RULING OF THE TRIBUNAL ON ORDERS FOR COSTS

Table of Contents

Introduction 2

Factual Background to the Ruling 4

Relevant Legislative Provision 5

Case Law 6

Submissions 17

Decision 25

- *On What Constitutes 'Findings' for the Purpose of Section 6* 25
- *On the Sequence, if any, Stipulated in the Terms of Reference* 30
- *Case Law: On What the Courts Require* 31

The First Module: Findings as to Cooperation and Conduct 33

On the Appropriateness of Making Modular Costs Orders 35

Reasons Rendering it Equitable to do so 35

Final Considerations 38

Conclusion 39

Introduction

1. The question of whether this Tribunal of Inquiry, in advance of the publication of its Report to the Taoiseach on the substantive matters under investigation, may, as a matter of law, make findings as to the co-operation and conduct of legally represented witnesses following the first module of public hearings for the purpose of making orders for costs, is the first of questions to be determined in this Ruling. The second is whether it would be appropriate for the Tribunal to make such orders if there is no legal impediment to so doing.

2. In response to a concern raised by some representative bodies that legal advice was needed to assist their members in responding to the Tribunal's Call for Information, the Tribunal heard applications for legal representation at a public hearing on 22 July 2024. The point had been made by the representative bodies that whilst their members were willing to assist the Tribunal in its work, they were fearful of doing so without legal advice having regard to the serious allegations they would make in the context of assisting the inquiry. Applications were made on behalf of the Chief of Staff of the Defence Forces, the Minister for Defence and several representative bodies.

3. For the reasons set out in its Ruling of 25 July 2024 ('the Ruling'), grants of full legal representation were made in respect of the Chief of Staff of the Defence Forces and the Minister for Defence ('the Minister'). The Tribunal also granted limited legal representation for the course of its private investigative stage to seven representative groups for the purpose of their members being assisted in the preparation of statements, being accompanied to interview with the Tribunal's legal team, if invited, and in the making of written submissions, where necessary. The Tribunal deferred its decision on their legal representation during the public hearings stage to a later time. Subsequently, the Tribunal also granted limited legal representation during the private investigative stage of its inquiry to certain individuals on stipulated terms. Prior to the commencement of the public hearings phase, the Tribunal returned to its deferred decisions on legal representation. Witnesses scheduled to testify during the first module of public hearings commencing on 3 June 2026 ('the first module') were granted limited legal representation, upon specific terms, where it was considered necessary and appropriate so to do.

4. Before the hearings commenced, a request was made on behalf of several persons for the Tribunal to consider making orders for costs on a modular basis and prior to the publication of its Report on the substantive matters under inquiry. Having considered the relevant statutory provisions on costs orders made by tribunals of inquiry and the current state of the case law thereon, the Tribunal formed the view that the legal question of its power to make interim orders as to costs on the completion of the first module of hearings was an open one.

5. For that reason and bearing in mind important considerations of fairness, on 17 June 2026, the Tribunal published a Notice of its intention to hold a public hearing on the issue (hereinafter 'the Notice'). The Notice invited those to whom grants of legal representation had been made to make submissions on:

(i) whether '*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 on the substantive matters under consideration; and

(ii) if permissible, whether it would be appropriate for the Tribunal to proceed to determine applications for interim orders for costs in respect of the first module, on the basis of such findings.

6. The Tribunal received relevant written submissions on the issues from six represented parties. All such submissions were published on the Tribunal's website. At the public hearing on 13 July 2026, those who had filed such written submissions addressed the Tribunal on the matters to be determined, and two other parties made brief oral submissions.

7. Before reviewing the jurisprudence on the powers of a tribunal in relation to costs, it is important to set out key elements of the factual background against which this Ruling is delivered.

Factual Background to Ruling

8. Any application of the relevant principles to the legal question that falls to be determined must have regard to certain notable features of this Tribunal, its specific Terms of Reference and the nature of the evidence that was heard during the first module of public hearings. The following matters are of particular importance:

A. The Terms of Reference permitted the Tribunal to hear evidence of abuse, but they preclude it from making any findings in relation to abuse which would, if established in a court of law, be criminal in nature. On notice to every party and without objection from any, the Tribunal adopted the position that it would not make any findings in relation to abuse in respect of any matter, whether it be civil or criminal in nature. No party took issue with that approach, and the Tribunal proceeded to hear evidence of abuse on that basis. It follows, therefore, that the Tribunal will never be making any findings in relation to the evidence of abuse that has been heard in the first (or any other) module.

B. The Tribunal did hear evidence in relation to matters other than abuse and on which there was a conflict of evidence. Obvious examples include the extent to which there was training of recruits in relation to the availability and operation of complaints processes and the extent to which there may have been deterrence of the making of complaints. Insofar as any of the conflicting testimony bears on the issue of cooperation by the relevant parties, those disputes would be resolved before a final order for costs could be contemplated.

C. It is not envisaged that any of the witnesses who gave evidence in the first module will return to revisit *that* evidence at any later stage of the Tribunal's hearings.

D. It is acknowledged that the evidence heard in relation to Term of Reference (iv) may be relevant to evidence heard in respect of other Terms of Reference and that evidence heard in relation to other Terms of Reference may be relevant to evidence heard in relation to Term of Reference (iv). However, that is to acknowledge no more than a potential overlap in subject matter. There is nothing in the evidence yet to be heard which can bear upon the co-operation and truthfulness of the witnesses heard to date. Furthermore, the Tribunal cannot

contemplate *'any other matter'* which might bear upon the co-operation or conduct of the witnesses heard, during the first module.

It is against the above background that the relevant legal principles fall to be considered and applied.

Relevant Legislative Provision

9. A tribunal's power in relation to costs is governed by section 6 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979 which was subsequently amended by section 3 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997 (hereinafter 'section 6').

10. Section 6(1) of the 1979 Act (as amended) 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 [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."

11. The amendment to section 6(1) of the 1979 Act 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 its terms of reference and whether a party failed '*to co-operate with or provide assistance to, or knowingly [gave] false or misleading information to, the tribunal*'.

Case Law

12. At the oral hearing, parties referred to several authorities in support of their respective positions. Prior to the amendment made in 1997, the Supreme Court interpreted the meaning of section 6 in *Goodman International v Mr Justice Hamilton* [1992] 2 I.R. 542 *('Goodman International').* The applicants in *Goodman International* had challenged, by way of judicial review, the constitutionality of the resolution adopted by the Oireachtas establishing a tribunal of inquiry into the Beef Processing Industry. Refusing the reliefs sought, the Supreme Court held that the resolution was entitled to the presumption of constitutionality and that the tribunal's terms of reference did not encroach upon the judicial domain because tribunals of inquiry do not administer justice. Having no power of punishment, a Tribunal's purpose is to report to the Oireachtas on its findings of fact.

13. As to what constitutes '*findings*' for the purpose of section 6, McCarthy J. (at p. 605) stated:

> "*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.*"[1]

[1] Emphasis here and elsewhere is mine unless otherwise indicated.

14. Some years later in *Goodman v Minister for Finance* [1999] 3 I.R. 356 the question at issue was whether the plaintiffs could claim interest on costs ordered in their favour by the tribunal. The order for costs was made on the same day as the tribunal's final report was published. The High Court found that the plaintiffs had failed to establish an entitlement to interest on any basis and dismissed their claim. In refusing the reliefs sought, Laffoy J. held (at p. 367) that:

> *"[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 expressed in the Act of 1979."*

15. The issue of the costs of legal representation before a tribunal was revisited in *McBrearty v Morris* [2003] IEHC 154 ('*McBrearty*'). Mr McBrearty and his family were of central importance to the matters under inquiry in the Morris Tribunal. He made oral submissions to the tribunal that he was unable to fund a legal team for the duration of the inquiry. The tribunal ruled that it was unable to relieve that burden. The applicant sought judicial review of that decision arguing that his constitutional right to fair procedures was not protected by the terms of section 6 of the 1979 Act. He contended that the right to legal representation was of no benefit to him in circumstances where neither he nor his family had the financial means to fund such representation in advance of the hearings.

16. Peart J. considered whether the applicant's right to fair procedures extended beyond the right to be legally represented to include the right to have that representation funded, in advance, of the commencement of the tribunal's oral hearings. The court noted (at p. 72), by way of some comfort to the applicant, that the tribunal had indicated a willingness to consider making costs orders at the conclusion of each module, but the question was whether that was sufficient to protect and vindicate the applicant's constitutional rights.

17. The High Court held that the court must presume that the discretion vested by section 6 in the tribunal in relation to any award of costs would be exercised by the tribunal in a lawful manner. In this regard, reference was made (at p. 63) to *East Donegal Co-operative Livestock Mart Ltd v The Attorney General* (1970) I.R. 317 ('*East Donegal*') where Walsh J. had stated (at p. 341) that:

"[. . . T]he presumption of constitutionality carries with it not only the presumption that the constitutional interpretation or construction is the one intended by the Oireachtas but also that the Oireachtas intended that proceedings, procedures, discretions, and adjudications which are permitted, provided for, or prescribed by an Act of the Oireachtas are to be conducted in accordance with the principles of constitutional justice."

18. In *McBrearty,* Peart J. concluded (at p. 90) that the applicant's rights to fair procedures under Article 40.3 of the Constitution could not be regarded as including the right to have his legal representation *'funded or provided for in advance of the tribunal reaching findings'*. He noted that the legislature, in 1997, had revisited the question of the costs of those appearing at tribunals and had decided how the matter was to be resolved. With reference to the legislature's approach, he said (at p. 90):

"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."

19. In refusing, *'with great regret'* the reliefs sought by the applicant, Peart J. observed (at p. 92) that nobody could but have sympathy for the parlous position in which the applicant and his family found themselves. He also pointed out that the funding of representation was not just in the interests of the applicant, but in ease of the tribunal itself, stating (at pp. 92 and 93):

"I say this because it seems to me that if the applicant does not have the benefit of the services of solicitor and Counsel for the duration of the Tribunal and leading up to its commencement, the burden of assisting the applicant and his family will fall to the Tribunal, its solicitor, Counsel and staff, and their work will be greatly increased, and indeed it is likely that the work of the Tribunal could thereby take longer to complete. Conversely, if the applicant had the benefit of a reasonable level of representation, the work of the Tribunal might be eased."

20. The case of *Lawlor v The Members of the Tribunal of Inquiry into Certain Planning Matters and Payments* [2010] 1 I.R. 170 (*'Lawlor'*) is also of note. The appellant's husband against whom allegations of corruption had been made, was investigated by the respondent tribunal prior to his death in October 2005 and had been engaging with the tribunal since 1998. The appellant was granted the right to represent her deceased husband. She sought, *inter alia*, an order directing the tribunal to make all necessary financial arrangements to enable her to engage effective legal representation before the tribunal. She further sought that any findings of serious misconduct by her husband be supported by evidence establishing such findings beyond a reasonable doubt. The High Court rejected her claims.

21. On appeal to the Supreme Court, Murray C.J. confirmed (at para. 51) that the only power a tribunal enjoys to make any order in relation to costs is that outlined in section 6(1) and, that the power arises only where *'findings'* have actually been made by a tribunal. He considered it clear from the decision of Laffoy J. in *Goodman v Minister for Finance* that *'a tribunal of inquiry has no power to make an order for costs other than in those circumstances'*. He continued (at para. 58):

> *"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."*

22. An important authority on a tribunal's powers in relation to costs is that of *Murphy & Others v Flood & Others* [2010] 3 I.R 136 (*'Murphy v Flood'*). Referred to as the *'Murphy interests'*, the plaintiffs were involuntarily before the Flood Tribunal because Mr Gogarty (deceased) had made allegations against them. In its second (2002) and third (2004) interim reports, the respondent tribunal made findings to the effect that the plaintiffs had made corrupt payments. It went on to find that the plaintiffs had obstructed and hindered the tribunal by failing to give truthful accounts of their dealings and involvement in relation to certain persons and meetings. In making these findings, the tribunal made specific references to the crime of obstruction and hindering under section 1(2) of the Tribunals of Inquiry (Evidence) Act 1921 (as amended) – ('the 1921 Act').

23. Having participated in over 160 days of public hearings and having provided extensive discovery and statements to the tribunal, the plaintiffs applied for their costs. In a ruling of 9 November 2004, the tribunal acknowledged that the plaintiffs had participated, fully, in the public hearings and that they had provided extensive discovery over a long period of time. However, it refused to award them their costs because of its adverse findings of obstruction and hindering, and the substantive findings of corruption that it had made. The plaintiffs sought judicial review and the proceedings were absorbed into their earlier plenary action seeking declarations that the findings of obstruction and hindering were *ultra vires*, null and void and could not be taken into account for the purposes of costs.

24. The High Court refused the reliefs sought and the plaintiffs appealed. The Supreme Court (Denham, Hardiman, Geoghegan, Fennelly and Finnegan JJ.) allowed the appeal, holding that whilst the tribunal had jurisdiction to determine that there had been a lack of co-operation and to award costs in instances on non-cooperation, it had no authority to make findings of obstruction or hindering in the context of a reference to the criminal offence provided by s. 1(2) of the 1921 Act.

25. For the purposes of our analysis, the judgments of Denham and Fennelly JJ. are of particular importance. Denham J. commenced by acknowledging (at para. 1) that, legally, the issues raised by the parties were *'at the cusp'* between the authority of a tribunal and the administration of justice. She noted (at para. 69), with reference to other inquiries, that, *'ordinarily, any party permitted to be represented at an inquiry should have their costs paid out of public funds'*, with exceptions arising in circumstances of non-cooperation. The core issue, in her view, was whether a party before a tribunal had co-operated so as to be entitled to its costs. She was satisfied that a person who was found to be corrupt, but who had fallen on his sword and co-operated, fully, with the inquiry would be entitled to assume, unless there were other relevant factors, that he would obtain his costs. This, she said (at para. 81) was *'to facilitate the running of a tribuna*l'. She cited (at para. 72), with approval, what Geoghegan J. had said in *Haughey v Moriarty* [1999] 3 I.R. 1 (at p.14) to the effect that:

> *"[. . .] [the] 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. However, I merely express that view by way of obiter dicta because, in my opinion, the issue of costs can only properly come before the High Court by way of some kind of judicial review or injunctive proceedings after costs have been awarded. 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."

26. Recognising that any party permitted to be represented at a tribunal should have its costs paid out of public funds, Denham J. observed that this entitlement may be lost if the party fails to co-operate. The conduct of, or on behalf of, a party before a tribunal has to be considered. She held (at para. 80) that:

"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."

27. The Supreme Court (Denham J.) also considered what constitutes a *'finding'* for the purpose of section 6. It affirmed the cardinal principle as first articulated by McCarthy J. in *Goodman International* and expressly held that a tribunal of inquiry may not have regard to its substantive findings when deciding on the issue of costs because to do so would import a liability on a party and *that* would be tantamount to the administration of justice. Denham J. held (at para. 82) that:

"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."

28. Fennelly J. concurred. Reflecting on the 1997 amendments of section 6 he held that those amendments did not overturn the fundamental principle established in *Goodman International* (of which the Oireachtas was aware), namely, that it is impermissible for a tribunal to have regard to substantive findings when deciding on questions of costs. He acknowledged (at paras. 363-364) that the Supreme Court's view was that a tribunal was limited to making findings of fact that were *'sterile of legal effect'* and was not empowered to penalise a witness in respect of costs by reason of its substantive findings. Fennelly J. further found (at para. 365) that it was possible and correct to interpret the words in parentheses in section 6 as qualifying both *'the findings of the Tribunal'* and *'all other relevant matters'* and (at para. 370) that the Tribunal, in making a decision as to whether to award costs *'is not entitled to have regard to its substantive findings on the subject matter of its terms of reference'*.

29. Fennelly J. was also mindful of the particular burden that individuals may face when engaging with a tribunal. He observed (at para. 358):

"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."

30. Another authority opened to the Tribunal was *Fox v Mahon & Ors* [2014] IEHC 397 in which the High Court considered the applicant's challenge to the respondent tribunal's decision against him on costs. The applicant contended that the tribunal had relied, impermissibly, on substantive findings when determining the issue of costs. In its ruling on costs, the tribunal found that the applicant had not co-operated with it in relation to certain matters identified in its report, and that he had knowingly given false and misleading evidence.

31. The High Court (Baker J.) considered that the decision to award costs must be separated from the substantive decisions of a tribunal. A two-stage process was involved. Baker J. stressed that the Tribunal must have regard to whether false or misleading information was *knowingly* given to the Tribunal. She held (at para. 11):

> *"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."*

32. Baker J. reviewed the analysis carried out by the tribunal noting, (at para. 17), that it had made a number of express findings in its final report in relation to Mr Fox. These were that his emphatic and absolute denials of the evidence of Mr Dunlop were falsely given; that he was motivated in the giving of this evidence by a desire to frustrate or hinder the tribunal in its inquiries; and, that the applicant had not co-operated with the tribunal in the manner envisaged by the statutory provisions. The Court held (at para. 18) that:

> *"The Tribunal in assessing the conduct of a witness for the purpose of its deliberation must fairly assess his conduct before the Tribunal, and to the degree of pre and post hearing engagement had with a person. It must confine itself to that conduct and not to its substantive finding that Mr. Fox did receive corrupt payments."*

Baker J. was satisfied that the tribunal's conclusions were not based on its substantive findings. They were based, rather, on appropriate considerations for the purposes of section 6.

33. That same distinction which must be drawn between the substantive findings of a tribunal and those relevant to an award of costs was considered again in *Lowry v Moriarty*

[2018] IECA 66 (*'Lowry'*). The appellant had been a witness before the Moriarity Tribunal which had made findings that were critical of Mr Lowry. Following his application for his costs, the tribunal identified 15 grounds on which it considered that he had either failed to co-operate with it or had knowingly misled it. In its ruling, the tribunal concluded that Mr Lowry's costs were to be reduced by two thirds. His application for judicial review was dismissed by the High Court.

34. On appeal, Ryan P. held (at para. 74) that whilst the tribunal's findings of non-cooperation were well founded, its decision on costs was not, as it had not been based on *'a rational mode of calculation'*. As the appellant's rights were directly affected, the failure to give him an opportunity to dissuade the tribunal on its proposed costs ruling was in breach of fair procedures.

35. Of note in *Lowry* was the Court of Appeal's emphasis on the requirement for a tribunal to give notice of potential findings both in respect of non-cooperation and in terms of its possible consequences for costs. It found that what may have been fair in respect of the factual assessments contained in the tribunal's report, will not, necessarily, be appropriate in the context of applications for costs. The tribunal had given parties, including Mr Lowry, notice of its draft substantive conclusions which it was proposing to reach in light of the evidence, and it had invited such parties to respond. The Court of Appeal noted that the process adopted by the Moriarty Tribunal represented a very high level of consultation in advance of the publication of its report and had cleared the threshold of fair procedures by a substantial margin. The position in respect of costs, however, was different. Ryan P. stated (at para. 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."*

36. The Court of Appeal emphasised that the processes for dealing with costs and with substantive matters were separate and distinct. In coming to its conclusion, Ryan P. observed that it was important to recognise the distinction between the determinations of the tribunal on substantive matters, and on the adjectival matters that arise, subsequently, in relation to costs, stating (at para. 58) that *'we have two separate processes that should not be either conflated or confused.'*

37. Finally, consideration must be given to *Harrison v Charleton* [2022] IECA 260 (*'Harrison'*) on which reliance was placed by both the Minister and the Defence Forces in suggesting that the questions posed by the Tribunal should be answered in the negative. The applicant in *Harrison* sought to quash a costs order that had been made by the Disclosures Tribunal. Mr Harrison claimed, *inter alia*, that the costs decision was based, incorrectly, on the tribunal's substantive findings. The High Court (Heslin J.) had dismissed the application for judicial review, being satisfied (at para. 142) that the costs decision was *'plainly one taken in accordance with the respondent's powers under s.6 of the 1979 Act'.*

38. Mr Harrison appealed. He contended that the tribunal had erred in taking into account its substantive findings because reference was made to its report in its decision on costs. He argued that the tribunal had, impermissibly, drawn inferences from the report regarding his conduct and contended that there was no finding by the tribunal that he had *'knowingly'* given false and misleading evidence.

39. The Court of Appeal reviewed the relevant authorities and set out (at para. 82) the nine principles that it considered could be distilled therefrom ('the *Harrison* principles'). These are:

> *"(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 finds, 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."

40. The Court of Appeal observed that the tribunal had resoundingly rejected and condemned certain allegations made by the appellant as being '*entirely without validity*'. It noted (at para. 107) that the findings of the tribunal as to the appellant's conduct which were relied upon in the costs decision, included express findings that he had persisted in making damaging and hurtful allegations against individuals '*knowing "that they were untrue"*'. The Court referenced (at para. 112) the language used by the tribunal in describing appellant's evidence observing that it was manifest from the terms used, that the tribunal did not consider that he had given his evidence on the basis of a sincere but mistaken view of the position.

41. The Court of Appeal agreed (at para. 115) with the High Court that the findings of the tribunal were, undoubtedly, findings to the effect that the applicant knew that he was giving false or misleading information and that he had deliberately adduced false evidence. To knowingly give false and misleading information was not to co-operate. It was satisfied that:

> "[. . .] *the respondent did not simply prefer evidence given by others to that which was given by the applicant. It was not a situation where the applicant was found to be sincere, even if sincerely wrong.* [. . .] *Rather, the findings of the Tribunal — including of deceit, evasion, a tailoring of evidence and a shifting of position to suit the applicant's purposes — are findings which relate to active, conscious and knowing conduct on the part of the applicant, insofar as his engagement with the Tribunal was concerned."*

42. The Court of Appeal held that the tribunal, in referencing its report had not relied on substantive findings when deciding the question of costs but had relied on its findings as to the conduct of the appellant that were to be properly understood in the context of the report as a whole. The appeal was dismissed on all grounds.

Submissions

43. On the two questions posed by the Tribunal in its Notice, four of the six represented parties contended that both questions should be answered in the affirmative. Representing those four parties were: Coleman Legal LLP on behalf of 115

Defence Forces Personnel (former and serving); Sean Costello Solicitors on behalf of the witness 2LtB; Malcomson Law LLP on behalf of the 'Women of Honour' group and certain individuals; and O'Mara Geraghty McCourt Solicitors on behalf of Sergeant Rena Kennedy. It was their shared view that no legal impediment exists to the making of costs orders following the first module and that it would be appropriate for the Tribunal to do so.

44. The Minister acknowledged that costs are a matter for the Tribunal to determine in the exercise of its discretion. On behalf of the Defence Forces, it was suggested that for the Tribunal to proceed with costs order before substantive findings are made would risk breaching fair procedures. Both parties submitted that the questions posed by the Tribunal in its Notice should be answered in the negative.

45. I have considered, carefully, all relevant submissions, and what follows is but a synopsis thereof. Some submissions are addressed in more detail later in the Ruling.

In Support of Answering the Tribunal's Questions in the Affirmative

46. In support of the position that the Tribunal enjoys the power to make findings as to conduct at the conclusion of the first module and in advance of the provision of its Report, it was contended by Coleman Legal LLP that section 6 does not restrict the making of a costs order to a particular point in time. If the Oireachtas had intended to do so, it would have said so. A modular approach to costs is consistent with balancing the right of parties who have been granted representation to have their costs paid, and the right of the public in ensuring that costs are not awarded to those who have failed to co-operate. A modular approach does not require the Tribunal to make any substantive findings on the matters being investigated. A finding that a witness who gave evidence in the first module had co-operated with and provided assistance to the Tribunal is a finding as to conduct only.

47. In a similar vein Sean Costello Solicitors contended that the entitlement to costs turns on a party's conduct towards the Tribunal rather than on any findings about the underlying allegations being examined by the Tribunal. *Goodman International* confirms that costs cannot depend on findings concerning the subject matter of the inquiry. The relevant findings are those that relate to the conduct of parties. A party's costs may be

reduced or withheld on the basis of non-cooperation. Sean Costello Solicitors submitted that the statutory test under section 6 of the Act can be distilled down to an assessment of co-operation with the Tribunal, assistance provided thereto, and whether false or misleading information was knowingly given. Section 6 does not require findings relevant to costs to be contained in either a final or an interim report. Therefore, the Tribunal is entitled to determine costs on that basis and in advance of a report on substantive matters. Malcomson Law submitted that there was no reason, in principle, why findings as to conduct must await the Report in circumstances where the Tribunal can assess the conduct of a party for the relevant period in advance thereof.

48. On behalf of its 115 Defence Forces personnel, Coleman Legal LLP advanced the view that the relevant conduct upon which an award of costs may be based includes a party's co-operation with the Tribunal during its private investigative phase. A party who provided a statement, attended for interview and assisted the Tribunal during the investigative phase, it was said, displayed a discrete and complete type of conduct capable of being assessed, independently, of whether that party testifies at public hearings. It would be unfair to refuse to allow a party to recover its costs until after the Report has been completed. Similar observations were made by Sean Costello Solicitors and O'Mara Geraghty McCourt Solicitors on behalf of their respective clients. In circumstances where it is clear that the first module is discrete and the witnesses who testified will not be required to give further evidence in a future module, then costs can be determined. The relevant issue for a determination on costs was a witness's conduct and co-operation with the Tribunal. O'Mara Geraghty McCourt Solicitors argued that if there were to be a challenge to evidence, one would expect that it would be made during the module in which the evidence was given.

49. It was emphasised by Coleman Legal LLP that the Tribunal requires the assistance and co-operation of persons, like its clients, in order to discharge its mandate. These persons are entitled to have their costs paid in a timely manner as otherwise they do not enjoy equality or fairness. In this regard, it was submitted that those being investigated have *their* costs paid in a timely manner irrespective of their level of cooperation. Malcomson Law LLP contended that modular costs would not eliminate the representation difficulties faced by parties who require day to day funding. Having to

wait for the Tribunal's Report before having their costs discharged creates inequality of treatment.

50. All four represented parties agreed that it would be appropriate for the Tribunal to proceed to make costs orders on a modular basis and in advance of its Report. Coleman Legal LLP contended that to defer the matter of costs in respect of the first module creates unnecessary administrative difficulty and is inconsistent with the sound management of what is a complex and lengthy inquiry. Justice and equity strongly favour addressing the question of costs at the earliest opportunity. Supporting that view, Sean Costello Solicitors pointed out that Fennelly J. in *Murphy v Flood* had said that the ordinary presumption favouring reimbursement applies because individuals who assist tribunals often incur substantial legal expense while serving the public interest. Malcomson Law LLP submitted that parties who have co-operated with the first module may face a significant delay if costs could only be considered after the Tribunal's Report. O'Mara Geraghty McCourt Solicitors took the view that there was no legal impediment in either the case law or the 1979 Act preventing the Tribunal from making interim costs orders. Accordingly, it was said, that the Tribunal has the power to determine applications for interim costs in respect of represented witnesses at the conclusion of the first module and that it should proceed to do so.

In Support of Answering the Tribunal's Questions in the Negative

51. The contention was made on behalf of the Chief of Staff that it would be '*impermissible*' for the Tribunal to make findings, including findings as to conduct, at the conclusion of the first module and in advance of the Tribunal's Report. To do so, it was said, could create risks for the Tribunal's work.

52. A tribunal, it was submitted, has no inherent power to award costs and any such power is derived solely from section 6(1) of the 1979 Act. That statutory provision allows costs orders to be made where the Tribunal, having regard to its '*findings*' and '*all other relevant matters*', considers it equitable to do so. The Tribunal's power in relation to costs must be exercised *'only after substantive findings have been delivered'.*

53. Central to the focus of the Defence Forces oral submissions was the Supreme Court's statement in *Lawlor* (at p. 188). The Court stated as follows:

> *"[51] 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. It is clear from the decision of Laffoy J. in Goodman v Minister for Finance [1999] 3 I.R. 356 that a tribunal of inquiry has no power to make an order for costs other than in those circumstances. As was stated by Laffoy J. in that case* (at p. 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."*

54. With regard to the funding of representation, it was submitted that the '*equality of arms*' principle is not applicable to the work of a tribunal. In this regard, reliance was placed on the following extract from the Supreme Court judgment in *Lawlor*:

> *"[54] What the case law does establish, in the context of the criminal law, is the right to be provided with legal representation for accused persons in criminal cases or for persons whose liberty is otherwise at stake* [...]
>
> *[55] In the present case the proceedings sought to be impugned are not criminal proceedings nor are they proceedings which determine any rights of any parties. While particular reliance was placed by the applicant on the decision of the European Court of Human Rights in Steel & Morris v. United Kingdom (2005) 41 E.H.R.R. 22, the court is satisfied that that case has no application here. The case was concerned with the right to a fair trial under Article 6.1 of the Convention and all the comments of the court must be understood in the context of that right."*

55. The submission on behalf of the Chief of Staff also pointed to the *dicta* of Baker J. in *Fox v Mahon* in support of the contention that substantive findings and costs

determinations are separate and distinct decision-making processes. In determining costs, the Tribunal *'must take a view as to the truth of the evidence and as to the intention or knowledge of the person giving that evidence'.* The same distinction between the two processes was discussed in *Lowry* and this was also referenced by Counsel on behalf of the Defence Forces. *Harrison,* and particularly the fifth principle thereof, was said to be authority for the proposition that it is necessary for substantive findings to have been made prior to a determination on costs.

56. Persons facing findings of non-cooperation must receive reasonable notice thereof and this, it was said, may be a matter for post-hearing engagement. The Tribunal ought to have regard to this when considering conduct relevant to costs. Making costs orders in advance of the final Report would risk breaching fair procedures because the Tribunal could not have considered all of a relevant party's *'pre and post-hearing engagement'* with the Tribunal. The Court of Appeal in *Lowry* had emphasised the need for a party to be given notice of both potential findings of non-cooperation and of their possible consequences for costs. Further support for this proposition was to be found in *Harrison v Charleton.*

57. It was submitted that the Tribunal cannot properly assess co-operation or a party's overall engagement until all the evidence has been considered and substantive findings have been made in its final Report. Making findings as to conduct or determining applications for interim costs orders after the first module, would depart from the sequence required by Section 6(1).

58. The Minister, whilst acknowledging that, ultimately, it was a matter for the Tribunal, the Minister advanced the proposition that findings as to conduct should only be made after the Tribunal has made its findings and furnished its Report to the Taoiseach. The Minister's submission, it was stressed, was made as a response to the Tribunal's invitation and solely from the position of being a party before it to whom legal representation had been granted.

59. The primary focus of the first module concerned term of reference (iv) though some elements in that module may be relevant to other terms of reference. Evidence heard in future modules may in turn be relevant to matters raised in the first module; and the Tribunal intends to provide a Report to the Taoiseach only after the completion of all

its work. Therefore, it was said, the first module was not *'sealed off'* in a discrete compartment and the Tribunal will not be publishing an interim report on this first module.

60. With reference to *K. Security Ltd & Another v Ireland & Attorney General* (High Court, 15 July 1977), the Minister submitted that prior to 1979, there was no power under the original Tribunals of Inquiry (Evidence) Act 1921 for a tribunal to make an order for costs. Since 1979, section 6(1) of 1979 Act gives the Tribunal a discretionary power to award all, some, or none of a party's costs and, in some circumstances, to order a party to pay part of costs of the Tribunal or of any other party. *Goodman v Minister for Finance* and *McBrearty v Morris* demonstrate that section 6 contains the Tribunal's sole power to award costs. Peart J.'s conclusion in *McBrearty* confirmed that the legislation does not permit a tribunal to assist parties with costs prior to making findings. The Minister also argued that section 6 requires that orders for costs can only be made once it has made its findings *and* reported on those findings.

61. Three elements formed part of the *'architecture'* that ought to be considered: the1921 Act, the instrument of appointment, and section 6 itself. Understood correctly, that sets out the sequence of events to be followed and prescribes the route, the method, the timing and the sequence of the steps that, traditionally, have been taken by every tribunal of inquiry. It is only on the delivery of the Report that the power of section 6 of the 1979 Act is triggered. Therefore, it was said that *'the findings are consequent to a report when the Tribunal has concluded its investigation of the matters specified'.*

62. A helpful overview of the case law on the meaning of the phrase *'findings of the tribunal'* was provided. The Court of Appeal in *Harrison* described (at para. 64) Geoghegan J's observations in *Haughey v Moriarty* (at p. 14) as being *'of significance'.* The Court of Appeal noted that Denham J. had approved of them. It said:

> *"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 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."*

63. Based on the case law, and in particular, on the *Harrison* principles, there remains the possibility according to the Minister that there might be '*other relevant factors*' that could justify denying persons who had fully co-operated with the Tribunal some or all of their costs. The express wording of section 6(1) requires that the Tribunal must be satisfied, at the time of making the costs orders, what those (if any) '*other relevant matters*' are, and that these matters can only be known once the Tribunal has made its findings and a report has been produced.

64. The Tribunal's Opening Statement at a sitting on 16 June 2025 had reminded parties that representation does not automatically entitle a party to costs. Furthermore, the Tribunal's published Procedures provide that costs applications may be made following submission of the Tribunal's final report.

65. The approach mooted by the Tribunal of making interim costs orders before reporting on its (substantive) findings would be *'a novel course of action'* and one which has not been the subject of judicial approval, to date. In both the Disclosures Tribunal and the Morris Tribunal awards of costs were not made until an interim report was furnished which was conclusive of the investigation into those particular issues.

66. On the second question posed by the Tribunal in its Notice, both the Defence Forces and the Minister for Defence adopted a similar position. The Defence Forces considered that it would not be appropriate for the Tribunal 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 as set out in its final Report.

67. On behalf of the Minister, it was submitted that this was, ultimately, a matter for the Tribunal. However, in her view, the law suggests that orders as to costs can only be made by the Tribunal after it has made its findings, reported on those findings, and considered all other relevant matters.

Decision

On the Scope of a Tribunal's Power in Relation to Costs

68. The starting point as to whether this Tribunal of Inquiry, in advance of the publication of its Report to the Taoiseach on the substantive matters under consideration, may, as a matter of law, make findings as to the co-operation and conduct of parties who testified during the first module for the purpose of entertaining applications for costs is, of course, section 6(1) of the 1979 Act (as amended).

69. The power conferred by that section may be exercised when the Tribunal is of the opinion that there are sufficient reasons rendering it equitable to order that the whole or part of the legal costs of any person appearing before it be paid out of public funds. It is clear that, in arriving at such an opinion, the Tribunal is not at large and is obliged to have regard to '*the findings of the tribunal*' and to '*all other relevant matters*'.

70. Particular emphasis was placed by the Defence Forces on the rejection in *Lawlor* of a contention advanced to the effect that a tribunal enjoys an inherent jurisdiction to make orders as to costs. However, the Supreme Court in *Lawlor* confirmed but went no further than finding that the sole power to award costs derives from section 6, and that such power only arises where '*findings*' have actually been made by a tribunal. The Tribunal accepts that this represents a correct statement of the law and recognises that it has no jurisdiction in relation to costs apart from that which is provided for in the relevant legislative provision.

The Legislation: On what Constitutes 'Findings' for the Purpose of Section 6

71. The '*findings of the tribunal*' and '*other relevant matters*' are important factors to which regard must be had when a tribunal is making cost orders under section 6. On behalf of the Defence Forces and of the Minister, it was said, that the Tribunal must be satisfied at the time of making such orders what, if any, those '*other relevant matters*' are. These '*matters*', it was argued, can only be known once the Tribunal has made its findings and a Report has been produced. On that basis, it was said that substantive findings should be made by the Tribunal before it proceeds to determine applications for costs. In

the Minister's view, it would be an *'inappropriate and premature step to reverse what has been understood to be the normal course of events'* by determining applications for costs before substantive findings have been made.

72. The Tribunal recalls that in *Murphy v Flood* Fennelly J. held (at para. 365) that both the term *'findings'* and the term *'other relevant matters'* are qualified by the words in parentheses in section 6. Those interpolated words refer to four discrete matters: the terms of the resolution; a failure to co-operate with a tribunal, a failure to provide assistance to a tribunal, and the giving, knowingly, of false or misleading information to a tribunal.

73. It is instructive, in my view, that Fennelly J. gave careful consideration to whether the 1997 amendment changed earlier judicial interpretation of the term *'findings'* in section 6(1). He recalled that the Supreme Court in *Goodman International* (McCarthy J.) had held that *'the findings of the Tribunal'* should be read to mean findings in respect of the conduct of the parties. Fennelly J. then proceeded to consider whether the words interpolated in parentheses had affected that principle. He noted that the defendants in *Goodman International* had submitted that the amendment made it clear that substantive findings may be taken into account. Fennelly J. considered the significance of this suggested interpretation and he rejected it. He did so on the basis that to reach such a conclusion would constitute an invasion by a tribunal of the judicial function and a tribunal, he recalled (at para. 363), was limited to making findings of fact that were *'sterile of legal effect'*. His analysis (at paras. 364 and 365) requires careful scrutiny. He stated:

> *"[364] If it be the case that the amendment to s. 6(1) has the effect of investing in the Tribunal the power to refuse to award costs by reason of the substantive findings it has made, it is difficult to see how its findings could any longer be described as being devoid of legal consequence, made in vacuo or sterile. [. . .] It is incumbent on this court to address, only in the last resort, a question as to the constitutional validity of a statute. To that end, the court must, so far as the words used by the legislature so permit, interpret those words so that they do not conflict with the Constitution. In the present case, that task is simplified by the availability of the judgments in Goodman International v Mr. Justice Hamilton [1992] 2 I.R. 542. The link created by s. 6(1) of the Act of 1979, as interpreted by the Tribunal and as upheld by Smyth J., appears to*

empower the Tribunal to penalise a witness before it in respect of costs by reason of its substantive findings. Clearly, this court, when delivering judgment in that case did not contemplate any such possibility. The dictum of McCarthy J. avoids conferring that power on the Tribunal. [. . .]

[365] 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. [. . .] 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."

74. Moreover, Denham J. expressly held that a tribunal may not have regard to its substantive findings when deciding on the issue of costs because to do so would import a liability on a party which is tantamount to administering justice.

75. The submission that the Tribunal cannot know what, if any, '*other relevant matters*' exist until after substantive findings have been made and a Report produced, fails to take account of the fact that, whatever those '*other relevant matters*' are, they cannot, for the purposes of determining a costs application, be the Tribunal's substantive findings. For that reason, I find the argument that the Tribunal must wait until its substantive findings have been made and its Report has been produced *before* considering applications for costs, to be less than persuasive.

76. Both the Defence Forces and the Minister referred the Tribunal to the fifth principle in *Harrison* as a further reason for submitting that the Tribunal's substantive findings must be made before it can make findings as to conduct.

77. The judgment in *Harrison* makes clear (at para. 82) that the fifth principle must be read in light of the second and this point is key to the matters here under consideration. Principle (2) provides that:

> *"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."*

Principle (5) is articulated thus:

> *"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."*

78. Of particular note is the fact that the first sentence of Principle (5) contains the important phrase that a finding on a failure to co-operate '*may flow in part from the Tribunal's substantive findings*'. The second sentence also contains an important phrase noting, as it does, that in determining whether a person gave false or misleading evidence, the tribunal '*may have regard to substantive findings where they are relevant to that issue'.* Both sentences are clearly expressed in *permissive* rather than in mandatory terms. Moreover, they must be seen in light of the starting point identified in Principle (2). It might be said that both sentences are no more than an expression of the obvious reality that some findings by their nature (such as a finding that certain evidence is not to be accepted) may be relevant both to the substantive issues before the Tribunal and to an entitlement to costs. The important point to note, however, is that there is nothing in the *Harrison* judgment, or specifically in Principle (5), that *requires* a tribunal to make its substantive findings before the findings that are relevant to costs are made.

79. I see no basis for concluding that *Harrison* in any way calls into question the settled jurisprudence of the Supreme Court on the nature of the *'findings'* required under section 6. A tribunal '*in making a decision as to whether to award costs is not entitled to have*

regard to its substantive findings on the subject matter of its terms of reference' (Fennelly J. at para. 370 of *Murphy v Flood*). The express requirement that a tribunal shall have regard to *'all other relevant matters'* does not detract from the fundamental centrality of that principle. That a finding on conduct or co-operation *'may flow from'* a substantive finding does not mean that it is the substantive finding itself that forms the basis for a decision on costs. A tribunal is not entitled to rely upon substantive findings at any point in the separate and discrete process applicable to determinations in respect of costs. Accordingly, I am not convinced that the relevant legislative provision as interpreted by the courts *requires* that substantive findings be made before findings as to conduct can be reached. What constitutes *'findings'* for the purposes of section 6 remains clear.

80. The foregoing analysis of section 6 leads me to the following conclusion. If, upon hearing an application for costs, the Tribunal can find:

(i) that the represented applicant had given evidence during the first module in a co-operative and truthful manner; and

(ii) that there had been no failure the inquiry

and if, having regard to *those* findings and to the fact that

(i) the notable features of *this* Tribunal (see para. 8 above) have been considered as *'other relevant matters'*; and

(ii) that there are no other relevant matters to which regard should be had;

and if the Tribunal is of the opinion there are sufficient reasons rendering it equitable to award that witness his or her costs—then, it seems to me, that the statutory requirements provided for in section 6(1) have been fulfilled. Indeed, once those requirements are fulfilled, the Tribunal may of its *'own motion'* order that costs (or some part thereof) be awarded to such a witness.

81. If, on the other hand, upon hearing an application for costs, it appears to the Tribunal that a witness, during the first module, gave false evidence relevant both to a substantive issue under consideration and to the question of whether that witness co-operated with the Tribunal, it may be appropriate, in such an instance, to defer a ruling either on all or on a portion of the costs until a final determination on the appropriate

characterisation of the evidence and, in particular, on whether it may be, properly, classified as false.

82. If the Tribunal were to approach the issue of interim costs orders in this way, the interests of represented parties who have assisted the Tribunal would be balanced, appropriately, with the public's right to be protected from a situation where all represented parties would have their costs discharged from public funds irrespective of whether they had co-operated or not or had knowingly given false or misleading information to the Tribunal. In that way, the Tribunal would be striking the balance at the point intended by the legislature (see *McBrearty*, para. 90).

83. Leaving the question of how the legislation (section 6) ought, properly, to be interpreted, I now turn to the Tribunal's Terms of Reference.

The Terms of Reference: On the Sequence, if any, to be Followed

84. A key feature of the oral submissions made on behalf of the Minister was to the effect that the '*architecture*' of the Acts and the Terms of Reference, when properly understood, require that cost findings be made *after* substantive findings. The architecture was said to have three elements—the first being the 1921 Act which provides for the resolution of the Houses, the second being the Terms of Reference, and the third being section 6 itself. Whilst that, in itself, may be uncontroversial, the question is whether the analysis of that architecture points to the conclusion suggested.

85. Counsel for the Minister pointed out that the governing legislation does not provide for the reporting function of a tribunal. That function, together with the question of to whom the report should be furnished, are laid down by the Terms of Reference. In oral submissions it was said that the '*architecture*' of the Acts '*triggers*' the application of section 6, and that the Tribunal's Report triggers the exercise of the section 6 power. Thus, the argument goes, section 6 was not to be construed on its own without reference to the statutory *'sequence'* to be followed. That sequence, it was said, is to be found in S.I. 304/2024 where at paragraph (II) it provides that the Tribunal is to '*inquire into, report and make [. . .] findings and recommendations*'. On this basis, it was submitted '*the findings*

are consequent to a report when the Tribunal has concluded its investigation of the matters specified'.

86. I am not persuaded. First, the Terms of Reference themselves make no reference to a prescribed sequence to be followed. Second, the Minister's analysis fails to recognise that the '*findings*' referenced in the '*sequencing*' paragraph are expressly clarified at the end of the same sentence as being findings '*on the definite matters of urgent public importance specified in the resolution*'. The case law establishes these are, precisely, the findings upon which the Tribunal may *not* base its determinations in respect of costs. Moreover, it is clear from the rulings of other tribunals that section 6 findings have been made before they had concluded their investigations of the matters within their remit.

87. If the Minister's submission on the required sequence said to be found in the Terms of Reference were correct, that would seem to suggest that the Tribunal would be precluded from making any rulings on costs on *any* modular basis, such as, had occurred in the Disclosures Tribunal and the Morris Tribunal. Whilst the Terms of Reference do not explicitly mandate interim reports, it seems doubtful that they could be construed as precluding them. Moreover, if a strict adherence to the sequence of events identified in the Terms of Reference were required, it would suggest that matters relating to costs under paragraph (III) would have to be determined before the matters referenced in any subsequent paragraphs could occur. The Taoiseach would have to wait until costs determinations had concluded before he could apply to the High Court under paragraph (V) for directions regarding publication of the Report or arrange to have it laid before both Houses of the Oireachtas.

The Case Law: On What the Courts Require

88. On behalf of the Minister, it was submitted that the case law, at present, requires that '*findings*' must (original emphasis) be made in a report before the Tribunal's section 6 jurisdiction is triggered. In this regard, several cases were opened which, it was said, demonstrated that the issue of costs orders is not only a separate process but one which is to be carried out '*in the aftermath*' of the submission of a tribunal's report. It is appropriate that this submission be addressed, specifically, in this Ruling.

89. There are, undoubtedly, several statements in the case law which refer to orders for costs being made '*at the end of the Tribunal*' (see, for example, *Lowry*, paras. 58, 60; *Murphy v Flood*, para. 72; and *Haughey v Moriarty* at p. 14), or, at least, after substantive findings have been made (see *Harrison v Charleton*, paras. 118-122). These references are set out in some detail in the Minister's written submissions, and the Defence Forces concurred, broadly, with the contentions advanced in relation thereto.

90. It might be said that statements made in the cases cited are explicable, simply, by the fact that, in the tribunals under consideration, the issues that arose in relation to costs were, in fact, being dealt with by the courts *at the end of* the respective inquiries or after substantive findings had been reached. In *Lowry*, for example, Ryan P. drew a distinction between the Tribunal's substantive findings in its report and the separate process regarding costs and stated, as a matter of fact in that case, (at para. 60) that the '*process dealing with costs is a separate matter that was initiated following the publication of this part of the report*'. The statements made in the cases which were cited may be viewed as no more than statements of what actually occurred in each of those cases but there is no suggestion in any of those cases that there is a mandatory sequential process that a tribunal of inquiry must follow.

91. Furthermore, in the Disclosures Inquiry, Mr Justice Charleton did deal with costs on a modular basis and, thus, before '*the end of the Tribunal*' and he did so without any condemnation on that issue from the Court of Appeal. The Morris Tribunal, likewise, made costs orders before '*the end of the inquiry*'. The High Court in *McBrearty* regarded the tribunal's proposed modular approach as a protection afforded to the applicant. I accept that in most (but not all) instances, a report on a tribunal's investigation, or some aspect thereof, had been submitted before costs orders were made. However, the substantive findings contained in those reports could not have been the basis for determinations as to costs. Accordingly, the fact that in the cases cited a particular tribunal *had* produced a report (whether interim or final) at the time when it made a ruling on costs, seems incidental to the established principle that such a ruling could not be based upon substantive findings and that represented parties are entitled, absent findings of non-cooperation, to have their cost paid.

92. It seems, therefore, that the core principle emerging from the case law is that the consideration of costs and the consideration of the substantive issues are two separate processes, subject to the potential overlap identified in Principle (5) in *Harrison* rather than laying down some general requirement that the cost process must, in all cases, follow subsequent to the substantive findings process.

The First Module: Findings as to Cooperation and Conduct of Witnesses

93. The key notable features of this Tribunal, its specific Terms of Reference and the nature of the evidence that was heard during the first module of public hearings have been identified at paragraph 8 above. It is worth emphasising that this Ruling is being made in the specific context that pertains to this inquiry and in the very particular circumstances that prevailed during the first module of its public hearings.

94. The Tribunal cannot and will not make any findings in relation to the truth or otherwise of the harrowing allegations of abuse which were made, and denied, during the first module. None of that evidence falls to be determined. Further, there is nothing in the evidence yet to be heard by the Tribunal which can be said to bear upon the co-operation and conduct of the witnesses in respect of their evidence during that module. As O'Mara Geraghty McCourt Solicitors pointed out, if there were to be a challenge to such evidence, one would expect that it would have been made at the time it was given. Almost all of those witnesses will have no further engagement with this inquiry. In these circumstances it seems to me that the issues of co-operation and assistance provided by the parties concerned are, for the most part, relatively straightforward.

Conflicting Testimony

95. Insofar as any conflicting testimony on matters upon which I will make findings, bears upon the issue of co-operation by the relevant parties, I accept that those disputes would have to be resolved before a final order for costs could be contemplated and, in this regard, the fifth of the *Harrison* principles may be engaged. For example, the Tribunal heard conflicting evidence on whether, if at all, recruits and apprentices received training

on the complaints processes. On this point, the evidence ranged from there being no training at all, to there being some rudimentary training, to there being some quite detailed and regular training. Even if I were to prefer the evidence of one witness over another on the specific issue of training, I would have to be satisfied, for the purpose of a costs application, that the rejected evidence was not just incorrect information, but that it was tendered to the Tribunal by a given witness in the knowledge that it was false.

96. When it comes to findings in the Tribunal's Report on a disputed issue like training, it may be appropriate that the resolution of such an issue be approached at a relatively high level. In this regard, I would have to take cognisance of the fact that the evidence given by many of the witnesses concerned events some 36 years ago and that some of the witnesses acknowledged that training given may well have gone over the heads of many young recruits. Thus, even *if* the Tribunal were to prefer evidence, for example, that some training was given, it might also be willing to conclude that those who testified that no training was given, had not deliberately given false or misleading evidence. Honest mistake or the frailty of memory due to the passage of time may account for same.

97. Apart from the matters that I have identified as key notable features of the first module of *this* Tribunal, I cannot contemplate '*any other relevant matters*' which might be said to bear upon findings I can make as to the conduct or co-operation of a witness who testified therein and no such other relevant matters have been identified to me by the parties.

98. The conclusion suggested by the foregoing analysis of the legislation, the Terms of Reference and the case law is that there is no prohibition on a tribunal making findings as to conduct and co-operation at the end of a module and in advance of its Report where it is in a position to do so. This Tribunal has not been referred to any authority that stipulates a legal requirement that it must refrain from so doing.

99. The Tribunal, therefore, concludes that there is no legal impediment to it making '*findings*' as to co-operation and conduct in respect of the relevant parties at the end of the first module and in advance of the production of its Report.

On Whether it is Appropriate for the Tribunal to Make Costs Orders on the Completion of the First Module

100. The question which now arises is whether there are sufficient reasons rendering it equitable for this Tribunal to make orders for costs at the end of the first module where it is in a position to make findings of conduct and co-operation in respect of the witnesses who participated therein.

101. Before turning to that matter, however, it is necessary to clarify that this Ruling is not concerned with the question of advance funding or ongoing payments to represented parties who participate in the inquiry. The Ruling is concerned only with whether, as a matter of law, costs orders based on findings as to conduct can be made *after* a witness has given evidence during the course of the first module and before the substantive matters under inquiry are determined. If, as a matter of law, it may do so, then thought should now turn to whether it would be appropriate for the Tribunal so to do.

Reasons Rendering it Equitable to do so

102. With that clarification made, I now turn to consider whether, if at all, sufficient reasons exist rendering it equitable for the Tribunal to make orders for costs on the completion of the first module of public hearings. Four of the six parties who made written and oral submissions, advanced reasons for the Tribunal's consideration in this regard.

103. One of the first reasons rendering it equitable for the Tribunal to make costs orders was the contention that the functions of the Tribunal would be impossible to discharge without the voluntary engagement of witnesses who had come forward to testify. In the absence of testimony, there could be no tribunal. The primary purpose of any tribunal of inquiry is to establish facts and by so doing provide information to improve public administration. Tribunals are thus established to serve only the public interest. It is, undoubtedly, in the public interest that people in possession of relevant information come forward to assist and co-operate with an inquiry into matters of urgent public importance. In oral submissions, Mr Gordon, SC, on behalf of his 115 clients, stated as follows:

"So, what do we see here? We see a tribunal that, in effect, cannot function without the cooperation of people like my clients, without their voluntary engagement with the Tribunal. This is not a tribunal that could work on any coercive basis. The entire premise of the Tribunal is to the contrary. And that's a significant factor among the factors that the Tribunal must bear in mind when looking at what to do under Section 6. There wouldn't be a tribunal if my clients and the others represented here today didn't come forward. And they came forward, confident that the Government had set up a forum which would fairly and impartially look at these important issues." (Transcript, Day 23 at line 25, page 93 – line 16, page 94).

104. There is obvious merit to this submission. I acknowledge that the Tribunal would be unable to carry out its functions unless witnesses were willing to assist it and to give their sworn testimony in public. I also recognise that, for many of those who gave evidence during the first module, the decision to come forward was both a brave and a difficult one and that their co-operation was fundamental to the progress of the inquiry.

105. A second reason rendering it equitable for the Tribunal to make costs orders at the end of the first module, concerned the burden caused by delay. An important factor in any consideration of costs is the well-established principle that, ordinarily, *'any party permitted to be represented at an inquiry should have their costs paid out of public funds'* (see para. 25 above). That presumption of an entitlement to costs, absent non-cooperation, is the starting point in any consideration of *'equitable reasons'*. The personally demanding toll of testifying publicly about the matters traversed during the first module of hearings would be compounded, in my view, if the witnesses concerned were obliged to carry, until the end of the entire inquiry, the financial burden they incurred for so doing, particularly where I can discern no good reason for such delay.

106. To delay discharging, where such is possible, a presumptive entitlement to costs to a witness who has cooperated fully, and to do so without good reason, sails precariously close to being unfair. For some, the obligation to co-operate may have imposed greatly upon them and exposed them to substantial legal expense (see Fennelly J. at para. 29 above). It seems to me that there are intimations of inequity about obliging those parties to wait for some considerable time before any attention turns to alleviating the burden associated with costs. This is all the more so in circumstances where this

Tribunal is dealing with hundreds of potential witnesses in relation to multiple matters under inquiry over an unprecedent period of time. If the Tribunal is in a position, lawfully, to lift that apparent inequity then, to my mind, good reasons should exist before it should decline so to do.

107. A third reason rendering it equitable for the Tribunal to make costs orders at the end of the first module, concerns the efficiency of the Tribunal's work. The jurisprudence of the Superior Courts recognises that a grant of legal representation to a person benefits not just that individual or entity but assists the Tribunal itself in carrying out its functions and reporting to the Oireachtas as expeditiously as possible. As Denham J. noted, awarding costs to those who co-operate '*facilitate[s] the running of a tribunal*' (see para. 25 above). Peart J. in *McBrearty* made a similar point when he observed that the funding of representation was in the interest of the Tribunal itself (see para. 19 above). As the Tribunal serves the public interest, it should complete as much of its work as is possible at the point in time when it is in a position to do so. Making costs determinations, now, in respect of the first module would enable the Tribunal to expedite, generally, its overall workload by disposing of those matters at this point in time rather than deferring all costs applications to a later period.

108. Finally, the benefit conferred upon the Tribunal by grants of legal representation is available only where public interest lawyers, both solicitors and counsel, are willing to accept the financial burden placed upon them by representing co-operating parties who appear before the Tribunal. As Mr Gordon pointed out, some have undertaken this work, without payment, in order to ensure that their clients were properly represented before the Tribunal and, so that the Tribunal could properly discharge its mandate. Their public service, in this regard, should not, to my mind, be understated nor should their entitlement to recovery of costs be protracted into the future, without good and sufficient reason.

109. Having regard to the foregoing, I am satisfied that it is in the public interest, in the interests of fairness and equity, and in the interests of the efficiency of the Tribunal that applications for costs be determined in as timely a manner as is permitted by law. I am of the opinion that there are sufficient reasons rendering it equitable for the Tribunal to hear applications for orders that the whole or part of the costs of a person to whom

representation had been granted and who participated in the first module of public hearings be paid out of public funds.

Final Considerations

110. For the sake of completeness, I want to address some matters that were raised in submissions. The Tribunal was referred by Counsel for the Minister to its Opening Statement in its public sitting on 16 June 2025, in which it reminded parties that a grant of representation does not confer an automatic entitlement to an order for costs *'at the completion of its inquiry'*. That statement remains true, but it does not mean that the Tribunal is *obliged* to wait until the completion of its inquiry before making findings of co-operation and conduct sufficient to ground an award of costs in circumstances where it is in a position to do so. As has already been noted, both the *Morris Tribunal* and *Disclosures Tribunal* made such findings prior to the *'completion'* of their respective inquiries.

111. The Tribunal was also referred to paragraph 13 of its own Procedures which provides that costs applications may be made following submission of the Tribunal's final Report. When those Procedures were published at the outset of the inquiry, that was the position contemplated by the Tribunal at that point in time. The possibility of modular costs orders or, indeed, the equitable reasons for making them where possible, had not been canvassed before the Tribunal. A provision in similar terms was also to be found in the Procedures of the Disclosures Tribunal (para. 11.1) but that did not prevent costs applications being entertained by Charleton J. prior to the submission of that Tribunal's final Report.

112. In any event, it is important to recognise that a tribunal is not absolutely hide-bound by its own policies or procedures or by any rules or systems which it may have devised and *'quite rightly so'* according to Geoghegan J. in *O'Callaghan v Mahon* [2006] 2 I.R. 32, at para. 124. That is because, whilst a tribunal, undoubtedly, has a latitude which may not be available to a court of law, it is always bound to ensure, as far as possible, compliance with fair procedures and constitutional rights and obligations.

113. There is a presumption that the Oireachtas intended that the procedures, proceedings and discretions permitted by section 6(1) of the Act of 1997, will be conducted by the Tribunal in accordance with the principles of constitutional justice (*East Donegal* at p. 341). To make findings as to the conduct and co-operation of witnesses who participated in the first module and whose engagement with the Tribunal insofar as that evidence is concerned has ended, does not, in my view, encroach upon the constitutional rights of any third parties. Indeed, it treats those to whom an apparent unfairness attaches, in a fair and equitable manner. In this way, it strikes the appropriate balance set by the legislature between the public's right to have public funds disbursed, appropriately, and the interests of co-operating parties to whom representation has been granted to have their legal costs paid in circumstances where they have co-operated and assisted the Tribunal.

114. Recalling the notable features of the factual background against which this Ruling is made, it would be unfair to delay making appropriate costs orders in circumstances where nothing, but the passage of time, stands between those who have a presumptive entitlement to their costs and their actual recovery thereof. It is worth emphasising that the views and findings reached in this Ruling are made in the particular circumstances of this Tribunal and arise in the context of the factual background set out in paragraph 8 above. Its findings in respect of the co-operation and conduct of parties who participated in the first module of public hearings, can have no bearing on decisions of other tribunals that operate under different terms of reference.

Conclusion

115. Having concluded that this Tribunal may, in principle, make findings as to co-operation and conduct of parties who participated in the first module and that I may do so in advance of submitting a Report on the substantive matters under consideration, I am satisfied that I am in a position to formulate the requisite '*opinion*' required under section 6. Where the Tribunal is in a position to make relevant findings for the purposes of costs determinations and where it has considered all other relevant matters and where it is satisfied that sufficient reasons exist rendering it inequitable to make such costs determinations, then, in my view, it should exercise its discretion and proceed so to do.

Novel but Not Unique

116. On behalf of the Minister, it was suggested that if the Tribunal were to adopt such an approach, it would entail *'a novel course of action'* and one which has not been the subject of judicial approval, to date. The Minister is, undoubtedly, correct in this regard but, whilst novel, such a course would not be entirely unique. In adopting the proposed course of action, the Tribunal is reassured by the fact that this is not the first time a tribunal has made findings as to conduct and orders for costs at the end of a sub-module and in advance of the publication of any report.

117. A Special Report on *Tribunals of Inquiry* published several years ago records that, on at least one occasion, a tribunal Chairman did award costs to two parties at the conclusion of the hearing of a sub-module and prior to the publication of his report on the issue (see Special Report on *Tribunals of Inquiry* by John Buckley, Comptroller and Auditor General, December 2008).

118. Under the heading '*Establishing Entitlement to Costs*', the Report (at para. 2.40) states as follows:

> *"In general and irrespective of whether a party before a tribunal has been granted representation, a party is required to make application to the tribunal to have their entitlement to costs determined. This is usually carried out at the conclusion of the tribunal or following the completion of specific modules and the publication of a report thereon. In the case of the Morris Tribunal however, the Chairman appears to have adopted a different procedure in some later sub-modules of the Tribunal's inquiries. For instance in the sub-module dealing with the detention of suspects, the Chairman awarded costs to two parties at the conclusion of the hearing of the sub-module and prior to the publication of his report on the issue. He took this decision on account of their cooperation with the Tribunal."*

119. In 2008, the Morris Tribunal published its Sixth Report which concerned paragraphs (b), (d) and (f) of that tribunal's Terms of Reference. The Report concerned the *Detention of 'Suspects' Following the Death of the Late Richard Barron on the 14th of October 1996 and Related Detentions and Issues.* Chapter 17 of the Report addressed the question of costs. Mr Justice Morris set out the legal principles upon which the tribunal

made its orders for costs. He reviewed the provisions of section 6(1) of the Act and considered, in particular, a Consultation Paper on Public Inquiries which the Law Reform Commission ('LRC') had published in 2003. He noted that the LRC had argued that the major change effected by the 1997 amendment was to enable the Tribunal when exercising its discretion under section 6 to have regard to its findings on the substantive issues.

120. The Morris Tribunal found itself unable to accept that interpretation having regard to the ruling of the Supreme Court in *Goodman International.* It went on to consider, as the Court of Appeal did years later in *Harrison,* that in certain cases there may be an overlap between a tribunal's substantive findings and the possible impact of such findings on considerations as to conduct. He noted that a substantive finding of wrongdoing does not necessarily operate so as to deprive an applicant of the opportunity to have an award of costs made in his or her favour. In such a case, he observed that it was important to consider the extent to which an applicant had co-operated with the Tribunal by furnishing it with relevant documents in an understandable and accessible format and by furnishing it with all information in his or her knowledge, and by telling the whole truth to the Tribunal.

121. Of particular note for the purposes of this Ruling was the tribunal's account of its reasons for having previously made orders for costs in respect of two witnesses at the end of the sub-module in which their evidence was heard and before the report on that sub-module was produced. At paragraph 17.16 Mr Justice Morris stated as follows:

> *"I now set out the Tribunal's Ruling in respect of a number of the individuals who were legally represented before the Tribunal, having regard to the findings of fact which I have made. In this regard it should be noted that Mrs. Katrina Brolly has already been awarded full costs of her legal representation before the Tribunal. This order was made shortly after the conclusion of the hearing of the sub module concerning her arrest and detention. Mrs. Brolly was the first detainee to attend at the Tribunal and to tell her story. She did so in the anticipation that she would be cross-examined as being untruthful by those who wronged her. She gave her evidence honestly and with quiet dignity and courage. She co-operated fully with the Tribunal. In making this order, the Tribunal was complying with its undertaking that it would make orders for*

costs in respect of each of the sub modules as soon as possible. Mr. John Dooley was also awarded costs in respect of the same sub-module because of his co-operation and honesty. The Tribunal is now in a position to make orders for costs in respect of three of the other detainees who were legally represented, namely Ms. Edel Quinn, Mr. Mark Quinn and Mr. Seán Crossan."

122. What is clear from the foregoing is that the Morris Tribunal made its orders for costs once it was in a position to do so. It did not consider that, as a matter of law, it was required to wait until the publication of its report on the particular sub-module in question before awarding costs, where appropriate, to a number of witnesses.

123. In a similar vein, I am satisfied that, where I am in a position to do so, I am entitled to make orders for costs which takes account of the degree of co-operation of the witnesses who gave evidence during the first module of public hearings. Accordingly, adopting a course of action similar to the one adopted by Morris J. (without judicial condemnation), I will hear applications for costs in respect of those witnesses who gave evidence during the first module of public hearings and whose evidence to this Tribunal is now complete.

Dated this the 12th day November 2026.

Ms Justice Ann Power

Sole Member of the Tribunal