary to conduct a wide-ranging discussion into this aspect of the case. It is plain that the only power a tribunal enjoys to

make any order in relation to costs is that outlined above and it arises only where “findings” have actually been made by a tribunal.”

18. Murray CJ stated at page 418:

“The court considers that there is no general principle that legal costs may be claimed in proceedings pending before a tribunal of inquiry with which this case is concerned. Furthermore, and this is not contested, the tribunal itself has no funds and no power to make provision for persons appearing before it.”

19. The power of tribunals of inquiry to make costs rulings was addressed in detail by the Supreme Court in *Murphy v Flood* [2010] 3 IR 136.

20. Denham J (with whose judgment Geoghegan J and Finnegan J agreed) dealt with the law on costs at pages 159 – 165. A number of key principles emerge from that judgment.

- a. First, the terms of reference of a tribunal of inquiry are also relevant to the exercise by a tribunal of its power to rule on an application for costs.

“The terms of reference explicitly state that where there is a failure to cooperate costs should, so far as is consistent with the interests of justice, be borne by the individuals. The terms of reference thus give to the Tribunal an express jurisdiction and power to consider a failure to co-operate with the Tribunal as a factor in the issue of costs.” (At paragraph 43 on page 154)

- b. Secondly, the general principle is that

“Ordinarily any party permitted to be represented at a tribunal should have their costs paid out of public funds.” (paragraph 80 on page 164)

Fennelly J made a similar point at paragraph 358 on page 230 where he stated *“... I think that the ordinary presumption should be in favour of reimbursement...”*

- c. Thirdly, the ordinary rule “*may be lost if the party fails to cooperate with the tribunal.*” (paragraph 80 on page 164)
- d. Fourthly, it is a matter for a tribunal to consider the issue of co-operation having regard to “*the conduct of, or on behalf of, a party before a tribunal.*” (paragraph 80 on page 164)
- e. Fifth, the Supreme Court emphasised the distinction between substantive findings and findings of co-operation in considering the issue of costs, noting

“The distinction between the administration of justice and the authority of a tribunal has to be drawn clearly. A tribunal is not administering justice, it is a fact finding inquiry, reporting to the legislature. A decision on costs grounded on a substantive finding of a tribunal would import a liability for a party. I am of the opinion that s 6(1) of the Act of 1997 should be construed in light of the well established case law, and that consequently a chairman may not have regard to the substantive findings of a tribunal when determining the issue of costs.” (paragraph 82 on pages 164-165)

21. In *Fox v Mahon & Ors* [2014] IEHC 397, Baker J. stated that a two stage process had to be followed:

“10. The jurisdiction of Tribunals of Inquiry in respect of costs has been considered in a number of cases, from which it is clear that the decision to award costs is one which must be separated from the substantive decisions of the Tribunal itself. This finds reflection in the amended statutory provisions. The clear statement of McCarthy J. in *Goodman v. Hamilton*, sets out the different process or decision making activities involved in the making of findings by a Tribunal on the one part, and its determination on costs on the other, at p. 605:

"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 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. "

As explained by Hardiman J. in Murphy v. Flood at para. 176:

"Nevertheless, the supreme importance, in the public interest, of having a l their evidence available means that they cannot be penalised in costs for their past behaviour relating to the substantive subject matter of the Tribunal's inquiries."

22. Baker J continued that:

"11. The Tribunal did not and could not have addressed the question of the applicant's co-operation or non-cooperation in its final Report which was a report of its findings of fact and which did not involve it in questions of co-operation, and the Tribunal is required to make a separate adjudication on the issue at the second stage of its process. It is however clear that the statutory considerations require and empower the Tribunal to have regard to the conduct of persons before it for the purposes of the costs decision. One statutory basis to which the Tribunal must, by legislation, have regard is a failure to co-operate with or provide assistance to or knowingly giving false or misleading information to the Tribunal. The Tribunal retains a discretion where there are "sufficient reasons rendering it equitable to do so" to award costs, but it is constrained by statute to have regard to the failure to co-

operate of a person or the giving of false or misleading information by that person. The law is clear and does not confine the consideration to false evidence, and the Tribunal may not refuse the whole or part of an applicant's costs merely on account of the fact that the applicant has given false evidence or information to the Tribunal. The Tribunal must address itself to the question of whether the false or misleading evidence was given knowing it to be false or misleading. The Tribunal accordingly must take a view as to the truth of the evidence and as to the intention or knowledge of the person giving that evidence.”

23. In **Lowry v Moriarty [2018] IECA 66** (at para. 58) Ryan P. (Finlay Geoghegan and Edwards JJ concurring) endorsed the distinction between substantive findings, pursuant to a Tribunal's terms of reference, as opposed to findings regarding the conduct of the parties before the Tribunal, the latter, not the former, being relevant to determinations regarding costs:

“It is important, however, to recognise the distinction between the contents of the report insofar as they reflect the determinations of the Tribunal on the matters that are the subject of its terms of reference, the substantive findings, and the adjectival matters that arise subsequently in relation to costs. Therefore, we have two separate processes that should not be either conflated or confused. In actual fact, I think that the Tribunal operated in a manner that respected this distinction by extracting its findings and serving them on Mr. Lowry with specific reference to the question of costs. The same findings had previously been notified to him prior to finalisation and publication of the report so that he would have an opportunity of responding. Now they were furnished to him for the different purpose of addressing costs.”

In **Harrison v Charleton [2022] IECA 260**, the Court of Appeal (Ní Raifeartaigh J, Collins J. and Binchy J) summarised the applicable principles as follows at paragraph 82.

- “(1) The discretion conferred on tribunals of inquiry by section 6(1) is significantly more constrained than a literal reading of its provisions might suggest.*

- (2) *Subject to (5) below, the reference in section 6(1) to “the findings of the tribunal” does not permit a tribunal to have regard to its substantive findings on the subject-matter of its inquiry for the purposes of deciding questions of costs.*
- (3) *For all tribunals of inquiry (and not just “single disaster” tribunals), the correct starting point is that any person permitted to be represented at the tribunal should ordinarily have their costs paid out of public funds, i.e. an order for costs should ordinarily be made in their favour under section 6(1).*
- (4) *However, that is a presumptive entitlement only and it may be lost where the person concerned has failed to cooperate with the tribunal (including, but not limited to, knowingly giving false or misleading information or evidence to the tribunal).*
- (5) *A finding that a person has failed to cooperate with the tribunal may flow in part from the tribunal’s substantive findings, to the extent (and only to the extent) that such findings are relevant to the tribunal’s assessment of whether the party cooperated with it. Thus, in determining whether a person gave false or misleading information or evidence to the tribunal (which is a form of non-cooperation), the tribunal may have regard to its substantive findings where they are relevant to that issue. By way of illustration, if a person called as a witness by the tribunal gives evidence that event X did not occur, and the tribunal finds that X did occur, that finding would clearly be relevant in assessing whether that witness gave false or misleading evidence (although the tribunal would of course have to go to consider whether the evidence was given in the knowledge that it was false).*
- (6) *Any decision that a person has failed to cooperate must be arrived at fairly. However, that does not necessarily require a two-stage process before such a finding can be made.*
- (7) *Any findings of non-cooperation should be made in clear terms and sufficiently reasoned.*
- (8) *A finding(s) of non-cooperation does not leave the tribunal at large. Any decision to refuse or reduce the costs that would otherwise be payable to a*

person must be reached fairly and in accordance with fundamental principles of public law, including the right to be heard and the right to reasons.

- (9) *There must be (and the tribunal must identify) some rational relationship between the acts or omissions constituting non-cooperation on the one hand and the decision to refuse or reduce the costs. That does not require use of any “mathematical formula”, but the tribunal must explain how the refusal or reduction reasonably follows from the non-cooperation and is proportionate to it.”*

24. It is clear from the foregoing statement of principles that while the Court of Appeal made clear that following its extensive treatment of *Murphy v Flood* that:

“72. Murphy v Flood settles the proper construction of Section 6(1) as amended in 1997 and, in particular, the issue whether “the findings of the tribunal” is to be construed as including or excluding the substantive findings of a tribunal in relation to its subject-matter. A tribunal cannot have regard to such findings in making decisions about costs under Section 6(1). So much is clear ...

there is still a necessity for the substantive findings to have been made per the Fifth General Principle enunciated by the Court of Appeal and cited above since:

“A finding that a person has failed to cooperate with the tribunal may flow in part from the tribunal’s substantive findings, to the extent (and only to the extent) that such findings are relevant to the tribunal’s assessment of whether the party cooperated with it. Thus, in determining whether a person gave false or misleading information or evidence to the tribunal (which is a form of non-cooperation), the tribunal may have regard to its substantive findings where they are relevant to that issue. By way of illustration, if a person called as a witness by the tribunal gives evidence that event X did not occur, and the tribunal finds that X did occur, that finding would clearly be relevant in assessing whether that witness gave false or misleading evidence (although the tribunal would of course have to go to consider whether the evidence was given in the knowledge that it was false).”

25. The Tribunal would not be in a position to consider the substantive findings in this context until they have been made.

26. The same point arises in respect of the necessity in section 6(1) to consider “*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).*” All other relevant matters cannot be considered until after the substantive process has concluded.

27. It will be apparent from this analysis that a departure from this process could have implications for fair procedures.

28. In Murphy v Flood [2010] 3 IR 136, Fennelly J stated at page 226:

“In applying the rules of natural justice to these procedures, it must be borne in mind, as is acknowledged by the applicants, that the requirements of natural justice vary according to the character of the proceedings and the gravity of findings. The fact that the Tribunal is entitled to have regard, inter alia, to its view as to whether a person has failed to cooperate with it does not necessarily mean that there has to be a separate hearing on that issue, so long as persons potentially affected have reasonable notice of the possibility of such findings. It might well, nonetheless, be good practice for a Tribunal to give some advance notice of the relationship between cooperation with the Tribunal and any decision regarding costs, which it might later make.

...The Tribunal made considered findings that the two personal appellants had hindered and obstructed its work. It is not contested that the appellants had no notice of the possibility that such a finding might be made. It requires no expansion of the rules of natural justice to state that anyone exposed to the risk of adverse findings of that character, amounting to an accusation of criminal conduct, should receive reasonable advance notice.”

29. In Lowry v Moriarty [2018] IECA 66, Ryan P stated:

“88. ... *There is no universal rule about fair procedures. What is required depends on what is in issue and on the context. In this instance, there was Mr. Lowry's acknowledged prima facie an entitlement to recover his costs. As against that, there were reasons why the Tribunal was concerned whether there should be a reduction imposed. Indeed, the Tribunal has made clear in its Specific Ruling that it considered whether there should be any award at all of costs to Mr. Lowry. It does not follow that because a procedure is fair in one context it will also pass muster in another situation. So what may have been fair in respect of the factual assessments and conclusions of the Tribunal's report will not necessarily be appropriate in the context of applications for costs. In my judgment, this is a source of error in the Tribunal's approach.*

89. *The Tribunal gave parties including Mr. Lowry notice of draft conclusions which it was proposing to reach in light of the documentary and oral evidence that had been explored in the hearings and it invited responses. At this point, the parties including Mr. Lowry had before them the specific proposed conclusions and they could respond with general and particular objections and submissions. Clearly, the Tribunal was not bound to accept any responses. Mr. Lowry was in a position where he knew that if he did not make any response, or if his objections did not find favour with the Tribunal, this is what the report was going to contain. Not every Tribunal of Inquiry proceeded in this manner of giving affected parties notice of the contents proposed for the report. This process adopted by the Moriarty Tribunal represented a very high level of consultation in advance of publication of the report and cleared the threshold of fair procedures by a substantial margin.*

90. *I do not think the same can be said for the consultation in respect of costs insofar as it relates to a proposed disallowance. As set out above, he was alerted to potential findings of non-cooperation but not to the potential consequences in relation to the amount of any disallowance. The most important point I think is that Mr. Lowry was not alerted to the*

possibility that he would only get a fraction of his costs or, alternatively, that the possibility that he would get no costs was under consideration or, further, that the Tribunal was considering that his conduct in participation in the work of the Tribunal was such that it might merit condemnation in costs to the extent of withholding of two thirds thereof. Neither was he given an indication of the methodology of calculation of reduction or matters to which the Tribunal would have regard set out in the General Ruling so that he could address these in response with a view to averting that outcome.

91. *For these reasons, I would dismiss the appeal of Mr. Lowry in relation to the challenge to the findings of non-cooperation in the Specific Ruling and allow the appeal in respect of the decision that Mr. Lowry only be allowed one-third of his costs and would remit the matter to the Tribunal for reconsideration of the costs to be granted to Mr. Lowry having regard to the findings of non-cooperation made in accordance with the principles set out in the General Ruling and this judgment.”*

30. In Harrison v Charleton [2021] IEHC 113, Heslin J stated:

- “136. *In making the Costs Decision, the respondent has not, as the applicant claims, attempted impermissibly to re-write the law or depart from established legal position. The respondent neither based the Costs Decision on substantive findings, nor did the respondent purport to impose a test to the effect that only those who prove their allegations 100% will be entitled to costs. Rather, findings concerning the applicant's conduct before the Tribunal were to the effect that applicant knowingly gave false or misleading information to the Tribunal, deliberately adduced false testimony and failed to cooperate with the Tribunal. By deliberately giving false evidence, the applicant failed to co-operate with or to provide assistance to the Tribunal.*

137. *The applicant could have, but never did “fall on his sword”. On the contrary, to this day the applicant asserts that he assisted the Tribunal*

fully and that he gave truthful evidence at all times, being assertions which are wholly undermined by the findings of the Tribunal regarding the applicant's conduct.

138. *There was no absence of fairness or fair procedures. The applicant was given every reasonable opportunity to make such submissions as he wished, both written and oral, in advance of the Costs Decision being made. ... The Costs Decision, which took account of all submissions made on behalf of the applicant, requires no mathematical formula to understand. For stated reasons which are clear, rational, readily comprehensible, consistent with the respondent's powers under s. 6 of the 1979 Act and the relevant authorities, the applicant was awarded costs up to the first day of the Tribunal's public hearings but none thereafter. The respondent did not act ultra vires in making this decision, nor did he breach any principle of natural or constitutional justice."*

31. The Court of Appeal agreed, concluding at paragraph 141 that "There was no want of fair procedures on the part of the Respondent in the process leading to the Costs Decision." It continued:

"141... In his letter to the Appellant's solicitors of 22 October, 2019, the Respondent clearly identified areas of concern arising out of the Appellant's conduct before the Tribunal, and invited submissions thereon. It was clear that the Appellant was contemplating the possibility of a zero award of costs - this is apparent from the sentence in the letter in the concluding part thereof in which the respondent stated: "In light of all of the above, the Tribunal is presently considering what, if any, portion of costs should be ordered should be paid to you....." The Appellant was invited to a hearing to make such submissions as he wished to make, and he did so. He submitted that he was entitled to an order for all of his costs, and his counsel declined to make any submission as regards the basis upon which the Tribunal might award anything less than all of his costs, having regard to the matters identified in the letter of 22 October 2019."

32. A departure from the normal process whereby costs are considered by the Tribunal after the substantive findings have been made would risk being in breach of the requirements of fair procedures because the Tribunal could not have fully considered all of the relevant party's pre and post hearing engagement with the Tribunal (in circumstances where the Tribunal had not delivered its Final Report).

Submission on the Two Questions Raised by the Tribunal

33. Having regard to the very clear language of Section 6(1) "*having regard to the findings of the tribunal and all other relevant matters*" and the clear language of the Supreme Court at page 416 in the **Lawlor** case, it is clear that the Tribunal has no power to make "*findings as to conduct*" at the end of the first module of public hearings and in advance of the provision of its Report. Section 6(1) requires that the issue of co-operation can be considered only after the substantive findings have been delivered.
34. Accordingly, it would not be appropriate for the Tribunal to proceed to determine applications for interim orders as to costs in respect of the first module, in the absence of substantive findings and findings as to conduct in its Final Report.

PATRICK McCANN SC

DARREN LEHANE SC

ELIZABETH DONOVAN BL

CAROLINE A. CARNEY BL

**SUBMISSIONS ON BEHALF OF
THE MINISTER FOR DEFENCE
IN RELATION TO THE NOTICE OF PUBLIC SITTING OF THE TRIBUNAL ON 13TH
JULY 2026 AND THE ISSUE OF INTERIM COSTS ORDERS BY THE
TRIBUNAL**

A. Preliminary

1. The Minister makes these submissions to the Tribunal conscious of the important role of the Tribunal and with the utmost respect for the independence of the Tribunal. The Minister is particularly conscious that the Tribunal is invested with the full range of powers necessary for the performance of its functions under the *Tribunals of Inquiry (Evidence) Acts 1921 to 2011* and particularly in relation to the matter at issue which concerns its jurisdiction and ability to make orders for costs under section 6(1).
2. The Minister acknowledges that the Sole Member is the ultimate arbiter of the important matter at issue and must decide same as she thinks appropriate having regard to section 6 of the Act.
3. The Minister, for her part, has no statutory function in deciding upon the representation of parties before the Tribunal, their funding for any purpose connected with the Tribunal and, in particular, no power is invested in her by law to discharge any public monies towards such purpose or to decide on whether any party granted representation before the Tribunal should get his or her costs or at what stage.
4. The Minister is acutely conscious that she is responding to the matter from the position of a party who has been granted representation before the Tribunal and in no other capacity. Accordingly, the Minister's views expressed herein have regard to the legal advice available to her and this submission is tendered in order to respond fully and appropriately to the invitation of the Tribunal.

B. Background

5. The Tribunal has published a Notice of Public Sitting scheduled for 13th July 2026.
6. The Notice invites parties who have been granted legal representation to make submissions to the Tribunal on the following:

“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?”

Such submissions are to be filed with the Tribunal by 7th July 2026.

7. The Notice further provides that:

“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’).”

These submissions are prepared by the Minister in respect s. 6 (1) of the *Tribunals of Inquiry (Evidence) Act 1979 (as amended)* and the jurisdiction of the Tribunal to award costs to parties appearing before it at the end of the first module of public hearings.

C. The First Module

8. The Tribunal commenced the first module on 3rd June 2026. This module was outlined to concern Term of Reference (iv), which provides that the Tribunal shall:-

“investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of the Complaints of Abuse.”

9. This module includes allegations of deterrence/discouragement by individuals including soldiers who were prescribed Lariam for overseas duty and members of the 34th Platoon of the Army Apprentice School in Devoy Barracks, Naas in the early 1990s who have made allegations of abuse. The Tribunal also heard very serious allegations of sexual assault from former Defence Forces members. This module is scheduled to be completed in or around 15th July 2026.

10. In the Opening Statement of the first module, counsel for the Tribunal stated that:

“[t]he primary focus of this Module is Term of Reference iv; however, some of the evidence may be relevant to other Terms of Reference.”

Therefore, the first module is not sealed off in a discrete compartment, and the Tribunal has noted that there may be some elements of overlap with other Terms of Reference.

11. Further, the Tribunal has confirmed in the Notice that it will not publish an interim report following 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.”

12. It can be noted that the Terms of Reference outlined in the Statutory Instrument establishing the Tribunal, SI 304/2024, provide that the Tribunal shall endeavour to complete its inquiry into the matters set out no later than 3 years from the date of its establishment (20th June 2024) and will report to the Taoiseach on the matters set out. The Taoiseach, on receipt of any Report from the Tribunal, is obliged to apply to the

High Court for directions or to have the Report laid before the Houses of the Oireachtas.

13. These submissions take into account three important factors reflecting the current position of the Tribunal, namely: -

- (a) the evidence heard in relation to Term of Reference (iv) may be relevant to the work in respect of other terms; and
- (b) the likelihood that evidence heard in relation to the other Terms of Reference will be relevant to the evidence heard in relation to Term of Reference (iv);
- (c) the present position of the Tribunal reflects an intention not to publish a report until the conclusion of all its work.

D. The Jurisdiction of a Tribunal to award Costs

Costs of Tribunals of Inquiry before 1979

14. In ***K Security Ltd & Another v Ireland & AG***¹ Gannon J considered a claim to be entitled to the costs of representation before a tribunal. Gannon J dismissed the claim in the High Court outlining that:

“The fact that a Tribunal to which the Act may be applied is empowered by the Act to authorise interested parties to be represented before it is no basis for implying that the Act confers authority on such a Tribunal to award the costs of such representation to those parties at the expense of or as a charge upon the public funds. The public funds are entrusted by the Constitution to the care of the Government subject to the strict control, of the legislature upon whose resolutions in both Houses of the Oireachtas the constitution and authority of this tribunal are founded. The very nature of the functions of the legislature in relation to the control and disposition of public funds is such that Statutory Authority for payment out of or a charge upon public funds must be clearly expressed and cannot be a matter of implication as contended on behalf of the second named plaintiff.”²

¹ Unreported, High Court, 15th July 1977.

² Ibid p. 82.

15. It is respectfully submitted that the importance of this judgment lies not only in the obvious fact that there was no power under the original Tribunals of Inquiry (Evidence) Act 1921 to make an order for costs but also due to the utterances of Gannon J that the authority for payment out of, or charge out of public funds, must be clearly expressed and cannot be a matter of implication. The remainder of Gannon J's judgment relates to the claim that the Constitution provided for such a basis, a claim which he also rejected.
16. Gannon J's line of reasoning was followed in the case of **Condon v C.I.E.**³ In this case, the background of which involved an inquiry having been set up in the aftermath of a train crash in which a number of people lost their lives, Barrington J held that although the plaintiff was implicated as being responsible for the position of the points track on the day in question and, while the tribunal was investigating the cause of the crash, he had no entitlement to have the costs of his representation paid out of State funds.

Costs of Tribunals of Inquiry after 1979

17. The jurisdiction of a tribunal in relation to costs was originally dealt with by section 6(1) of the *Tribunals of Inquiry (Evidence) (Amendment) Act 1979*. This section has since been amended by the *Tribunals of Inquiry (Evidence) (Amendment) Act 1997* and the *Tribunals of Inquiry (Evidence) (Amendment) Act 2004*. Section 6 (1) of the 1979 Act (as amended) provides as follows:-

“Where a tribunal or, if the tribunal consists of more than one member, the chairperson of the tribunal, is of the 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 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-

³ Unreported, High Court, 22nd November 1984.

(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 Reform and Digitalisation by any other person named in the order.”

18. The jurisdiction to award costs is discretionary in nature. A tribunal may award costs in full, or in part, or may refuse costs to parties appearing before it. It also has power to order a party to pay all or part of the costs of the tribunal or of any other party. The jurisdiction of a tribunal to award costs derives solely from section 6.

It was stated by Laffoy J in **Goodman v Minister for Finance**⁴ that:

“... a tribunal is only empowered to direct payment by the defendants, pursuant to an order made under s.6, out of monies provided by the Oireachtas to the extent that is clearly expressed in the Act of 1979.” (emphasis added)

Similarly, in the later case of **McBrearty v Morris**⁵ Mr Justice Peart stated that:

“[i]t is clear that the only power the Tribunal enjoys to make an order for costs is contained in that section” (emphasis added).

It is respectfully submitted that section 6 requires that orders for costs can only be made by the Tribunal once it has made its findings and reported on those findings. This is addressed further below.

19. Further, the interpretation of section 6(1) to date by the Superior Courts establishes that there is no entitlement to have representation financed in advance or on an ongoing basis during the tribunal’s hearings and prior to its reporting.⁶

⁴ (1999) 3 IR 356 at p. 367.

⁵ [2003] IEHC 154 at p. 61.

⁶ See also **Lennon v Morris** Unreported, High Court, 2 May 2003, De Valera J.

20. In **McBrearty v Morris** Peart J in the High Court was asked to consider whether the judgment of Judge Morris, as sole member of the Morris Tribunal, erred in law (and in other respects) in determining that he did not have jurisdiction pursuant to section 6 (1) to make an advance order for costs to the McBrearty family, who had been granted representation for 7 modules of the Tribunal's work. Having accepted that the jurisdiction of the sole member to award costs emanated from section 6 alone, Mr Justice Peart rejected the argument that section 6 permitted an advance order for costs and he outlined as follows:-

"... I am completely satisfied that the Tribunal has no power under the section, as contended for by the applicant, namely, to make provision for, or at least guarantee in advance, the costs of the applicant's legal representation, or those of his family or extended family".⁷ (emphasis added)

In reaching his decision Peart J stated that:

"The legislature has revisited the question of costs of those appearing at tribunals and has decided how the matter is to be dealt with. 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."⁸

Significantly, and while having some sympathy for the applicant, Peart J concluded after an extensive and detailed examination of the procedure adopted by Morris J that:

"... the legislation does not permit the Tribunal to assist ahead of making its findings, and the case-law does not permit of an exception in the applicant's case under Article 40.3 of the Constitution."⁹ (emphasis added)

⁷ Ibid, p.62.

⁸ Ibid, p.90.

⁹ Ibid, p.93.

The Report of a Tribunal

21. There is no reference in the *Tribunals of Inquiry (Evidence) Acts 1921-1997* to the reporting function of a tribunal or to any actual report, whether interim or final, until the enactment of the *Tribunals of Inquiry (Evidence) (Amendment) Act 2002*. Section 3 of the 2002 Act deals with a report of the tribunal for the first time in the context of seeking the directions from the High Court as to publication or otherwise of the report, where such an application is necessary. The only other reference to a report of the tribunal is in section 2 of the *Tribunals of Inquiry (Evidence) (Amendment) Act 2004* whereby a newly appointed Chair to an existing tribunal is permitted to have regard to the report of the tribunal previously published before his/her appointment where necessary for the performance of his/her functions.
22. Therefore, the requirement of reporting, and to whom the report should be furnished, is as a necessity laid down by the terms of reference, approved by both Houses of the Oireachtas and conferred upon the tribunal established by the relevant instrument as to, in what circumstances and to whom the report should be furnished.
23. In respect of the Defence Forces Tribunal of Inquiry, Term of Reference (II) requires that *“the Tribunal shall report to the Taoiseach and make such findings and recommendations as it sees fit in relation to these matters as expeditiously as possible.”* This duty to report is then conferred upon the person or persons appointed to be the Tribunal by virtue of paragraph (2) of SI 304/2024 which provides:

“2. A tribunal (hereinafter called the “Tribunal”) is appointed to inquire into, report and make such findings and recommendations as it sees fit to the Taoiseach on the definite matters of urgent public importance specified in the resolution passed by Dáil Éireann on the 24th January and by Seanad Éireann on the 30th January 2024, the text of which resolutions is set out in the recital to this instrument.”
24. It is submitted that the Terms of Reference embodied in SI 304/2024 set out the sequence of events that should be followed by the Tribunal, namely, *“inquire into, report and make such findings and recommendations”*. Therefore, the findings are consequent to a report when the Tribunal has concluded its investigation of the matters specified. The Terms of Reference in SI 304/2024 do not explicitly envisage interim findings prior to any report nor an award of interim costs at any earlier stage. This, it is

submitted, accords with the tenor of the caselaw discussed below. Further, this accords with the practice of previous Tribunals of Inquiry.

25. In the Disclosures Tribunal, Charleton J delivered an interim report relating to modules (n) & (o) relating to allegations made by Garda Keith Harrison. The Tribunal at that stage dealt with the costs issue in the Harrison Module, which ultimately led to a judicial review to try and quash the report and separately the costs order. These applications lead to a judgment of some significance of the Court of Appeal, which is dealt with below. It is important to note that the Harrison Module was concluded and completely sealed off before modules (a)-(m) were embarked upon. The Terms of Reference governing the Disclosures Tribunal actually envisaged a modular form of modules (a)-(o) and then Term of Reference (p), whether by the original judge appointed or by a replacement judge. A report was furnished by the Disclosures Tribunal in respect of modules (a)-(o) before the issues of costs was dealt with.
26. Subsequently, an amending instrument appointed former President of the Court of Appeal, Ryan J, to conduct module (p) and this resulted in the furnishing of 3 further reports, the 4th and 5th interim reports and a 6th interim and final report. Each of those reports concerned wholly different complaints as between each other and again applications for orders for costs were heard and determined subsequent to the furnishing of each of the reports in accordance with the Terms of Reference.
27. In **McBrearty v Morris** Peart J reviewed the procedure adopted by Judge Morris, and specifically the Judge's commitment to deal with an award of costs after he had reported on each module. This course of action was notably not disapproved of and is, it is respectfully submitted, consistent with the proper sequential operation of section 6 (1) outlined above. In the 8th and final report, in his letter to the Minister, Morris J stated:

"The Tribunal has now concluded its work. This eighth report is the last report to be delivered by the Tribunal. The only outstanding work to be completed relates to applications for costs in respect of the seventh and eighth reports of the Tribunal. Applicants for costs will have three weeks within which to submit written applications to the Tribunal following the publication of the seventh and eighth reports, Thereafter, the Tribunal will rule on these applications and make the appropriate Orders."

The 'findings' contemplated by Section 6 (1)

28. Extensive legal analysis has taken place as to the meaning of the phrase ‘*findings of the Tribunal*’ in section 6 (1) (as amended)

29. Prior to the amendment of section 6 (1) in 1997, McCarthy J in **Goodman International v Mr Justice Hamilton**¹⁰ held that:

“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 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.” (emphasis added)

30. It is important to note that at the time of this judgment, section 6 read as follows:

“(1) Where a tribunal, or, if the tribunal consists of more than one member, the chairman of the tribunal, is of opinion that, having regard to the findings of the tribunal and all other relevant matters, there are sufficient reasons rendering it equitable to do so, the tribunal or the chairman, as the case may be, may by order direct that the whole or part of the costs of any person appearing before the tribunal by counsel or solicitor, as taxed by a Taxing Master of the High Court, shall be paid to the person by any other person named in the order.”

31. In 1997, the Oireachtas revisited this section and section 3 of the *Tribunals of Inquiry (Evidence) (Amendment) Act 1997* substituted a new sub-section 6 (1) as follows:

“(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

¹⁰ [1992] 2 IR 542, at p. 605.

cooperate with or provide assistance to, or knowingly giving false or misleading information to the tribunal)...”

32. This amendment was considered by the Court of Appeal in **Harrison v Charleton**¹¹ where it was held that:-

“Apart from permitting orders for costs to be made in respect of the costs incurred by the tribunal itself, the major change effected by this amendment was the addition of the words “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 cooperate with or provide assistance to, or knowingly giving false or misleading information to the tribunal)”. (emphasis added)

33. The section, in its amended form, was briefly considered by Geoghegan J in the High Court in **Haughey v Moriarty**.¹² While Geoghegan J's observations were *obiter dicta*, he said that:

*“In my opinion, [the] power to award costs under the Act of 1997 is confined to instances of non co-operation with or obstruction of the Tribunal but that of course would include the adducing of deliberately false evidence and that is why the statutory provision specifically requires regard to be had to the findings of the Tribunal as well as all other relevant matters”.*¹³

In **Harrison v Charleton**, the Court of Appeal stated at paragraph 64 of its judgment that the opinion of Geoghegan J, whilst *obiter*, was ‘*nonetheless of significance*’.

34. The revised subsection was the subject of close analysis by the Supreme Court in 2010 in **Murphy v Flood**.¹⁴ The proceedings raised the issue of the scope and effect of the expression “*the findings of the tribunal*” and whether it contemplated the substantive findings made by a tribunal in relation to the subject - matter of its inquiry.

Denham J cited the *obiter* utterances of Geoghegan J in **Haughey v Moriarty** and held that *that the “power to award costs under the Act of 1997 is confined to instances of non-cooperation with the Tribunal”* (at para 72). She stated at paragraph 81 that: -

¹¹ [2022] IECA 260 at para. 62.

¹² [1999] 3 IR 1.

¹³ *Ibid*, p. 14.

¹⁴ [2010] 3 IR 136.

“Fundamentally the issue is whether a party has cooperated with a tribunal so as to be entitled to his or her costs. A person found to be corrupt who fell on his sword and fully cooperated with a tribunal would be entitled to assume, unless there were other relevant factors, that he would obtain his costs. This is to facilitate the running of a tribunal.” (emphasis added)

Fennelly J agreed with the judgment of Ms Justice Denham and went on to state that:

“The Oireachtas can be taken to have been aware in 1997 of the decision in Goodman International v. Mr. Justice Hamilton [1992] 2 I.R. 542. If the legislature had intended to negative the effect of the judgment of McCarthy J., it could have adopted clear wording to that effect. In fact, it has left intact the words which were interpreted by McCarthy J. I agree that if the section, in its present form, were the only matter to be interpreted, it is at least open to the meaning that the Tribunal may have regard to its substantive findings when deciding on costs. The matter is not, however, res integra. This court has said, per McCarthy J., that a tribunal may not have regard to its substantive findings when deciding on costs. The words which he interpreted are still in this section. The additional words interpolated in 1997 do not inevitably reverse the principle enunciated by the court in 1992. It is possible, without doing violence to language, to interpret the words in parentheses as qualifying both “the findings of the Tribunal” and “all other relevant matters”. In the light of the decision in Goodman International v. Mr. Justice Hamilton and the obligation to interpret in conformity with the Constitution, I think that is the correct interpretation.”¹⁵

In **Harrison v Charleton** the Court of Appeal outlined that:

“Whether there are any other factors or circumstances that may, in principle, justify a departure from that default rule is somewhat less certain. In her judgment, in Murphy v Flood, Denham J seems to leave open the possibility that there might be “other relevant factors” that could justify a denying someone who had fully cooperated with the tribunal some or all of their costs. But that question does not arise here, and it is not necessary or appropriate to consider it further.”¹⁶ (emphasis added)

¹⁵ Ibid, para 365.

¹⁶ At para. 73.

35. It is submitted that, on the basis of the above judgments, there remains intact the possibility that there might be “*other relevant factors*” that could justify denying someone who had fully cooperated with the tribunal some or all of their costs. This view, it is respectfully submitted, aligns with the judgment of the Court of Appeal in ***Harrison v Charleton***, where, having analysed in detail the caselaw pertaining to section 6, it was determined that the following principles were to be derived therefrom:

“(1) The discretion conferred on tribunals of inquiry by section 6(1) is significantly more constrained than a literal reading of its provisions might suggest.

(2) Subject to (5) below, the reference in section 6(1) to “the findings of the tribunal” does not permit a tribunal to have regard to its substantive findings on the subject-matter of its inquiry for the purposes of deciding questions of costs.

(3) For all tribunals of inquiry (and not just “single-disaster” tribunals), the correct starting point is that any person permitted to be represented at the tribunal should ordinarily have their costs paid out of public funds, i.e. an order for costs should ordinarily be made in their favour under section 6(1).

(4) However, that is a presumptive entitlement only and it may be lost where the person concerned has failed to cooperate with the tribunal (including, but not limited to, knowingly giving false or misleading information or evidence to the tribunal).

(5) A finding that a person has failed to cooperate with the tribunal may flow in part from the tribunal’s substantive findings, to the extent (and only to the extent) that such findings are relevant to the tribunal’s assessment of whether the party cooperated with it. Thus, in determining whether a person gave false or misleading information or evidence to the tribunal (which is a form of non-cooperation), the tribunal may have regard to its substantive findings where they are relevant to that issue. By way of illustration, if a person called as a witness by the tribunal gives evidence that event X did not occur, and the tribunal finds that X did occur, that finding would clearly be relevant in assessing whether that witness gave false or misleading evidence (although the tribunal would of course have to go to consider whether the evidence was given in the knowledge that it was false).

(6) Any decision that a person has failed to cooperate must be arrived at fairly. However, that does not necessarily require a two-stage process before such a finding can be made.

(7) Any findings of non-cooperation should be made in clear terms and sufficiently reasoned.

(8) A finding(s) of non-cooperation does not leave the tribunal at large. Any decision to refuse or reduce the costs that would otherwise be payable to a person must be reached fairly and in accordance with fundamental principles of public law, including the right to be heard and the right to reasons.

(9) There must be (and the tribunal must identify) some rational relationship between the acts or omissions constituting non-cooperation on the one hand and the decision to refuse or reduce the costs. That does not require use of any “mathematical formula” but the tribunal must explain how the refusal or reduction reasonably follows from the non-cooperation and is proportionate to it.”¹⁷ (emphasis added)

36. It is submitted that, it follows from the express wording of section 6 (1) that the Tribunal must be satisfied, at the time of the making of the costs order, what those, (if any) other relevant matters are. It is respectfully submitted that these matters can only be the known once the Tribunal has made its findings and a report has been produced.

37. In its Notice, the Tribunal states that ‘*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*’. This limitation that the relevant matters must relate to conduct is not expressly provided for under section 6 (1) nor is it expressly outlined in the case law considered above.

When ‘findings’ as to conduct can be made

38. It is respectfully submitted that, at present, the law requires that these ‘findings’ must be made in a report before the jurisdiction of the Tribunal under section 6 (1) is triggered.

39. In the 2018 case of **Lowry v Moriarty**¹⁸ it was held by the Court of Appeal that:

58. Insofar as the report itself contains findings in relation to non-cooperation, it could be argued that they are more appropriate to a later stage when that issue is to the fore. However, there is no complaint on this basis and it does seem to me overall that it

¹⁷ Ibid para 82.

¹⁸ [2018] IECA 66.

would be a point of excessive technicality without any real significance. It is important, however, to recognise the distinction between the contents of the report insofar as they reflect the determinations of the Tribunal on the matters that are the subject of its terms of reference, the substantive findings, and the adjectival matters that arise subsequently in relation to costs. Therefore, we have two separate processes that should not be either conflated or confused. In actual fact, I think that the Tribunal operated in a manner that respected this distinction by extracting its findings and serving them on Mr. Lowry with specific reference to the question of costs. The same findings had previously been notified to him prior to finalisation and publication of the report so that he would have an opportunity of responding. Now they were furnished to him for the different purpose of addressing costs.

60. It seems to me on this first question of time that the argument put forward by Mr. Lowry is correct. The process dealing with costs is a separate matter that was initiated following the publication of this part of the report. It began with an invitation by the Tribunal to relevant parties to make their applications. In Mr. Lowry's case, his application was the subject of a response from the Tribunal setting out matters that it considered relevant to the issue of costs. He made submissions which had to be considered by the Tribunal. The sole member might have accepted those submissions in whole or in part. The Tribunal might have considered it appropriate to entertain further debate on the question of costs; that was an option open to it. I do not of course suggest that the Tribunal was obliged to do so but merely to describe one possible course of action that it might have adopted. There was a clear line of distinction and point of distinction in time and purpose between the substantive material of the report and the later embarkation on the costs issue. It is a matter of enormous importance to a participant in an enquiry because of the gravity of the finding and in the circumstances of this case, having regard to the extent of the participation of Mr Lowry in the protracted investigations, there is the very practical consideration that he is left with an enormous liability in costs for his own advisers. It is also relevant that the tribunal set itself a particularly high standard of proof on the issue of costs which represents in effect the criminal standard beyond reasonable doubt. These points of principle, practicality and legal proof confirm the difference between the contents of the report and the decision on costs. It would therefore not be reasonable or legally permissible to hold that failure to challenge the report necessarily shut the appellant out from challenging the costs order. In those circumstances, I am satisfied that the processes are quite separate and the matter of costs is not time-barred as a result.” (emphasis added)

40. Denham J in **Murphy v Flood** stated that:

“In my opinion, the power to award costs under the Act of 1977 is confined to instances of non cooperation with or obstruction of the Tribunal but that of course would include the adducing of deliberately false evidence and that is why the statutory provision specifically requires regard to be had to the findings of the Tribunal as well as other relevant matters...I accept that the first plaintiff and perhaps the other plaintiffs may have to incur cost in providing the Tribunal with the necessary information and without there being any advance guarantee of indemnity, but there is a guarantee that justice will be done in relation to costs at the end of the Tribunal. It would not be practical or reasonable to expect an advance promise of indemnity. Any monetary loss incurred on this account is simply an unfortunate consequence of the legitimate right to hold such an inquiry.”¹⁹ (emphasis added)

41. Similarly, as Geoghegan J in the High Court in **Haughey v Moriarty** outlined as follows:-

“The absence of a right of appeal from a Costs order and the absence of an advance indemnity in relation to costs are not grounds for impugning the Resolutions whether under the Constitution or otherwise. Costs will be dealt with by the tribunal at the end of the entire Inquiry and I have no reason to believe that the Sole Member will not deal with the cost issue in a correct and constitutional manner....I accept that Mr Haughey and perhaps the other Plaintiffs may have to incur cost in providing the Tribunal with the necessary information without there being a guarantee of an indemnity but what there is is a guarantee that justice will be done in relation to costs at the end of the Tribunal. It would not be practical or reasonable to expect an advance promise of indemnity.”²⁰ (emphasis added)

42. In **Harrison v Charleton**, the Court of Appeal held as follows:

“118. The Appellant contends that the Respondent fell into error in having regard to the entirety of the Report in arriving at the costs decision, because this necessarily imported into the considerations of the respondent the substantive findings of the Tribunal, contrary to section 6, and the trial judge erred in failing so find.

¹⁹ At para. 72.

²⁰ At p. 9.

119. At para. 50 of his Judgment the Judge stated that the “costs decision is explicit about the fact that it should be read in the context of the Tribunal’s “entire report”. This is clear from internal page 10 which states, inter-alia, that “you will no doubt be familiar with the second interim report of the Tribunal. What follows should be read in the context of the entire report.”

120. What follows thereafter is a summary of the four main points that troubled the Tribunal regarding the evidence of the Appellant. It will be recalled that the letter of 22 October 2019 was set out in full in the Costs Decision. Having quoted that letter, the Tribunal then refers to the hearing on 1 November 2019 and then, under the heading “Decision” states: “This ruling should be read in its entirety and should also be read in the context of the report of the Tribunal published on 30 November 2017.”

121. This submission (that the Respondent erred in having regard to the entirety of the Report), while perhaps having some superficial force, does not withstand any real scrutiny. In arriving at the Costs Decision, it was necessary for the Respondent to cross-refer to the Report, and to quote from extracts thereof and to summarise or paraphrase conclusions thereof. On any occasion when a person quotes from, paraphrases or summarises a larger document, there is a risk that the true meaning of the principal document may become distorted simply because the text being quoted or summarised is no longer within its original context. For this very reason, it is commonplace in such circumstances for an author to say, as the Respondent did in the Costs Decision, that the document under consideration should be read in the context of the principal document. Otherwise, the principal document might have to be set out in full to avoid any risk of misinterpretation.

122. It is of course correct to say that the Report also contains the substantive findings of the Tribunal. However, in saying that the Costs Decision should be read in the context of the Report, the Respondent was saying no more than that the findings as to the conduct of the Appellant were to be properly understood in the context of the Report as a whole. The Respondent was not, in our view, thereby placing reliance upon the substantive findings of the Tribunal, and to so construe that statement would in our view be unreasonable and would be wholly inconsistent with any fair reading of the Costs Decision as a whole, and the process which lead to it, from which is evident that the Tribunal clearly understood the proper approach to section 6 and clearly appreciated that its substantive findings were not relevant for the purposes of deciding the Appellant’s costs application (save of course to the extent that such findings were

relevant to the conduct of the Appellant before the Tribunal). We therefore reject this ground of appeal also.” (emphasis added)

43. In the Tribunal’s own opening statement made by Ms Justice Power on 16th June 2025, the Sole Member outlined that:-

“Parties were reminded that a grant of representation does not confer an automatic entitlement to an Order for costs on the completion of its inquiry.”²¹ (emphasis added)

In addition, at paragraph 13 of the Tribunal’s own Procedures document published on its website, the following is set out:-

“13.1 Any application for an Order for costs pursuant to section 6 of the Tribunals of Inquiry (Evidence)(Amendment) Act 1979, as amended, may be made following the submission of the final Report of the Tribunal. The fact that the Tribunal has or has not granted representation to any person or body does not mean that a party is entitled to an Order for costs automatically. Any Order made by the Tribunal will, ordinarily, be on a party and party basis in the usual form. The Tribunal shall have regard to the provisions of the Tribunal of Inquiries (Evidence) Acts 1921 to 2004 and all relevant case law when considering applications for costs.” (emphasis added)

44. In the premises, it is submitted that the issue of costs orders is a separate and distinct process carried out in the aftermath of the submission of a report on the matters of urgent public importance.

E. Conclusion

45. It is submitted that to date all interested parties have engaged with tribunals without any advance assurance of reimbursement albeit on the basis that there is a presumption in favour of reimbursement.²² In this instance, the Tribunal established in June 2024 has proceeded for the last 24 months on that basis and in particular, having regard to its procedures published and adopted. The Court of Appeal in **Harrison** outlined in detail extracts from **Murphy v Flood** and held in reliance on the said judgment that:

²¹Emphasis added. <https://www.toidf.ie/app/uploads/2025/06/Opening-Statement-of-Ms-Justice-Power-Hearing-of-16-June-2025.pdf>.

²² Fennelly J in **Murphy v Flood [2010] 3 I.R. 136** at 230.

“...Where a person is granted representation before a tribunal, then “ordinarily” their costs should be paid out of public funds, by means of an order for costs made in their favour pursuant to Section 6(1). That is the default rule. However, the entitlement to costs is presumptive and not absolute and may be lost by non-cooperation with the tribunal, including (but not limited to) knowingly giving false or misleading information to the tribunal.”

The question of these costs, including the loss of the presumption of the entitlement thereto (following the application of an express statutory consideration), can only be safely determined at the time of the provision a report.

46. In making submissions and answering the questions posed by the Tribunal, the following matters are noted and appear to be of direct relevance to issues to be considered by the Tribunal:
- (i) The Tribunal is obliged at the conclusion of its inquiries to furnish its Report to the Taoiseach.
 - (ii) The Tribunal is not expressly mandated to, nor does it intend to, furnish any interim reports in advance of the furnishing of its Report to the Taoiseach.
 - (iii) Mr Justice Geoghegan in **Haughey v Moriarty** outlined that costs would be dealt with at the end of the Tribunal's inquiry.
 - (iv) Similarly, the High Court determined in **McBrearty** that section 6 does not provide for an advance grant of costs notwithstanding that representation had been granted.
 - (v) Whilst the relevance of the Tribunal's report to the question of costs under section 6 is limited to the circumstances set out at para 82(5) in **Harrison**, the caselaw relating to section 6 has to date been decided in circumstances where a report containing the findings of the Tribunal, has been delivered.
 - (vi) The question as to what constitutes “*all other relevant matters*” has not been determined definitively and it is submitted that the Tribunal cannot know ‘*all other relevant matters*’ on a day-to-day basis without an examination of facts at issue.

(vii) The case law demonstrates that, in certain circumstances, that the substantive findings in a report may be relevant to the conduct of the parties and the question of costs before the Tribunal.

(viii) Additionally, the sequence envisaged by paragraph (ii) of SI 304/2024, and as outlined above, ought to be followed by the Tribunal.

(ix) Interim awards of costs by a Tribunal prior to reporting could, conceivably, involve costs rulings on a daily basis and in respect of multiples of witnesses.

(x) The approach mooted by the Tribunal of making interim costs orders in the absence of making findings, or reporting on its findings, has not been the subject of judicial approval to date and, in this regard, it would be a novel course of action for this Tribunal.

(xi) The interpretation of the Tribunal's powers is primarily a matter for the Tribunal having considered the necessity, appropriateness and consequences of adopting such an interpretation in the absence of legal authority.

47. The following is the Minister's submission on the questions posed by the Tribunal in its Notice:-

Question 1

Could *findings as to conduct* be made by the Tribunal at the end of the first module of public hearings and in advance of the provision of its Report.

Answer to Question 1

Whilst this is ultimately a matter for the Tribunal, for the reasons outlined above, it is submitted that the findings as to conduct and an analysis of "*all other relevant matters*" can lawfully be made once the report of the Tribunal has been delivered to the Taoiseach.

Question 2

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.

Answer to Question 2

It is again submitted that this is ultimately a matter for the Tribunal. However, as submitted above, orders as to costs can only be made by the Tribunal once it has made its findings, reported on those findings, and once all other relevant evidence has been heard and the Tribunal has considered all other appropriate submissions on the above.

Diarmaid McGuinness SC

Sinéad McGrath SC

Ruth Mylotte BL

Karl Shirran BL

Dated: 7 July 2026

Chief State Solicitor's Office