



Report of the Legal Costs Working Group

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Foreword

Late last year, the Minister for Justice, Equality and Law Reform, Mr Michael McDowell, TD, established the Legal Costs Working Group. The Group was asked to look at the way in which legal costs are determined and assessed and make recommendations which would, in the Group's view, lead to a reduction in the costs associated with civil litigation.

The issue of legal costs is never far from the headlines. Recent controversy about alleged double charging in respect of Redress Board cases has once again brought the issue to the fore.

The determination and assessment of legal costs is, however, a complex issue and it is one which, for some time, has evaded root and branch reform. The Group, in approaching the issue, came to the task with open minds, ready to explore all options and come to conclusions designed to serve the public interest. As Chair, I can have no complaint in the dedication, enthusiasm and commitment shown by the members of the Group as they went about their work.

There are three broad strands to the recommendations contained in this Report. Firstly, the Group recommends the replacement of the existing taxation of costs system with a new system of assessment predicated on the formulation of recoverable cost guidelines – based on work actually and appropriately done – by a regulatory body. Secondly, the Group recommends significant changes in the information that a solicitor is required to provide clients and the manner in which it is to be provided. And finally, the Group recommends a number of legislative and procedural changes to reduce delays in the courts process.

It is the Group's view that these proposals will, if acted upon, lead to a new costs assessment process which will be transparent, predictable and accessible.

At the heart of the recommendations contained in this Report is the principle that the individual litigant should have a central role to play in controlling legal costs. How the litigant can be so empowered is dealt with in detail in the report. Suffice to say at this point that the timely provision of information to clients is, as the Report states, central to this empowerment.

The Group is cognisant that inefficiencies in the legal process are also a factor in raising costs. For this reason, legislative and procedural recommendations have been made to speed up the litigation process.

I would like to thank all those who engaged with the Group in their work. Many individuals and bodies took the time to give the Group the benefit of their views and this is greatly appreciated. We were also helped in our work by the willingness of those engaged in the costs assessment

process in the neighbouring jurisdictions to share with us their experiences and the lessons learned, for good and for bad, from their own process of reform in this area.

Finally, I want to place on record my appreciation of the very strong contribution made by the Group's Secretariat, Dave Fennell and Liam Smyth, in carrying out our work and in drafting this Report.

Paul Haran
Chair
Legal Costs Working Group

7 November 2005

1 Introduction

Terms of Reference

1.1 On 27 September 2004, Mr Michael McDowell TD, Minister for Justice, Equality and Law Reform, announced the establishment of a group to look at ways of reducing legal costs. The Group was given the following terms of reference:

- To examine the present level of legal fees and costs arising in civil litigation; how such fees and costs arise and are calculated; the basis for such fees and costs, and the system and arrangements in place in the State relating to the taxation of costs,
- to undertake a historical analysis of fees and costs to determine whether the relative level of such fees and costs have increased over time and, if so, the reasons for such increase,
- to the extent that the Group thinks it appropriate, to undertake a comprehensive study of the systems and methods employed in other jurisdictions for setting and determining fees and costs in civil litigation,
- to consider whether a scale of solicitor's costs and counsel's fees should be made by way of regulation as provided for by section 46 of the Courts and Court Officers Act 1995 and
- on the basis of the aforementioned examination and study to make recommendations for initiatives or changes in this area which, in the Group's considered view, would lead to, or assist in, a reduction of costs associated with civil litigation, would improve accessibility to justice and provide for greater transparency.

Membership of the Group

1.2 Mr Paul Haran, the former Secretary General of the Department of Enterprise, Trade and Employment, was appointed as the Chair of the Group. The other members appointed were:

Mr Tony Briscoe	IBEC
Mr John Cronin	Dept. of Justice, Equality and Law Reform
Mr Peter Dargan	Consumers Association of Ireland
Mr John Fay	ICTU
Mr John McBratney	Senior Counsel
Mr Colm McCarthy	DKM
Ms Ann Nolan	Department of Finance
Mr Tommy Owens	retired County Registrar
Ms Christine O'Rourke	Office of the Attorney General
Mr Noel Rubotham	Courts Service
Mr Matthew Shaw	Chief State Solicitor's Office

1.3 During the course of its work, the Group formed sub-groups as follows:

Research

Mr John Cronin
Mr Noel Rubotham

Taxation of costs

Mr John Cronin
Mr Tommy Owens
Mr Noel Rubotham

Court Procedures

Mr John McBratney
Mr Noel Rubotham

Group Secretariat

1.4 Administrative support to the Group was provided by Mr Dave Fennell (Secretary) and Mr Liam Smyth, both from the Department of Justice, Equality and Law Reform.

Meetings

1.5 The Group had 14 plenary meetings. In addition, each of the sub-groups met on a number of occasions.

Consultation

1.6 In November 2004, the Group published a notice in the national press seeking submissions on the issues within the remit of the Group. A list of those who made submissions may be found in Appendix 1.

1.7 The Group subsequently decided to ask a number of those who made submissions to meet with them to elaborate on their submissions. The Group met with the Bar Council, the Family Lawyers Association, the Law Society, the Institute of Legal Costs Accountants, the Irish Insurance Federation and the Self-insured Task Force.

1.8 In addition to the meetings with the above bodies, the Group had an opportunity to meet with a number of other interested parties, as follows:

- Ms Dorothea Dowling and Ms Patricia Byron, Personal Injuries Assessment Board.
- Mr Dermot Nolan, Mr Reuben Irvine and Ms Noreen Mackey from the Competition Authority who presented the findings of the Preliminary Report of the Study of Competition in Legal Services.
- Mr Ciarán Breen and Ms Erika Fagan from the State Claims Agency (with whom the Group Secretariat met).

1.9 A delegation from the Group met with Master Christopher Napier, the Northern Ireland Taxing Master. The meeting provided a valuable insight into the costs assessment process in Northern Ireland and the issues common to both jurisdictions on the island.

1.10 The Chair, together with the Group Secretariat, met with various officials and individuals concerned with taxation of costs in England and Wales to discuss the regime for assessment of legal costs in that jurisdiction. These meetings were very informative and the Group wish to thank the following: Master Hurst (Senior Costs Judge), Mr John Lambert, Principal Costs Officer, Supreme Court Costs Office, Mr Robert Musgrove, Chief Executive, Civil Justice Council (CJC), Mr Mike Napier, CJC Executive Committee, and Mr Kevin Rousell, Head of Costs & Litigation Funding Policy, Department of Constitutional Affairs.

Research

1.11 The Group commissioned research into the levels of fees and costs. The statistical retrieval of data was carried out by the Courts Service and the Group wish to thank the Office of the Taxing Master and the County Registrars involved for their assistance and co-operation. The Group also commissioned Mr Vincent Hogan, University College Dublin, to assist them in the analysis and presentation of this data (see Appendix 2).

1.12 The Group was assisted in the writing of this Report by two research papers commissioned by them from Ms Nessa Cahill BL. The first paper described the existing regime for assessment of legal costs in Ireland and the second was a comparative study of legal costs systems in a number of other jurisdictions. The Group has asked the Department of Justice, Equality and Law Reform to make the papers available to the public and we understand that the papers will be put on the Department's website as soon as possible.

2 Executive Summary

General

2.1 The Group recognises the profound impact that the principle of ‘costs following the event’ has on the legal costs’ environment. It underpins a view that a party should be able to recover their reasonable costs in vindicating their rights and is central to the practice of ‘no foal no fee’ with its attendant impact on access to justice for many. The Group noted that while most common law jurisdictions operate similarly, some, such as the United States, do not. However, in the absence of a convincing case for change and given the paucity of research on this topic, the Group does not recommend abandoning the principles underpinning our system of costs recovery. Therefore, a considerable element of the Group’s work was concerned with the costs recovery process (5.15 – 5.17).

Recoverable Costs

2.2 The Group is convinced that greater predictability and transparency is required and recommends the establishment of a legal costs regulatory body to formulate guidelines setting out the amounts of legal costs that normally can be expected to be recovered in respect of particular types of proceedings or steps within proceedings (5.22).

2.3 The Group recommends that such costs guidelines be based on an assessment of the amount and nature of work required to be done in such a case and comprehend such elements as:

- the appropriate hours expended by the various persons to be remunerated,
- the complexity of the proceedings and the stages therein, and
- the level of the court in which the case is heard (5.22 – 5.24).

2.4 The Group believes that the lumping together of so many elements of the solicitor’s work into one instructions fee, usually by far the largest single item on a bill of costs, seriously inhibits transparency and openness and recommends that the solicitor’s instructions fee be broken down into its component parts and follow the guidelines recommended above. A similar approach should be adopted in relation to the counsel’s brief fee (5.26 – 5.27, 5.32).

2.5 For the reasons set out in the Report, the Group does not recommend the setting of scales of fees having absolute mandatory effect. However, it recommends that the onus should be on a party seeking costs higher than those set out in the guidelines to show why, in the particular circumstances of the case, the higher amount claimed should be paid (5.23).

2.6 The guidelines should allow for flexibility to reflect the individual and exceptional circumstances which may arise at different stages of a particular case. While some cognisance should be given to the financial value of the claim or counterclaim in dispute and the complexity of the case, the Group is of the view that costs should be primarily assessed by reference to work

actually and appropriately done and that the level of recoverable costs should not be proportionate to that value nor should it be the main determinant of the amount of costs recoverable (5.23).

Two-thirds Rule

2.7 Given our recommendation that costs should primarily be recoverable by reference to work done, the Group considered the almost universal practice whereby Junior Counsel is paid two thirds the rate of Senior Counsel as unacceptable and unfair given its arbitrary nature (5.28 – 5.30).

Competition

2.8 The Group noted the preliminary report of the Competition Authority on the legal profession and its discussion on professional structures. The Group did not replicate this enquiry but limited itself to considerations as to costs. However, it believes that the principle of costs being assessed by reference to work done is the proper approach to be taken and recommends that the costs guidelines do not take the *'grade or level'* of the counsel into consideration (5.29).

Jurisdictional limits

2.9 The Group is very concerned with the impact of inflation on the jurisdictional limits of the various courts and believes that this leads to costs escalating as actions are inadvertently being driven into higher courts. For the reasons set out in the Report, the Group recommends that the jurisdictional limits of personal injuries cases be maintained until a more complete understanding of the dynamic of the Government's insurance reform programme is available. It recommends that for all other areas the jurisdictional limits be adjusted to take account of inflation and that such limits be adjusted regularly thereafter (5.41).

Family law

2.10 The Group is of the view that in marital break-up cases it is important that there is the fullest disclosure possible of the capital and income of each spouse at the earliest opportunity. Spouses and their advisers are not able to negotiate successfully if one or even both parties are convinced that the other is hiding financial information. To seek to address this problem each party should, at the earliest possible stage after the commencement of separation or divorce proceedings, have the right to require the other party to make a full and complete disclosure of their assets and liabilities. The disclosure will need to be capable of being enforced by suitable penalties for any party who does not provide full and complete disclosure or it is subsequently discovered has failed so to do (5.44 – 5.45).

Judicial resources

2.11 The Group recommends that the Government should ensure that the level of judicial resources required to carry out the work of each bench effectively and efficiently is provided. However, the issue of resources cannot be separated from other relevant factors impinging on judicial effectiveness such as organisation of districts/circuits, management of judicial resources and working practices. All of these issues need to be addressed (5.56).

Empowering the Client

2.12 The Group recognises the importance of ensuring that clients get full and up-to-date information on the costs implications of their cases. This information should be provided at the critical stages of the process to aid the clients in making informed decisions. The Group believes it important that clients should be given ample opportunity at all stages to terminate proceedings and prevent the further escalation in costs. To this end the Group recommends that;

- the costs agreement letter issued by solicitors (as provided for by section 68 of the Solicitors (Amendment) Act 1994) be amended to provide the client with more detailed information
- unless the circumstances clearly preclude it, clients should be afforded a cooling-off period from receipt of their costs agreement letter before proceedings are commenced
- periodic updates be provided
- solicitors be obliged to notify clients of material developments in the conduct of litigation and
- clients be given the opportunity to cease their action before any material increase in expenditure is incurred (subject to the knowledge that a litigant who abandons litigation may be liable to the costs of the opposing party) (Chapter 6).

2.13 The Group recommends that a failure on the part of a solicitor to issue a costs agreement letter should be subject to a meaningful penalty (6.14).

2.14 The Group recommends that costs agreement letters form part of the assessment of costs process (party and party costs as well as solicitor and client costs) and that, where costs are in dispute, both parties have access to any cost agreement letter which has been issued (6.15).

Assessing costs – Process

2.15 The Group recommends that the taxation system be replaced by a new system of costs assessment carried out by a Legal Costs Assessment Office. The Group believes that the costs guidelines and other associated reforms it proposes will bring a greater simplicity and transparency to the system and recommends that the assessment process be a written procedure. The Group also recommends that the new appeals process be an oral procedure in public (7.16).

2.16 The Group recommends that parties should be encouraged to have only those elements of costs under dispute assessed and that the charge for assessment be adjusted accordingly (7.21-7.24).

2.17 The Group believes that the current level of fees in relation to taxation places considerable costs in the way of those seeking to challenge excessive legal costs. Accordingly, the Group recommends that the charges associated with the proposed assessment structure should be confined to recovering the expenses of the legal costs assessment, appeals and regulatory bodies (7.25).

2.18 The Group recommends that there should be an entitlement by parties liable to pay costs to make a lodgement or tender in advance of assessment, and in the event that the amount of

their offer or tender is not exceeded on assessment, that the opposing party should be liable to pay the court fees in respect of the assessment (7.20).

2.19 The Group recommends that provision be made for up-to-date information and data to be made available to the public on the outcomes of assessments and appeals (7.34).

2.20 The Group noted the serious adverse consequences that the failure to update the so called Appendix W costs has had on the system of costs recovery and recommends that the body responsible for issuing guidelines be charged under statute with keeping its costs guidelines up-to-date (7.17).

Assessing Costs – Regulatory Body

2.21 The Group recommends the establishment of an independent Legal Costs regulatory body to exercise regulatory functions, to set guidelines and recoverable standards and have a public information role (7.17).

Legal Costs Assessment Office

2.22 The Group recommends the establishment of a Legal Costs Assessment Office to replace the current Office of the Taxing Master (7.34).

Appeals Adjudicator

2.23 The Group recommends the creation of the post of an Appeals Adjudicator to conduct assessment appeals. Appointment to the position of Appeals Adjudicator should be by way of open competition conducted by the Public Appointments Service. The competition should be open to suitably qualified persons and not be confined to members of the legal profession. Appeals Adjudicators should be appointed on a non-renewable fixed contract basis (7.37).

Lodgement

2.24 A recent decision of the Supreme Court (*Cronin v Astra*, 14 May 2004) has held, on the basis of current legislation, that where a plaintiff accepts a lodgement by a defendant in High Court proceedings which falls within the jurisdiction of a lower court, the plaintiff cannot be confined to receiving costs on the scale appropriate to the lower jurisdiction. This contrasts with the outcome where an order is made by the court awarding damages within a lower jurisdictional ambit. This makes it commercially unattractive for a defendant to make a lodgement below the jurisdiction of the court in which the plaintiff has chosen to initiate proceedings, and operates to discourage efforts by defendants to bring proceedings to a conclusion pre-trial. The Group recommends legislative action to remedy this defect (8.15).

Procedural reform

2.25 The courts should be enabled to deal with cases justly, and this expressly requires the court to allot to individual cases an appropriate share of the court's resources, while considering the needs of other cases. Existing procedural rules available to the courts to minimise delay and contain costs levels are under-utilised. An overriding rule of interpretation prescribing the objectives which should be pursued by the courts in interpreting the rules and employing the

measures available, should lead to a more rigorous application of the rules. If a system of administration of justice is to operate effectively, the right of access of individual litigants to justice must, in reality, be reconciled with the rights of access of parties to other cases. In this regard, the Group recommends that consideration be given, if need be in primary legislation, to the formulation of a principle of interpretation which would require that a balance between the right of access of individual litigants and the rights of access of parties to other cases be struck by the courts when applying the rules of court in individual cases (8.32).

2.26 The Group recommends that the rules of court should contain a specific Order facilitating supervision by the court of the pace of litigation and containing measures to ensure delay is minimised (8.33).

Sanctions for delay

2.27 The Group recommends that Orders of the Court should also provide for the making of “*unless*” orders in respect of directions given by the court, i.e. orders designating that, unless the party concerned complies with the direction concerned within a specified period of time, the party would, without the need for a further application to the court, suffer judgment, or dismissal of their claim, or liability for costs or whatever the appropriate penalty is (8.34).

Fixing of liability for costs at the pre-trial stage

2.28 The Group recommends that the rules which now apply the commercial and competition proceedings lists in the High Court which place an onus on the court to determine liability for the costs of interlocutory applications when disposing of those applications should be extended in their application to all proceedings (8.35, 8.38).

2.29 The Group recommends that costs of pre-trial motions should, save where it would, in the circumstances of the case, be unjust to do so, be awarded to the successful party to the motion, measured at the hearing, and be set off against any award of damages or costs which may ultimately be made in favour of the successful litigant (8.37).

Post-proceedings letters of offer

2.30 The Group recommends that provision should be made, if necessary in primary legislation, to give effect to a letter of offer of settlement of the proceedings by a defendant in relation to the claim of the plaintiff on a “*without prejudice save as to costs*” basis particularly in cases where satisfaction other than by means of a monetary payment is involved in the settlement. A similar provision should be enacted in respect of the plaintiff making an offer to settle (8.39).

Costs penalties for delay

2.31 The Group recommends that the terms of Order 99, rule 6 of the Rules of the Superior Courts, which allows for penalties in costs to be applied to a solicitor responsible for delay in the trial of proceedings, should be amended so as to apply to all steps in the litigation process and not just the trial (8.40).

Provision of estimates of costs

2.32 The Group recommends that the court should be empowered by rule of court to require the parties to produce to the court and exchange with each other estimates of costs incurred at any stage of the proceedings, including the pre-trial stage (8.41).

3 Legal fees and costs

Scope of the Report

3.1 In examining how legal fees and costs arise, it is useful to have a clear understanding at the outset as to the different types of legal business and, following on from that, the different types of legal costs that arise from the conduct of that business.

3.2 There are essentially two broad categories of business in respect of which legal services may be provided:

- Non-contentious business covers situations where no litigation is involved.
- Contentious business covers legal services provided or work done in connection with legal proceedings, whether before a court, a tribunal or an arbitrator.

3.3 In accordance with the Group's terms of reference which relate solely to civil litigation, the Report only deals with costs arising from contentious business.

Types of legal costs

3.4 Reference is made throughout the Report to different types of legal costs paid by parties engaging in civil proceedings and it may be useful to have these basic categories of costs defined at the outset:

- **party and party costs** refer to those legal costs which may be recovered by one party to proceedings from another party. Typically, the costs of the successful party are paid by the unsuccessful party and the issue of liability for such costs is usually dealt with at the conclusion of the proceedings
- **solicitor and client costs** refer to those costs that a solicitor claims from his own client. The costs that are payable to counsel as a result of work done or services provided in contentious proceedings appear as a disbursement in the solicitor's bill of costs.

In addition to the above, costs arise in relation to the provision of judicial and court resources which are provided by the State. The parties to a civil action, while they may pay various court fees, are not required to pay for the full economic cost of the judicial and court resources used by them.

Party and party costs

3.5 It should be noted that the principles on which party and party costs are assessed are different to the basis of calculation of solicitor and client costs. The essential principle underlying party and party costs is one of indemnity, that is, a party is entitled to recover all costs reasonably incurred in the prosecution of their claim or the defence of the proceedings.

Solicitor and client costs

3.6 With regard to solicitor and client costs, the basic premise is that the solicitor is entitled to be paid all costs claimed for, other than such costs as may be unreasonable. The Group, in considering the different types of legal costs, was mindful of the need to ensure that there is no duplication of costs, i.e., avoiding a situation where costs which are billed to the client are recovered in party and party costs.

Bill of Costs

3.7 A solicitor's bill of costs generally encompasses three categories:

- Solicitor's scale fees,
- Solicitor's instructions fee, and
- Disbursements.

3.8 The rules of court prescribe the format in which bills of costs submitted for taxation are to be produced. They provide that a bill of costs must be itemised, and contain seven columns, as follows:

- (a) the first or left-hand column for dates;
- (b) the second for the numbers of the items;
- (c) the third for the particulars of the services charged for;
- (d) the fourth for disbursements;
- (e) the fifth for the Taxing Masters' deductions from disbursements;
- (f) the sixth for the professional charges;
- (g) the seventh for the Taxing Masters' deductions from professional charges.

The Solicitor's fees: Scaled costs

3.9 In the context of contentious matters in the High Court, a schedule of fees, set out in Appendix W to the Rules of the Superior Courts, lists 81 items and the prescribed fee for all but ten of these items (see Appendix 8). The amounts of fees prescribed were last revised in 1961. The failure to update the amount of the fees has resulted in the discretionary instructions fee being the matter of paramount importance in relation to the remuneration of a solicitor. It should be noted that, in some instances, the fee prescribed in Appendix W may be a fixed amount, a scale or expressed as being at the discretion of the Taxing Master.

3.10 In the Circuit Court, costs are determined on similar principles to those set out in the Rules of the Superior Courts. In the case of the District Court, costs are awarded in accordance with scales of costs set out in rules of court.

The Solicitor's fees: the Instructions Fee

3.11 Appendix W defines an instructions fee in the following terms:

"These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including:—

- (a) *taking instructions to sue, defend, counter-claim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or a reference under Order 64, rule 46;*
- (b) *considering the facts and law;*
- (c) *attending on and corresponding with client;*
- (d) *interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;*
- (e) *arranging to obtain reports or advice from experts and plans, photographs and models;*
- (f) *making search in Public Record Office and elsewhere for relevant documents;*
- (g) *inspecting any property or place material to the proceedings;*
- (h) *perusing pleadings, affidavits and other relevant documents;*
- (i) *where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and*
- (j) *the general care and conduct of the proceedings."*

3.12 Instructions fees account for much of the controversy and challenges surrounding bills of legal costs. There are a number of reasons for this. First, due to the low level of the fees prescribed for individual items, solicitors rely on instructions fees to recoup their costs and provide their remuneration. Secondly, instructions fees are not itemised to the same extent as other fees and may be regarded as being less transparent. Thirdly, instructions fees are usually the principal item on a bill of costs. Fourthly, the amount of instructions fees can be quite subjective, as compared with the individual items specified in Appendix W and they are not as susceptible to precise calculation.

3.13 Jurisprudence in the area (*Best v. Wellcome Foundation* 1996, 3 I.R. 378 refers) suggests that there are ultimately only three criteria on which the instructions fee is determined;

- any special expertise of the solicitor;
- the amount of work done;
- the degree of responsibility borne.

Disbursements

3.14 Disbursements include travel expenses, witness expenses, counsel fees, and professional fees of experts other than the solicitor concerned.

Counsel's Fees

3.15 Counsel's fees usually constitute the most significant component of the disbursements claimed in a bill of costs arising from court proceedings. The case-law has established a number of principles concerning the approach to be adopted to retaining counsel and paying counsel's fees — *Kelly v. Breen*, 1978 ILRM 63 refers — and these principles would seem to retain their relevance, and are as follows:

1. *"A successful party should, so far as is reasonable, be indemnified from the expense he is put to in an action to attain justice or enforce or defend his rights. He is not*

however entitled to be indemnified against such costs of expenses which had been incurred or increased through over caution, negligence or mistake, or by payment of special fees to Counsel or special charges or expenses to witnesses or other persons or by any other unusual expenses.

2. *It is the function of the practising solicitor*

- (a) to select Counsel competent in the field of work to which the brief relates and*
- (b) to determine the proper and reasonable fee which such Counsel namely Counsel competent in the field of work to which the brief relates and not a particular Counsel whom the solicitor may wish to brief would be content to take.*

3. *In the determination of such fee the practising solicitor should act reasonably carefully and reasonably prudently and should have regard to his day to day and year to year experiences in the course of his practice.*

4. *These experiences include, inter alia, fees charged and paid in respect of cases of a similar nature, the practice of barristers as to marking fees in so far as accepted by solicitors in practice, fees paid to opposing Counsel in the same matter, subject to whatever factors might be special to the case, and the depreciation in the value of money.*

5. *The fees payable to Counsel by a solicitor who has retained him in an action are disbursements made by him in the course of his practice."*

3.16 Two issues concerning the retaining counsel and their fees have attracted comment: the number of counsel retained in High Court cases and Junior Counsel's fees as a proportion of Senior Counsel's fees.

Number and use of counsel

3.17 Normally, one Senior and one Junior Counsel are instructed in a case heard before the High Court. In the Circuit Court, a Junior Counsel will likely be instructed in a case. Traditionally solicitors have dealt with cases in the District Court, however, the use of counsel is becoming more common, especially in the Dublin District Courts.

3.18 In relation to the use of counsel generally in personal injury cases, the Group noted the greater reliance on counsel in cases in this jurisdiction as compared to, say, England and Wales where counsel are used far less frequently. This has obvious cost implications. The main explanation advanced to the Group for this greater reliance on counsel was a lack of confidence on the part of solicitors in dealing with cases before the courts coupled with an overly cautious approach on the part of solicitors to giving advice without the benefit of counsel's opinion.

Junior Counsel's fees as a proportion of Senior Counsel's fees

3.19 Where a Junior Counsel is instructed, together with one or more Senior Counsel, it is established practice that Junior Counsel will, in the vast majority of cases, charge two-thirds of the fee marked by Senior Counsel on a case. No justifiable rationale for this practice appears to exist.

Legal costs: the facts

3.20 In order to arrive at a better understanding as to the level of fees charged and to establish trends and patterns as to how legal costs have changed in recent years, the Group commissioned research in the matter.

3.21 Data relating to High Court cases taken from the records of the Taxing Masters' Office was analysed; two samples were generated, one from 1984 and the other from 2003. The vast majority of cases in the sample were personal injury (PI) cases. Data from four Circuit Courts (Dublin, Cork, Limerick and Sligo) for 2003-4 was also analysed. Full details of the analysis may be found in Appendix 2.

3.22 The conclusions of the analysis can be summarised as follows:

- there is very large variation in fees charged even for the same class of case
- in the High Court, the most important determinant of fees charged in PI cases would seem to be the level of the award made to the plaintiff. Measures of the quality/quantity of legal services provided do not appear to be major factors in determining the fees charged
- in the Circuit Court, the level of the award does appear to influence the levels of the fees – but the effect is weaker than in the High Court. Furthermore, the effect holds only for solicitors
- the level of solicitors' fees in the High Court increased by 4.2% in real terms annually over the period 1984 to 2003
- the level of Senior Counsel fees in the High Court increased by 3.3% in real terms annually over the period 1984 to 2003
- in the Circuit Court, amounts allowed for legal costs in the same categories of action differed significantly from venue to venue.

3.23 The Group notes that the research does seem to indicate that legal fees have risen faster than incomes in other sectors, that the level of the award is the main factor in determining legal fees in personal injury cases and that the approach to taxation of legal fees in Circuit Court cases appears to differ from venue to venue.

4 Taxation of costs

Taxation

4.1 Taxation, in the context of legal costs, is the term used to describe the process whereby an officer of the court determines at a hearing the amount of costs due on foot of a bill of costs furnished for the purpose. In the High Court, this function is carried out by one of two Taxing Masters. In the case of Circuit Court proceedings, costs are taxed or measured by the County Registrar for the County concerned, who for that purpose has the same powers as the Taxing Master (County Registrars carry out a wide range of other duties). Costs of District Court proceedings are regulated by scale.

4.2 A chart showing the numbers of taxations handled by the Taxing Masters and County Registrars is at Appendix 5. The vast bulk of costs taxed by the Taxing Masters fall into the category of party and party costs.

The Taxing Masters

4.3 The powers and functions of the Taxing Masters are set out in the Courts (Supplemental Provisions) Act 1961, as amended. The Taxing Masters' Office, which is staffed by two Assistant Principals, a Junior Court Clerk (Executive Officer level) and a Clerical Officer, handles the business of the Taxing Masters "*other than such business as is required by law to be transacted by a Taxing-Master in person.*"

4.4 No person can be appointed to the position of Taxing Master unless at the time of appointment he or she is a solicitor of not less than ten years standing who is either then actually practising or has previously practised for not less than ten years. To be eligible for appointment to the office of County Registrar, a person must at the time of appointment be a solicitor or barrister of not less than eight years standing who is either then actually practising or has previously practised for not less than eight years.

The Taxing Masters' remit

4.5 Generally, costs will require to be taxed where (a) party and party costs cannot be agreed between the parties, (b) costs incurred in proceedings not of an inter-party nature (e.g. company liquidations, wardship) are directed or required to be taxed or (c) solicitor and client costs have been referred to taxation by the client within the requisite period.

Costs Allowed on Taxation

4.6 Prior to the enactment of the Courts and Court Officers Act 1995, the Taxing Master was not empowered to look at the quality, extent or value of the work done but was restricted to the reasonableness of the cost. Sections 27(1) and (2) of the 1995 Act give the Taxing Master the power to evaluate the costs of the solicitor and fees of counsel or of expert witnesses, by

examining the nature and extent of the work done or services provided, and by reference to the same criteria, viz. the fairness or reasonableness of such costs or fees (and of any expenses charged) in the circumstances of the case.

4.7 While the 1995 Act has given the Taxing Masters greater scope in assessing costs, there is concern that the practices in relation to the taxation of bills of costs have not responded robustly to the changes in the 1995 Act, as is evidenced by the continuing, almost universal, practice of the so called ‘two thirds rule’ in relation to Junior Counsel fees.

The taxation process

4.8 Bills of costs are taxed at an oral hearing. Although a solicitor for a party, or a personal litigant if unrepresented, is entitled to participate in the taxation, the hearing is usually attended by the legal costs accountants respectively retained by the party seeking the costs and the party liable to pay the costs, i.e. the party “opposing” the bill. In the Circuit Court, while legal costs accountants do occasionally appear before the County Registrar on a taxation, the solicitor on record or a member of the latter’s staff will attend the taxation hearing in nearly all cases. To assist in taxing the bill, the Taxing Master has power to summon and examine witnesses, require books, papers and other documentation to be produced, and “generally direct any party to the taxation to do such acts as he may consider necessary”.

Certificate of taxation

4.9 Once the taxation is completed, the items of disbursements are vouched by one of the Senior Clerks in the Taxing Masters’ Office, and a certificate of taxation issues on payment of the appropriate court fees. Interest on the amount of the costs at judgment rate will run from the date of issue of the certificate.

Court fees / stamp duty

4.10 Fees payable on the taxation of costs are set in the court fees orders for the jurisdiction concerned.

4.11 The principal fees chargeable are €110 on the notice to tax in the Taxing Masters’ Office (compared with €45 on the equivalent document in the Circuit Court), a stamp duty of 6% of the amount allowed on taxation (common to taxations by the Taxing Master and the County Registrar), and €50 on the certificate of taxation of the Taxing Master (as compared with €10 on the County Registrar’s certificate).

4.12 Some members of the Group questioned the somewhat arbitrary nature of these fees and suggested that a more scientific and rational approach be taken to determine the fees chargeable, taking into account the actual economic cost of providing the service.

4.13 The issue of court fees in relation to the assessment of costs is dealt with further in chapter 7.

Review of taxation by the Taxing Master

4.14 Before the signing of a certificate of taxation, but not later than fourteen days after the completion of the taxation of the entire bill of costs, a dissatisfied party may deliver to the other

party and lodge in the Taxing Masters' Office written objections to the allowance or disallowance of an item or items, specifying the grounds for each objection, whereupon the Taxing Master is required to "reconsider and review" the taxation of the items concerned. Significantly, the Taxing Master may entertain further evidence in support of the objections. If required by a party, the Taxing Master is obliged to state in writing the grounds and reasons for his decision thereon, and any special facts or circumstances relating thereto.

4.15 The Taxing Master may issue pending the outcome of a review an interim certificate of taxation for the portion of the bill to which no objection was taken as well as for such of the disputed portion as the Taxing Master may in his discretion consider reasonable.

Review of taxation by the court

4.16 The review by the Taxing Master may itself be reviewed by the High Court at the request of the dissatisfied party within 21 days from the date of the completion of the review. The application for review is made by motion on notice to the other party. The review by the court is conducted on the basis of a report of the Taxing Master, the original bill of costs, notice of objections and submissions in support of them, and any replying submissions and any other material documents, and the evidence will be confined to that submitted to the Taxing Master, unless the court allows further evidence.

4.17 The court may only alter the taxation where it is satisfied that the Taxing Master has erred as to the amount of the allowance or disallowance such that the latter's decision was unjust. Following the court's review, the matter is remitted to the Taxing Master to complete the taxation in accordance with the Court's decision. Where the court directs re-taxation of the bill or any items within it, the re-taxation is subject to the same review procedures as apply to a normal taxation. The Circuit Court has a similar reviewing jurisdiction in respect of taxations by the County Registrar.

5 Paying for legal services – options for change

The legal services market

5.1 The market in civil legal services contains features common to most well-operating markets. Services are bought and sold, supply is offered by a wide number of entities many of whom compete for business, the State provides the courts and the applicable legislation, and demand is driven by a wide variety of people and bodies seeking to vindicate their rights.

Market Imperfections

5.2 However, as in many other markets, there are imperfections that may inhibit the efficient and fair working of the market contrary to the welfare of individuals and society in general. Unlike most other markets, the person who procures or purchases the services of a solicitor to conduct litigation on his or her behalf may have an expectation that another party will pick up the bill. This is because those who lose an action generally pay for the other party's costs – the person who *'pays the piper'* (the loser) is not in a position to *'call the tune'*. This situation, especially in the context of the *'no foal, no fee'* system, may result in the litigant not exercising adequate control over the level of their costs.

5.3 Defendant demand for legal services is largely generated by another party (the plaintiff) taking a case against the defendant, and the defendant may face considerable difficulty in controlling costs incurred by the plaintiff. Plaintiff demand may be exaggerated by the operation of the *'no foal, no fee'* system in encouraging proceedings at no cost to plaintiffs.

5.4 The view was expressed within the Group that the high incidence of *'queues'* for court time, congestion and postponement and demands for more capacity are typical of markets for facilities that are free at the point of use or which are materially under-priced. Making any facility free, or too cheap, naturally increases demand. In this analysis, the pricing of court usage needs to be addressed. This issue is further considered later in the Chapter.

Consumer Challenges

5.5 Significant information imbalances exist in the market for litigation services in the area of civil law. The public generally have only a limited appreciation of the costs involved in litigation, the processes involved, the meaning and need for particular steps, the need to recruit the services of other professionals such as counsel or expert witnesses, and the actual law itself. This is further complicated by the technical language used and somewhat alien setting in which law is practised. In this complex and intimidating environment, the exercise of consumer control can be problematic.

Supplier Power

5.6 The suppliers of legal services have power to facilitate supplier-induced consumption where a provider of legal services might encourage a litigant to take certain actions which they agree to without sufficient appreciation of the costs, benefits and, indeed, risks involved.

5.7 The Group recognises that the legal professional bodies are serious about their professional conduct responsibilities and seek to ensure that their members promote the best interests of their clients. However, some professionals may not always abide by the spirit of such standards and, in other cases, even with the best will in the world, they may not fully appreciate their clients' preferences.

Work of the Competition Authority

5.8 The Group believes that considerable competition challenges exist in this market place. Given the focus of its remit and the current work of the Competition Authority, the Group chose to avoid duplication or crossover of work. The Group is in favour of greater competition in the legal profession and supports the work of the Competition Authority in this regard. The Group believes that action to increase competition in this market place could make a significant contribution to reducing the overall level of legal costs and contribute to consumer and societal welfare.

Problems with the Civil Litigation Cost Regime

5.9 The Group is of the view that the civil litigation services market exhibits a number of features of concern including:

- the high and unpredictable nature of costs involved which means that less well-resourced citizens cannot engage in litigation unless they can find a lawyer willing to act on a '*no foal, no fee*' basis – this significantly curtails their access to justice
- the '*no foal, no fee*' option is only available where the other party is well resourced and there is a reasonable prospect of recovering costs
- moderately resourced persons, outside of the legal aid environment, are particularly excluded from recourse to the civil legal system in that their limited assets, such as home, could be put at risk in the event that they lose their action, especially as the extent of their exposure to party and party costs is frequently almost impossible to predict
- well resourced entities may at times be considered easy prey for opportunistic or supplier induced plaintiffs in the knowledge that well resourced entities find costs recovery almost impossible and, therefore, may have an inducement to settle, at the expense of the wider community through higher taxes or prices (where the party is the State or an insurance company for example)
- the incentive structure can lead to excessive costs and usage of the legal system to the detriment of both users and society in general

Recoverability of Costs – Options

5.10 The Group recognises that the system of recoverability of costs is seen as a significant underpinning of our system of civil law but it also recognises that it has a major influence on the costs environment. The absence of an incentive to control costs in some instances and the considerable costs involved in referring bills for taxation are significant drawbacks. In this regard, the Group considered whether an alternative approach might be identified which would offer incentives for all those engaged in litigation to keep costs at the minimum level required for the attainment of justice.

5.11 Recoverability of costs can be considered as a continuum, ranging from full reasonable costs recovery to no recovery. The Group looked at a number of international models. Most countries operate a full cost recovery system similar to ours. Two common law models, New Zealand and the United States, are of particular interest as they depart from the full cost recovery norm.

New Zealand

5.12 On 1 January 2000, a new system was introduced in the High Court in New Zealand which provides for scales designed to recover two-thirds of costs which would be reasonably payable as between solicitor and client.

5.13 The Group can see how this model might encourage more prudent behaviour on parties to civil litigation. Parties and their lawyers know that, even if they win, they will not be recompensed for all of their costs by the other party. There is therefore an in-built incentive to keep costs down and the Group was impressed by this dynamic. The Group was, however, hesitant about the fairness of the system in forcing vindicated litigants to bear one third of their own costs and the consequential impact it might have on the 'no foal, no fee' system and wider access to justice issues. However, as this is a relatively new process in New Zealand, the Group felt that judgement would have to wait until a rigorous analysis was conducted on the impact of this recent change on costs, incidence of litigation and access to justice.

United States

5.14 Parties in the US generally pay their own costs. As such, this model might be seen as more desirable in a market context. However, even in the US, there is provision in certain circumstances (e.g., civil rights cases) for one way fee shifting (successful plaintiff can recover fees). The clear advantage of this model is that costs should be more actively managed by the parties in the knowledge that the other party will not pick up their costs. However, in this environment, 'no foal, no fee' arrangements are provided for by the lawyers claiming a proportion of the settlement or damages obtained (a practice that is illegal in Ireland and in many other jurisdictions). Many people question the desirability of such an approach and, indeed, it is believed to drive a considerable level of litigation in the U.S. to the enrichment, some might say, of the lawyers. It does, nevertheless, eliminate the need for cumbersome cost recovery and adjudication machinery. As with the New Zealand system, the Group was concerned about the fairness or otherwise of not allowing vindicated litigants to recover their costs.

Conclusion regarding Recoverability of Costs

5.15 The premise on which the Irish system of 'costs following the event' is based is that a person who wins an action should not suffer a financial penalty in vindicating their rights. Whether they are a plaintiff or a defendant they should be able to recover from the other party costs reasonably incurred in the process. As discussed above, many of the market and process imperfections flow from this aspect of our system.

5.16 For all its faults, however, this system provides an opportunity for persons of modest means to engage a solicitor to vindicate their rights (albeit only provided that the case is deemed one that can be won and the other party is well enough resourced to cover the costs). A departure from this principle would undermine the 'no foal, no fee' system which is dependent on costs

generally being awarded to the successful party (of course, it must be stressed that parties availing of *no foal, no fee* arrangements are at risk of having costs awarded against them). In such a situation, access to justice may be more impaired than it is at present resulting in pressure for the introduction of a better resourced system of civil legal aid.

5.17 In the absence of a convincing case for changing this cornerstone of our system, insofar as we would not have confidence in predicting the impact of such a change on access to justice, costs levels, or the distribution of the costs burden, especially given the paucity of applicable research in this area, the Group does not recommend abandoning the '*costs follow the event*' principle of costs recovery. Therefore, a considerable element of the Group's work deals with improving the costs recovery process.

Fixed Scales

5.18 The Group explored the feasibility of introducing fixed scales of fees for the various actions and steps involved in a case. Fixed scales would have the advantage of limiting recoverable costs to specified amounts. They could also limit the solicitor and client costs to those prescribed; however, it is difficult to envisage absolute restrictions being imposed on the scope of a solicitor-client agreement.

5.19 New Zealand has a sophisticated model to determine the scale fee applicable to the various stages of a proceeding. The model takes many factors into consideration including time, complexity and significance. Germany too has a model of fixed fees calibrated by the stages of the proceedings. There are obvious advantages to setting a fixed scale of fees; it is transparent, giving clients full knowledge of the likely costs to be incurred, it introduces predictability into what is a very uncertain environment and it reduces the scope for disputes about the level of legal costs.

5.20 However, a number of negatives can also be seen.

- Firstly, a fixed scale may not comprehend the totality and complexity of the range of legal proceedings that emerge. For instance, the work involved in one judicial separation case may be vastly different to another. In such circumstances, the Group was concerned that it might not be realistic to have a '*one price fits all*' fee. Nevertheless, in other environments where professionals receive fixed fees, such as medicine, and where complications may emerge in otherwise routine procedures, fixed fees appear to operate well
- Secondly, it is difficult to see how a scale would not undermine, to some extent, the principle of equality of arms. For instance, a litigant faced with an opponent who uses resources greater than the scale permits may find himself at a disadvantage. This will clearly place the less well-resourced opponent at a disadvantage. Nevertheless, even in the current environment, the level of recoverable party and party costs is not unlimited and those employing greater resources may, where they so choose, have a better resourced legal team than the other party
- Thirdly, critics of fixed payment levels are concerned that lawyers may restrict their input and effort in a case to a level of input comprehended, in their view, by the fee available
- Finally, the introduction of fixed scales could increase costs in certain circumstances. The maximum provided for in the scale could become the standard charge.

Conclusion on Fixed Scales

5.21 Having considered the arguments for and against, the Group does not recommend the introduction of scales containing fixed costs beyond which costs are not recoverable.

The Way Forward – Prescribed Guidelines

5.22 The Group, taking into account how the legal services market operates and having examined the options for recovering costs, sees merit in a legal costs regulatory body determining the amounts of legal costs that normally can be expected to be recovered in respect of particular types of proceedings or steps within proceedings for each jurisdiction. This could be done by establishing a legal costs regulatory body tasked to issue guidelines on amounts deemed reasonable with reference to the time that would generally be expended on the task. Put simply, the recoverable costs set by the body would encompass a financial amount measured against a timeframe. Depending on the work in question, the amount could be a single figure or, where complexity is an issue, a range of amounts could be set.

5.23 In order to take into account differing levels of complexity and the need to provide for some flexibility arising from the particular circumstances of each case, costs could be allowed in excess of those set out by the costs body. However, the onus should be on a party seeking costs higher than those prescribed to show why, in the particular circumstances of the case, the higher amount claimed should be paid. Consideration should be given, where the type of action renders this appropriate, to the value of the claim or counterclaim involved. The question as to how cognisance of the value of the case may be taken into account should also be considered. However, in no event should the level of recoverable costs be directly proportionate to the value of the case.

5.24 The Group believes that the all encompassing instructions fee should be replaced by a set of fee guidelines for each aspect of work done adjusted to take into consideration the time taken in conducting the action, its complexity and the jurisdictional level of the action. The core of this change is that recoverable costs should only be for work actually and appropriately done with reference to the time that might reasonably be expended on the identified task by a competent lawyer.

5.25 As mentioned above, a number of models exist internationally which illustrate how a system of prescribed guidelines might be framed. In New Zealand, a detailed schedule identifies the various steps in proceedings (measured against complexity of the case and time involved) and costs are allocated accordingly. In the Federal Court of Australia, a more general guide to counsel fees sets out a fees range in respect of brief, appearance and interlocutory applications together with hourly rates for other items.

Solicitor Instructions Fee

5.26 The Group, as discussed in Chapter 3, noted that the instructions fee constitutes the largest single element of the bill of costs. Indeed, the practice whereby this fee is inflated to compensate solicitors for the failure to update other charges in line with inflation has been commented on and is regarded by the Group as a grave indictment of the current system. Both the all encompassing nature of this single item and the inherent cross subsidisation involved totally impede any reasonable control over the bill of costs by the litigant.

5.27 The Group recommends that the single instructions fee structure be abandoned and be replaced by a requirement to break down the fee, in accordance with guidelines, into a set of charges for work actually and appropriately done on individual steps of a case's progression. The systematic itemising of costs by reference to work actually and appropriately done in relation to the various stages of the process will enable the work carried out in connection to the case to be clearly identified and more easily verified. The manner in which the bill should be set out should be formulated by the legal costs regulatory body referred to above and described in Chapter 7. The Group believes that the guidelines would replace many of the individual items currently prescribed in Appendix W.

Counsels' Fees

5.28 A number of issues specific to the fees charged by barristers were considered in the course of the Group's work. The Group considered the grading of barristers into two levels – Senior and Junior Counsel – and noted that this has significant costs implications. For example, a Senior Counsel does not usually appear in a High Court case without a Junior Counsel. A client, in engaging, through their solicitor, the services of a counsel of one level to conduct proceedings, may in practice also be required to engage a counsel of the other level. Furthermore, a Junior Counsel where appearing in a case with a Senior normally receives a fee that is set at two thirds of the Senior's fee. The fee a Junior may receive in a case is independent of skill, or work done, but determined by the good fortune of the Senior's earning capacity and fee setting agility. While the profession rejected that this approach was set practice, it has become firmly established practice.

5.29 While noting the Competition Authority's views on the division of the Bar between Senior and Junior Counsel, the Group believes that adopting its recommendations for a system of recoverable cost guidelines on the basis of work done will address the cost implications arising from the present grading structure. For example,

- in circumstances where the Junior Counsel carries out most of the work in a case where a Senior is also engaged, the Junior could recover higher fees than the Senior,
- a well experienced and expert Junior might be employed for a full High Court action and recover the fee that a Senior would traditionally have expected.

Two members of the Group believe that the State should withdraw from any involvement in the selection of Senior Counsel – in this regard, please see the minority recommendation at the end of this Chapter (paras. 5.58 and 5.59 refer).

5.30 The essential point being that fees would be directly linked to the work actually and appropriately done, time expended, and complexity involved, and not to the professional grading structures. Furthermore, adopting guidelines for the various stages of work based on work actually and appropriately done may result in counsel expending more time and effort in drafting pleadings and opinion (if they are appropriately remunerated under the guidelines) thereby changing or delimiting the scope of the case and potentially reducing costs later in the process. Indeed, it was suggested to us that such increased effort earlier on in a case might limit the tendency to go to court.

5.31 The Group was concerned that practice and precedence determine in many cases the number and type of counsel required rather than the work required to be done. The Group also recognised, of course, that the instructing solicitor has an important role in relation to the number and type of counsel assigned.

5.32 A similar issue to the solicitors' instructions fee arises in relation to counsel's brief fee. A brief fee is an all encompassing amount which could be described as including tangible elements such as preparation and research and intangibles such as the counsel's reputation and expertise. As with the instructions fee, the Group recommends that the single fee be abandoned and be replaced by the guidelines on recoverable costs, deconstructing the fee into a set of charges for work actually and appropriately done in respect of steps within a case's progression.

Quotations

5.33 The Group was informed that, increasingly, solicitors '*shop around*' in relation to engaging barristers on behalf of their clients. The Group welcomes this development and sees merit in solicitors obtaining quotations, where appropriate, from barristers and other professionals before engaging them. However, the Group understands that, in particular cases, this may not be possible (e.g., where a barrister with a highly specialised expertise is required).

Related Costs Issues

Cost should not always follow the event

5.34 While the Group is of the view that costs should usually follow the event, they found that there was a broad consensus that departures from this principle should be allowed. This issue is dealt with in more detail in Chapter 8.

Keeping cases out of court

5.35 One possible way of reducing legal costs is to keep cases out of court. In this regard, a number of groups who made submissions to the Group suggested a greater use of mediation. The Group shares the view that anything to encourage greater use of mediation mechanisms in appropriate cases is likely to prove beneficial. However, the capacity to enforce mediation must be open to doubt. Mediation should, however, be encouraged and there may well be strong arguments that applications (for example, under section 205 of the Companies Act 1963 (minority oppression) and section 117 of the Succession Act 1965 (proper provision for child of testator)) should be brought before a judge very early in the proceedings so that the availability of mediation is made known to the parties. In the case of section 205 proceedings, this could form part of the current motion for directions and, in relation to section 117 proceedings, it may be appropriate, at the first instance, that they are returned automatically by an Originating Notice of Motion into a list for directions. Certainly a blanket refusal to mediate in such cases ought to be a matter taken into consideration in relation to any subsequent award of costs.

5.36 As stated above, fairly remunerating the earlier stages of an action, especially the drafting of an opinion and pleadings, could have the result of clarifying the law and facts in issue and bring greater focus to the action. This front loading of costs could lead to a reduction in subsequent costs, particularly if a settlement can, as a result, be reached.

5.37 There may well be other areas where parties could be encouraged to consider mediation at the earliest possible stage. The question of how mediation can be introduced more widely into the Irish system deserves thought and discussion, especially in the courts of lower jurisdiction given the tendency of costs to become disproportionate there.

Monetary jurisdictions of the District and Circuit Courts

5.38 The current civil jurisdictional limits for both courts date back to 1991. Sections 13 and 14 of the Courts and Court Officers Act 2002 provide that the civil jurisdiction of the Circuit Court be increased from £30,000 to €100,000 and that of the District Court from £5,000 to €20,000. There has been sustained opposition from some sectors to the implementation of these provisions because of a concern that such increases, if implemented, would push up the level of court awards. Implementation of the provisions has been effectively '*parked*' pending further consideration of the issue in the light of ongoing developments, especially the establishment of the PIAB.

5.39 The Group has considered this issue and believes that the failure to increase the civil jurisdictional limits since 1991 has led to a situation where more and more cases are unnecessarily heard in the higher courts with attendant increased legal costs. At this stage, a relatively modest claim must now be heard in the High Court. This is wasteful of court resources, incurs unnecessarily high legal bills and, if the trend is left unchecked, will make the District Court and, in time, the Circuit Court redundant in relation to certain classes of civil proceedings.

5.40 It is accepted that the changes proposed in the 2002 Act may well represent something of a shock to the system if implemented overnight.

5.41 Some Group members argued strongly against any increase in the jurisdictional limits due to a concern for the inflationary impact on the cost of insurance to the consumer which may result from an upward adjustment in jurisdictional limits. Furthermore, the Group recognised that the PIAB has only commenced its work in this area and that it is too soon to gauge the longer term impact of the PIAB along with other recent changes. Mindful of the need to control insurance costs and their impact on society, the Group recommends that the jurisdictional limits of the courts be progressively increased and adjusted regularly thereafter, save for personal injuries cases where the status quo should be maintained for a further period until a more complete understanding of the dynamics of the Government's insurance reform programme is available.

Small Claims Procedure

5.42 The Small Claims procedure provides a cost effective method of dealing with a civil proceeding in respect of a small claim (not exceeding €1,269.74). It is designed to handle consumer claims cheaply without involving a solicitor. To be eligible to use the procedure, the plaintiff must have bought the goods or services for private use from someone selling them in the course of business. In addition to consumer claims, the procedure can be used in respect of minor damage to property and the non-return of a rent deposit in relation to a holiday premises. Claims arising from a hire-purchase agreement, a breach of a leasing agreement and debts are excluded from the procedure.

5.43 The Group is of the view that consideration should be given to a substantial increase in the jurisdictional limit of the Small Claims Procedure and that the range of cases dealt with by means of this procedure should be expanded.

Family law

5.44 The Group did not have the opportunity to examine the dynamics, procedures and processes unique to family law and it believes that the issue of family law requires a separate and detailed examination. The Group did, however, consider the issues relating to the disclosure of information in such cases and this is dealt with in the next paragraph. As regards costs, the Group notes that, unlike other areas of law, parties generally cover their own costs in family law cases or are legally aided. Similar to other case types, however, complex and inherently expensive cases might involve poorly resourced clients. Access to justice is a particular concern given the nature of proceedings. In this regard, the Group notes that the vast majority of cases supported by legal aid are family law related. The issue of legal aid is considered below (5.46 – 5.51).

5.45 In relation to the family law process, the Group is of the view that in marital break-up cases – where the level of distrust between the spouses can be very great – it is important that there is the fullest disclosure possible of the capital and income of each spouse at the earliest opportunity. Mediation is required at the earliest possible stage. Spouses and their advisers are not able to negotiate successfully if one or both parties are convinced that the other is hiding financial information. A mechanism is required to provide for this exchange of information and, to this end, the Group recommends that each party should have, after the breakdown in the relationship, the right to require the other party to make a full and complete disclosure of their assets and liabilities. The disclosure will need to be capable of being enforced by suitable penalties for any party who does not provide full and complete disclosure or it is subsequently discovered has failed so to do. The disclosure mechanism should be activated at the earliest possible stage in the commencement of separation or divorce proceedings. In the final stages of this Report, the Group became aware of the introduction of a Practice Direction of the president of the High Court in respect of family law proceedings in the High Court, one of the objects of which is to encourage early and full disclosure of parties' assets and income.

Access to justice

5.46 The ability to defend and vindicate private rights is a cornerstone of a civilised society. It is central both to the promotion of the welfare of citizens as well as to the economic development of the State. The *'price'* of justice has a major bearing on access and the Group is concerned that the cost to individual litigants significantly influences access to justice. The Group also recognises that opportunity costs may also arise for a society and its citizens if access to justice is inhibited. This might happen where practices and procedures ultimately found to be unlawful were allowed to stand without timely legal challenge.

5.47 The Group was concerned about two related issues; the cost of justice to the litigant, and the overall cost to society of its civil legal system. Clearly these are interrelated issues, and reducing or eliminating the price to a litigant does not necessarily mean that the cost to society will reduce. Indeed the Group is concerned that the opposite could, in fact, be the case in that excessive costs can emerge if litigants are protected fully from the costs of their actions.

5.48 The Group concentrated its efforts at addressing factors which had a significant bearing on the overall cost of litigation and also examined issues influencing pricing and incentives to consume. However, the Group was also concerned about the access impact of the high costs of litigation. As regards the current free legal aid scheme, the Group noted that recent increases in funding have allowed the Legal Aid Board to improve significantly waiting times for appointments with solicitors. The Group welcomes this development. However, the means-assessment rules significantly limit the numbers in society who can access the system.

5.49 The Group believes that the implementation of its recommendations will both reduce the cost of litigation to citizens and give greater predictability to potential litigants. These features should enhance access to justice. However, the Group recognises that they will not eliminate the significant cost disincentive to many individuals.

5.50 The Group believes that the development of low cost litigation procedures could play a significant role in providing citizens with greater access to justice and, in this regard, the Group would encourage the implementation of its recommendations in the context of the jurisdictional limits of the District Court and the Small Claims Court. Similarly, the Group feels that the development of alternative dispute resolution systems must be further explored.

5.51 The Group is of the view that the Government might give further consideration to the operation of the free legal aid system to ensure that those without adequate means are not effectively excluded from using the civil legal system to vindicate their rights. The Group was strongly of the view that the *'no foal, no fee'* system may not adequately address the need for legal services across the spectrum of issues requiring resolution in the courts.

Charging for Court Time

5.52 The issue of charging for court time arose in the Group's consideration. Some jurisdictions appear to employ costs recovery charging for court time. Some Group members thought that charging for court time might reduce demand and encourage non-court based resolution of disputes. They also felt that time-based charging might reduce certain time-consuming strategies employed in court, to the betterment of others waiting to use the courts. They felt that the Courts Service should seek to recover some or all of its costs based on the usage of the service. Other Group members believed that charging for access to the courts may be constitutionally debarred and were concerned about access to justice issues. The Group recommended that the constitutional aspects be clarified and depending on the legal advice the issue be reviewed by the Department of Justice, Equality and Law Reform in consultation with the Courts Service and other relevant groups.

Controlling the costs of multiple actions

5.53 Some Group members raised the issue of legal costs arising in multiple action cases such as the so-called Army deafness claims. The point was made that one would reasonably expect legal costs to fall in relation to such cases over time. The initial cases would require a certain level of legal work, investigation and preparation which should not be required in subsequent cases. However, in practice, no reduction in legal costs was observed. Over time, one would expect that the cases would become less complicated and, at the very least, they could not be described as having any novel or unique features.

5.54 The Group is of the view that the State should continue to be pro-active in robustly challenging such costs. It believes that its proposals for charging on the basis of work actually and appropriately done would seriously constrain the practice of repeat overcharging in this type of case. The Group recommended that the proposed cost recovery guidelines should explicitly identify this type of case and that solicitors and others should only be permitted to charge for work actually done in respect of the case in hand in line with the recommendations made elsewhere in the Report concerning recoverable costs.

5.55 Furthermore, the Group was convinced of the need to use case management actively to ensure that test cases where required are brought forward as early as possible to clarify the law in contentious areas. The Group is aware that proposals for case management of such cases forms part of the recommendations of the Law Reform Commission's report on Multi-party Litigation, published as this Report was being finalised.

Judicial resources

5.56 The Group received a number of submissions highlighting judicial resources as a factor in pushing up costs (cases not heard because of a lack of judges etc). While the Group considered the issue of judicial resources to be outside its terms of reference, it believes that the Government should ensure that the level of judicial resources required to carry out the work of each bench effectively and efficiently is provided. However, the issue of resources cannot be separated from other relevant factors impinging on judicial effectiveness such as the organisation of districts/circuits, the management of judicial resources and working practices. All of these issues need to be addressed.

5.57 The Group noted that there have been important and welcome innovations in relation to judicial working practices such as the new Commercial Court and the Supreme Court handing down judgements without the need to read them in full in open court.

Minority Recommendation in relation to Senior Counsel – Peter Dargan and Colm McCarthy

5.58 The legal profession in Ireland has traditionally been divided into barristers and solicitors. But in addition the profession of barrister has been divided into Senior and Junior Counsel, a distinction sanctioned by the State in its granting of letters patent to those deemed suitable for senior status. Since Senior and Junior Counsel undertake different kinds of work, the distinction may have economic effects, and we recommend that the State should withdraw from any involvement in the selection of Senior Counsel. So far as we are aware, the State has no comparable involvement in any other profession.

5.59 Should the barristers' professional body, the Bar Council, wish to continue with the practice of elevating experienced members to a separate status without any segmentation of functions between the senior and junior members, there can be no objection to this. But if a segmentation of functions were to continue, the approval of the Competition Authority ought to be required.

6 Empowering the client

The legal services market

6.1 The Group believes that the consumer, the individual litigant, should have a central role to play in controlling costs. Empowering the litigant to have a better understanding of what is involved in civil litigation and the decision processes of a case, and to be actively involved in this regard – particularly with regard to cost – is an essential factor in ensuring the effective control of legal costs. The timely provision of information to clients by solicitors and counsel is central to this empowerment. As the Report was being finalised, there were allegations of double-charging by solicitors in respect of applications before the Residential Institutions Redress Board. The controversy highlights the importance of empowering clients in the manner described above.

The ‘Section 68 letter’

6.2 Section 68 of the Solicitors’ (Amendment) Act 1994 requires solicitors to provide clients with written particulars concerning the fees that will be charged for the requested legal services. There are a number of points to note regarding this provision:

- the information in question must be furnished to the client upon taking instructions from that client, *“or as soon as is practicable thereafter”*
- the solicitor should not commence legal services without having provided the information required by section 68
- the information referred to in section 68 must be provided in writing.

6.3 The following particulars regarding the legal services to be provided by the solicitor or his firm, must be included in a section 68 notice:

- (a) the actual charges for the legal services sought; or
- (b) where (a) is impossible or impracticable, an estimate of the charges; or
- (c) where (a) and (b) are impossible or impracticable, the basis for making the charges.

6.4 Certain aspects of the provision are relevant solely to contentious business. Firstly, where legal services involve contentious business, in addition to the requirements noted above, the section 68 letter must also include particulars of the circumstances in which the client may be required to pay the costs of another party or other parties. It must also include particulars of the circumstances, if such exist, in which the client may be required to pay costs to the solicitor above the costs that may be recovered from the other party or parties in contentious proceedings.

6.5 Secondly, in the context of contentious business, section 68 prohibits solicitors from entering into any agreements with clients to the effect that the solicitor’s charges will be a percentage of the damages or monies that may be payable to the client in contentious proceedings. Any charges made in contravention of this rule are not enforceable against the client.

6.6 Thirdly, solicitors are prohibited by section 68 from retaining any part of damages or other monies payable to the client arising from contentious business, in full or partial discharge of the solicitors' charges. However, this does not preclude a solicitor and a client from entering into an agreement that the solicitor's costs will be paid out of damages or other monies that become so payable to the client. Such an agreement must be in writing and must include an estimate of what costs the solicitor believes may be recoverable in respect of the solicitor's charges from other parties to the proceedings in question.

6.7 Fourthly, as soon as practicable after the conclusion of contentious business, a solicitor is obliged to provide a bill of costs to the client, displaying the following:

- “(a) a summary of the legal services provided to the client in connection with such contentious business,*
- (b) the total amount of damages or other moneys recovered by the client arising out of such contentious business, and*
- (c) details of all or any part of the charges which have been recovered by that solicitor on behalf of that client from any other party or parties (or any insurers of such party or parties).”*

6.8 The bill of costs so furnished must also show separately the amount of fees, outlays, disbursements and expenses incurred or arising in connection with the provision of such legal services.

Sanctions for Failure to Provide Section 68 Letter

6.9 While section 68 is a mandatory provision, there are limited sanctions available for failing to comply with it: the Taxing Master may take the absence of such a letter into account in determining the appropriate fees and the Disciplinary Committee of the Law Society can have regard to the failure to comply with section 68 in appropriate cases.

The Group's recommendations

6.10 The Group is of the view that the section 68 mechanism for informing clients is a good one. It also welcomes the steps taken by the Law Society to facilitate solicitors in adhering to their obligations under the provision. However, the Group believes that the statutory obligation imposed by section 68 falls short of the objective of ensuring that each client receives the information they require for their informed oversight of costs.

6.11 Accordingly, it is recommended by the Group that the Minister for Justice, Equality and Law Reform, having consulted with the Law Society, bring forward proposals for a revised and expanded client engagement letter, which should:

- be furnished to the client within a stated timeframe,
- contain (a) details of the work to be done and (b) the estimated costs thereof or the daily or hourly charges applicable,
- contain a 'cooling off' provision (showing costs incurred or unavoidable and those which will ensue if case is proceeded with),
- be regularly updated, and

- give clients the opportunity to cease their action before any material increase in expenditure is incurred (subject to the knowledge that a litigant who abandons litigation may be liable to the costs of the opposing party).

6.12 The letter should also make explicit reference to the other provisions of section 68, viz.:

- a solicitor shall not act for a client on the basis that all or any part of the charges to the client are calculated as a specified percentage or proportion of any damages or other monies that may become payable to the client and any charges made in contravention of this shall be unenforceable in any action taken against that client to recover such charges, and
- a solicitor shall not deduct or appropriate any amount in respect of all or any part of his charges from the amount of any damages or other monies that become payable to a client of that solicitor arising out of any contentious business (save where a solicitor and his client agree, in writing, to waive the provision).

6.13 The Group recommends that a revised section 68 letter should be provided periodically, whenever a significant increase in estimated costs is anticipated and at critical decision points.

6.14 The Group also recommends that failure on the part of a solicitor to issue a letter in accordance with the relevant legislative provisions should be subject to a meaningful penalty. In this regard, the Group recommends that costs should only be certified as recoverable with reference to the valid section 68 letter or update and that costs which have not been so specified should not be recoverable. To this end, the Group recommends that legislation should be enacted to make it explicit that a legal practitioner may not seek reimbursement from his/her client in respect of that portion of the costs which are not recoverable nor seek to have the amount recovered from the clients award or settlement.

6.15 The Group suggests that the section 68 letters should form part of the assessment process and, where costs are in issue between parties, that the paying party should have access to the other party's section 68 letters.

7 A new costs assessment process

An evaluation of the current system

7.1 The Group, in examining the current system of taxation, identified a number of key issues that require to be addressed:

- transparency
- predictability
- application of section 27, Courts and Court Officers Act 1995
- expense, and
- duplication.

Transparency

7.2 The current requirements as to the format of bills of costs impede rather than assist understanding of the extent of the work actually undertaken by a solicitor or counsel. The gathering, under a few headings (viz. the instructions fee and brief fee) of an otherwise heavily itemized bill, of the bulk of the work undertaken in the preparation and overall management of the case, makes difficult any systematic evaluation of the nature and extent of the work undertaken by the legal professionals involved (as required by section 27(1) of the Courts and Court Officers Act 1995). The fact that the various subsidiary items are governed by a scale of fixed fees – or a range within which fees are to be allowed – which is long out of date, gives a distorted picture to the client or paying party as to the make-up of the costs.

7.3 Lack of transparency extends to the process of taxation itself. In the absence of a review by the court of a Taxing Master's decision, when the Taxing Master will be required to produce a report to the court, reasons for decisions on individual taxations are not published. As has been remarked in decisions of the courts in reviewing taxations, comparison of the taxation outcomes in similar cases is a valid means of determining the costs allowable in a particular case. The absence from the public record of details of taxation decisions, however concisely stated, or of any register of taxation outcomes recording key factors in the outcome, has created a significant information deficit which severely limits public awareness, and awareness within the legal profession, of the likely levels at which bills of costs in different categories of proceedings or stages within proceedings, may tax.

7.4 In *Lord v Flynn*, attention was drawn to two practice directions of the Taxing Masters which issued on 3rd April, 1998. These directions provided, respectively, that (a) any person not being a party to a taxation must obtain consent from the party whose costs were taxed before inspecting the taxed bill of costs, and (b) written submissions must be lodged on behalf of a party in advance of a taxation including a list and details of decided cases or other relevant documents upon which the submissions are based. The first direction appears to have been designed to preclude access by third parties, without the consent of the party affected, to information of a confidential nature

which might be incorporated in or attached to bills of costs, in the light of the increased powers of scrutiny available to the Taxing Master under section 27 of the Courts and Court Officers Act 1995.

7.5 In the case concerned, the applicant was a legal costs accountant relatively new to the profession who claimed to be adversely affected by the discontinuance of a practice of allowing legal costs accountants to inspect bills for comparison purposes. The applicant sought to have the practice direction at (a) above set aside in judicial review proceedings against the Taxing Masters. While rejecting the applicant's claim, the judge observed in relation to the former practice:

" I do accept that to some extent the practice was helpful in so far as the due taxation of costs was concerned and, therefore, the due administration of justice in that it was a method whereby helpful precedents could be brought before the Taxing Master."

Predictability

7.6 The approach to taxation of costs, as mandated by legislation, rules of court and case-law, makes the outcome of the process difficult to predict, for legal practitioners and lay persons alike. Given the nature of legal work in the area of contentious business, some degree of uncertainty as to the precise amount which will ultimately be chargeable in respect of a legal dispute is inevitable. The absence of data on previously taxed cases compounds this difficulty.

7.7 No express set of taxation policies or guidelines exists to indicate how the criteria mentioned earlier as governing the exercise of discretion by the Taxing Master (e.g. complexity, skill required, importance of case to client, value of claim, etc.) should be applied for particular types of action or application. The absence of such guidance hampers solicitors in advising clients on the extent of their likely exposure to costs and renders the process of predicting or settling costs as an alternative to taxation more difficult. These disadvantages outweigh any benefit which the current very flexible approach to exercise of judgment may confer in an individual case.

Application of section 27, Courts and Court Officers Act 1995

7.8 As has already been observed, section 27(1) of the 1995 Act permits the Taxing Masters "to examine the nature and extent of any work done, or services rendered or provided" by counsel – both Senior and Junior – as well as the solicitor, and any experts subpoenaed or retained.

7.9 Notwithstanding the opportunity this provision presents to scrutinise legal fees by reference to the amount of work carried out in a case, 'rule of thumb' practices are still employed, for example, in the fixing of Junior Counsel's fees. The practice of setting these fees at two-thirds of that of Senior Counsel retained by the party concerned continues on taxation. The fixing of Junior Counsel's fees across the board at a set proportion of Senior Counsel's fees, without any underlying reasoning would seem to offend against the intent of section 27(1).

7.10 It would also seem that standard fees are generally allowed to expert witnesses for attendance in court. While set fees for particular types of work or attendance may be quite justified and may enhance predictability, this should be done by reference to published guidelines.

Expense

7.11 Taxation is an expensive process. While, theoretically, solicitors are competent to draw an itemised bill of costs, due to the specialised nature of the work and lack of information about costs levels and practices on taxation already referred to, the drawing and supporting or opposing of bills on taxation has, in the Taxing Masters' Office at least, become the almost exclusive domain of a small group of legal costs accountants. No reference to the legal costs accountant appears in the legislation or rules relating to taxation, and he or she attends the taxation as agent of the solicitor concerned. A percentage commission – in the range of 7-10% of the solicitor's profit costs (generally, the solicitor's instructions fee) – will, generally, be charged by the legal costs accountant. This charge is not recoverable against the other party and will inevitably form part of the solicitor's cost base and, as such, will ultimately be passed on to the solicitor's client.

7.12 The Group, while it did not consider the fees charged by legal costs accountants as coming within the scope of its enquiry, would make the general point that it believes that the basis for charging fees should be on a work done basis. Charging by commission may have unwelcome incentivising consequences. The Group note that the general thrust of the recommendations in this Report will reduce the need to use legal costs accountants and should, therefore, lower legal costs by reducing this component of the solicitor's cost base.

7.13 The court fee percentage payable on taxation – 6% of the amount allowed after VAT has been applied – is a significant burden on the paying party and operates as a further disincentive to referring a bill to taxation.

Duplication

7.14 The procedure for review by the Taxing Masters of their own taxations following lodgement of objections, given the existence of a procedure for review by the court, serves no useful purpose. It may indeed contribute to delay in completion of taxation by the Taxing Master. Further evidence may be adduced before the Taxing Master on the hearing of objections, and this may discourage parties from making out their full case at the initial taxation stage.

A new regime for assessment of costs

7.15 The Working Group is of the view that the present system for taxation of costs should be replaced by a new legislative framework which would include the setting of guidelines for recoverable costs together with new assessment and appeals mechanisms.

7.16 The new regime would encompass:

- a Legal Costs regulatory body which would take over the existing functions as to costs performed by the court rules committees and other bodies, as well as exercising new powers to set guidelines and limits in respect of costs, and have a public information role
- a Legal Costs Assessment Office, which would replace the Taxing Masters' Office, operating a written assessment procedure
- an assessment, limited to that portion of the bill of costs which is disputed, would be undertaken

- an entitlement by parties liable to pay costs to make a lodgment or tender in advance of assessment, and in the event that the amount of their offer or tender was not exceeded on assessment, a requirement that the other party be liable to pay the appropriate court fees in respect of the assessment
- provision on a continuing basis of information and data to the public on the outcomes of individual assessments, under both the assessment and appeals procedures
- an Appeals Adjudicator to conduct, by way of oral hearings, appeals from assessment
- decisions of the Appeals Adjudicator should not be reviewable by him or her (as currently happens with the Taxing Master)
- suitably qualified persons (not confined to members of the legal profession) would be eligible to apply for the post of Appeals Adjudicator
- retention of the existing review role of the courts in relation to decisions of the Appeals Adjudicator.

The regulatory body could, if it was considered appropriate, also regulate costs in relation to non-contentious business. The principal elements of the regime proposed are considered in greater detail below.

The Legal Costs regulatory body

7.17 The Legal Costs regulatory body which the Group recommends should be empowered to formulate and promulgate guidelines for the assessment of costs in contentious business and should be conferred with all necessary powers to regulate such costs. Specifically, the body should

- be responsible for formulating and regularly updating cost recovery guidelines which would inform billing and assessment
- set ranges for the maximum number of hours which may be normally recoverable as party and party costs for particular types of proceedings or steps within proceedings.
- regulate the procedure for assessment of costs, the information to be provided by persons conducting assessments of costs, and ancillary matters
- prescribe the information to be given in respect of costs, fees and disbursements by solicitors and counsel to persons seeking or receiving legal services, or estimates of costs
- provide information to the public on the law and on client entitlements relating to costs, and
- as an aid to the exercise of its regulatory powers and for the information of the public, collect, analyse and publish data in relation to costs, counsels' fees, witnesses' expenses and other disbursements from all court jurisdictions

Assessment of costs

7.18 A new process of evaluating and determining the amount of costs to be allowed in disputed cases, to be known as assessment, should replace the current method of taxation or measurement of costs. The process would consist of two stages, a written assessment procedure and an oral appeals procedure.

Preliminary stage

7.19 A party seeking payment of a bill of costs should be required, when remitting the bill to the party liable to pay the costs, to inform the latter of their right to refer it for assessment within the time prescribed and to make a lodgment or tender in respect of the amount of costs claimed. The party liable to pay would be afforded a specified period within which to indicate whether they accept the bill or not.

Lodgment or tender in respect of costs claimed

7.20 A party liable to pay costs should be entitled, within a specified period of receipt of the bill, to make a lodgment in court or tender in satisfaction of the claim for costs. In the event that the amount in which the costs are assessed does not exceed the amount lodged or tendered, the party which declined to accept the lodgement/tender should be liable to pay the appropriate court fees in respect of the assessment. The lodgment procedure, and the categories of individual entitled to make a tender, should follow as closely as possible that provided for under Order 22 of the Rules of the Superior Courts.

The written procedure

7.21 This procedure would apply to the assessment of disputed costs in contentious business from all jurisdictions, on foot of an award of costs (and could be extended to non-contentious business). In the case of solicitor and client bills, the procedure would be initiated on foot of a request for assessment. Assessment by written procedure would be conducted by an officer in the Legal Costs Assessment Office in accordance with the appropriate recoverable cost guidelines set and any ranges for maximum number hours chargeable.

7.22 The written assessment procedure would be mandatory for disputed bills and would apply to bills falling currently within the remit of the Taxing Masters or County Registrars.

7.23 A party wishing to avail of the procedure would be required to submit the bill to the Legal Costs Assessment Office. It should be accompanied by a book of pleadings and other relevant documentation, including copies of notices exchanged, affidavits and correspondence, and the advice on proofs received from counsel. The Legal Costs Assessments Office would be entitled to request production of other documentation which it considered relevant.

7.24 The proponent of the bill (who will usually, although in the case of solicitor and client bills not always, be the party referring the bill) would be required to complete a questionnaire in a prescribed form to assist the assessment. The bill and completed questionnaire would require to be delivered to the other party, who would be afforded a limited period within which to respond with written submissions in a prescribed form. The party receiving the bill would indicate the items not in dispute. Upon receipt of the bill, questionnaire and proof of delivery of these to the other party, and following expiry of the time limit for receipt of comments, the Assessments Office would proceed to assess the bill.

7.25 Assessment under this procedure should be subject to a lower rate of court fees than that currently payable on taxation and no costs should be allowable in connection with the assessment against the party liable to pay the costs. As regards fees generally, the Group recommends that

the charges associated with the proposed assessment structure should be confined to recovering the expenses of the legal costs assessment, appeals and regulatory bodies.

7.26 In the event of a party being dissatisfied with the outcome of the assessment, they would be entitled, within a limited period of receipt of notice of the amount assessed, to have recourse to the appeal procedure detailed below. In the event that they do not avail of this opportunity, the certificate of assessment of costs would issue automatically on the expiry of that period.

Appeals

7.27 Appeals against assessments would be heard by an Appeals Adjudicator. This would involve an oral hearing.

7.28 The appeals procedure could be invoked in the event that a party is dissatisfied with the outcome of the assessment.

7.29 Court fees in relation to appeals should be levied at a higher rate than those applicable for the assessment and should be paid by the party initiating the appeal.

7.30 County Registrars would conduct appeals for bills of costs currently falling within their taxation remit. Consideration could also be given to empowering County Registrars to deal with appeals in respect of assessments of solicitor and client bills where the costs arise in respect of proceedings initiated or a transaction effected within the county in which the County Registrar has jurisdiction.

Review of and directions concerning assessments

7.31 Unlike the current arrangement under Order 99, rule 38 of the Superior Courts, whereby the Taxing Masters are required to review their own taxations upon receipt of objections, an Appeals Adjudicator would have no power to review his or her own decisions.

7.32 However, review by the court of an appeal should be available in the same circumstances as currently available under section 27(3) of the Courts and Court Officers Act, 1995, viz. that the court is satisfied that the Appeals Adjudicator has erred as to the amount of the allowance or disallowance so that the decision is unjust.

7.33 The High Court would exercise jurisdiction in respect of decisions of the Appeals Adjudicator, the Circuit Court exercising jurisdiction in the case of decisions by County Registrars. In the case of the High Court, the Group recommends that the President of the High Court assign judges to 'costs' cases from a panel of, say, three judges.

The Legal Costs Assessment Office

7.34 This office, which would be established within the Courts Service and be designated an office of each of the courts for the purposes of the Courts (Supplemental Provisions) Act 1961, would replace the Taxing Masters' Office and have the following functions:

- the operation of the assessment procedure mentioned above

- provision of administrative support to the Legal Costs regulatory body and the Appeals Adjudicators
- provision on a regular basis of up-to-date information and data to the public on the outcomes of individual assessments and appeals by reference to category of litigation or application, value of claim and other criteria, as prescribed by the legal costs regulatory body.

7.35 The office would be under the management of a member of staff of the Courts Service.

7.36 The assumption by the office of responsibility for the assessment procedure would have implications for the resourcing of the office. While the assessment procedure may possibly take less time than the current taxation procedure, a need for additional personnel resources to handle assessments would undoubtedly arise given the likely volume of bills which would be diverted to the new procedure.

The Appeals Adjudicator

7.37 Appointment to the position of Appeals Adjudicator should be by way of open competition conducted by the Public Appointments Service. The competition should be open to suitably qualified persons and not be confined to members of the legal profession. Appeals Adjudicators should be appointed on a non-renewable fixed contract basis.

8 Reforming litigation

Introduction

8.1 In this chapter the Group has sought to highlight those areas in which current practices may generate costs unnecessarily or operate as an impediment to containing costs, and to propose changes in practice or procedure which it considers may assist in containing costs.

Time limits in the Rules

8.2 The pace and progress of a civil case is dependent on the initiative and disposition of the respective parties – two or more protagonists, each with an eye to their own interest, who find themselves in a situation which, by its nature, does not encourage mutual cooperation.

8.3 Where one party to the proceedings delays in delivering their pleading, the other party will be entitled to seek an order for judgment in default of defence or for dismissal for want of prosecution, as the case may be. However, this process involves an application to court, and may result in the court granting an adjournment, or a series of adjournments, to afford the dilatory party time to deliver their pleading. Furthermore, where a party fails to comply with a direction upon such an application, e.g. to deliver a pleading, the matter will usually require a further application to the court in order for a sanction to issue, necessitating the incurring of further costs.

8.4 The Rules prescribe in considerable detail the time limits for the completion of the various steps to be taken in the preparation of a case for trial (e.g. entry of appearance and delivery of pleadings). However, the Rules at the same time afford the court a wide discretion to extend the time prescribed by rule of court or specified by an order of the court for the taking of any step, “upon such terms (if any) as the Court may direct” and such an extension may be granted even though the application for extension is not made until after the period of time in question has expired. The result is that the time limits in practice are often ignored as there is not any realistic likelihood that the delaying party will suffer any penalty for his or her delay.

8.5 The impression gained by the Group is that, over a considerable period, a tolerance has built up within the system for parties who fail to adhere to the time limits prescribed by the rules for completion of steps preparatory to trial, such as the delivery of pleadings. This perception is supported by expressions of opinion from authoritative sources. In May 2001, a committee established to consider the issues arising from case management of civil litigation reported to the Superior Courts Rules Committee. In his foreword to the report, Mr. Justice Frederick Morris, then President of the High Court, who chaired the committee, commented:

“By far the most important decision which the Committee made was the recognition that in this jurisdiction a solution to all our ills lay not in making sweeping changes to the Rules of Court but by the application of the existing Rules of Court as appropriately amended. The culture of our courts has been to excuse and overlook failure to comply with the Rules of Court. This is based upon the sound fundamental principle that justice requires that a party

be allowed to have his issue tried by the court rather than have his actions struck out or judgment entered for failure to comply with the rules. Thus it is that only in rare and exceptional circumstances will a party be deprived of a hearing at the pleadings stage.

If this review of the Rules of the Superior Courts is to mean anything then there must be a fundamental rethink of this culture of “Give him one last chance . . .”.

8.6 Consistent with these views, the committee in its report recommended strict enforcement of the rules of court.

Reservation of costs of interlocutory motions

8.7 Problems of delay are compounded by limitations on the ability of parties to control their exposure to costs in the proceedings. The general rule is that *“costs follow the event”*, meaning that the party in whose favour judgment is given will almost invariably be awarded their costs against the unsuccessful party. If the costs of interlocutory applications are reserved to the trial of the action, it means that a party who may have succeeded on such an application but lost in the main action will usually be visited with the costs of the interlocutory applications.

Duration of a trial

8.8 The length of time to be occupied in the trial of the proceedings is in most cases left to the parties to determine. At the list to fix dates for trial, counsel for the parties will usually be invited to estimate the time required for trial, and a trial date or dates will be allocated to the case having regard to those estimates. It would be quite unusual for the court to override the estimate of the advocates in allocating a time to a trial. The procedure is at best extremely rough and ready and suffers from the not inconsiderable defect that the identity of the judge is not known at the time that the estimate of time is made. Different judges move at different paces.

Consequences of trial overrunning or not beginning on its allotted date

8.9 In the event that a trial does not take place on time or that a case goes beyond its allotted trial time, expenses will have been incurred, e.g., witnesses in attendance to give evidence, the costs of which will invariably be borne by the losing party, albeit that the trial could not proceed because no judge is available or that the trial is proceeding at a slower pace than anticipated for which the losing party is not responsible.

Making the delaying party pay

8.10 The existing procedural rules, aside from any inherent discretion the court may exercise, may give the court powers of intervention in cases of delay. Order 33 rule 33 of the Rules of the Superior Courts (which Order is, on its face, concerned with accounts and inquiries) allows the court, in the event of there appearing to be any undue delay in the prosecution of any accounts or inquiries or in any other proceedings under any judgment or order, *“to require the party having the conduct of the proceedings, or any other party, to explain the delay, and . . . thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require . . .”* However, this provision does not appear to have been relied upon in recent times, if in fact it ever has been.

Making the solicitor for the delaying party pay

8.11 The Rules of the Superior Courts also provide for sanctions against solicitors deemed responsible for delay. Where it appears to the court that a trial or other proceedings cannot conveniently proceed due to the neglect of a solicitor for a party to attend personally or be represented, to the solicitor's failure to be properly prepared for the matter, or to an omission to deliver any document needed by the court, the court may direct the solicitor personally to pay costs to the other party.

8.12 The court may also disallow, or even direct repayment, of costs incurred as between a solicitor and the solicitor's client if it considers that they have been incurred improperly or without reasonable cause incurred, or have proved fruitless to the client due to delay in proceeding under any judgment or order, or to misconduct or default by the solicitor. The court may in such circumstances refer the matter to the Taxing Master for inquiry and report. These provisions are rarely if ever applied.

Lodgements in satisfaction of claims

8.13 A defendant, having entered an appearance and at any time up to the case being set down for trial, is entitled to make a lodgement or, in the case of certain classes of defendant, an offer of tender, to meet the claim of a plaintiff. The amount of the lodgement or tender is not made known to the court until after the delivery of judgment. Where the amount ultimately awarded to the plaintiff does not exceed the amount lodged or tendered, the plaintiff will be liable to the defendant for the costs incurred subsequent to the lodgement or tender, unless the court at the trial for special and express reason directs otherwise. This procedure serves to concentrate the parties' minds on the merits of early settlement of proceedings.

8.14 If the party accepts the lodgement he is entitled to his costs to date. These costs are subject to being taxed either by the Taxing Master in the case of High Court proceedings or by the County Registrar in the case of Circuit Court proceedings.

8.15 A recent decision of the Supreme Court (*Cronin v Astra*, 14 May 2004) has held, on the basis of current legislation, that where a plaintiff accepts a lodgement by a defendant in High Court proceedings which falls within the jurisdiction of a lower court, the plaintiff cannot be confined to receiving costs on the scale appropriate to the lower jurisdiction. This contrasts with the outcome where an order is made by the court awarding damages within a lower jurisdictional ambit. This makes it commercially unattractive for a defendant to make a lodgement below the jurisdiction of the court in which the plaintiff has chosen to initiate proceedings, and operates to discourage efforts by defendants to bring proceedings to a conclusion pre-trial. The Group recommends legislative action to remedy this defect.

The determination by the court of liability to pay costs

8.16 The court has power to deal with issues as to liability for costs at any stage of the proceedings, and may direct payment of costs imposed pre-trial albeit that the proceedings have not concluded. In determining liability for costs, the court may also direct—

- (a) that a sum in gross be paid in lieu of taxed costs, or
- (b) that a specified proportion of the taxed costs be paid, or
- (c) that the taxed costs from or up to a specified stage of the proceedings be paid.

8.17 Notwithstanding these powers, the issue of liability for the costs of such applications is often not determined at the time of the application. It is even more unusual for a court to fix the amount of costs at the time of the application no matter how straightforward. However, the courts very rarely fix the amount of costs in relation to an interlocutory application. Thus, a party who may have succeeded on a pre-trial application necessitated by a default on the part of the other party may ultimately fail to recover the costs of that application in the event that the defaulting party succeeds on the main issue at trial.

8.18 Where the court makes an award of costs following trial, the issue of liability for costs is usually determined as a single “package”. Where more than one issue has fallen to be determined at trial, or where a particular issue is no longer pursued or disputed, the matter of liability for costs is rarely split and separately determined in relation to each issue. Similarly, liability for the costs of pre-trial applications reserved for determination following the trial is seldom separately examined and determined from that of liability for the main trial costs.

Recent developments

European human rights jurisprudence

8.19 Even were the impetus for reform of the system of administration of civil justice to be lacking from within, the general approach to the management of litigation here is increasingly no longer tenable in light of our international obligations to observe human rights. The jurisprudence of the European Court of Human Rights has established that a principle of domestic law or practice that the parties to civil proceedings are required to take the initiative with regard to the progress of proceedings, does not absolve the State from complying with the requirement to deal with cases in a reasonable time.

Expedition

8.20 Until recently, the rules of civil procedure have not contained express policy statements or directives, as provided in the Civil Procedure Rules in England and Wales, designed to ensure that the courts interpret and apply the rules in a manner which assigns priority to expedition or the control of costs incurred. Part 1.1 of the Civil Procedure Rules establishes an “Overriding Objective” of “enabling the court to deal with cases justly”. This objective is further defined as including:

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

8.21 The court is required to seek to give effect to the overriding objective when it exercises any power under or interprets any rule, and must further it by actively managing cases. The parties are required to help the court to further the overriding objective.

8.22 Recent procedural innovations in civil litigation procedure in this jurisdiction have employed a similar objective-oriented approach. Rule 5 of the rules for the Commercial List within the High Court (known as the Commercial Court), in the chapter of those rules dealing with pre-trial procedure, provides that:

“A Judge may, at any time and from time to time, of his own motion and having heard the parties, give such directions and make such orders, including the fixing of time limits, for the conduct of proceedings entered in the Commercial List, as appears convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings.”

8.23 Where proceedings in the Commercial Court have been assigned to case management, a similar purpose is ascribed to the case management conference. A similar approach has been taken in the new rules regulating proceedings in the Competition List of the High Court .

8.24 Section 9 of the Civil Liability and Courts Act 2004 has, in relation to personal injuries actions within the ambit of that Act, set a general mandate to be observed by the courts in their application of the rules in such actions. Section 9(1) provides:

“(1) It shall be a function of the courts in personal injuries actions to ensure that parties to such actions comply with such rules of court as apply in relation to personal injuries actions so that the trial of personal injuries actions within a reasonable period of their having been commenced is secured.”

Containing adjournments

8.25 Section 9(2) of the Civil Liability and Courts Act 2004 restricts the discretion of the court in granting extensions of time periods prescribed by the rules of court to a situation where the extension is considered *“necessary or expedient to enable the action to be properly prosecuted or defended”* and the interests of justice require such extension.

8.26 Changes in the rules of court have been effected with a view to placing some limit upon the number of applications which may need to be brought by a defendant for dismissal of a claim in default of delivery of a statement of claim, or by a plaintiff for judgment in default of defence. In either case, on the hearing of the first application the court may grant the relief sought. Where the court affords further time to the defaulting party and a further application is necessary, the court is required to grant the relief unless it is satisfied that special circumstances, to be expressed in its order, justify the continuing default. In the latter event, should the party concerned fail to deliver the pleading within the further time allowed, the claim must be dismissed or judgment entered, as the case may be.

8.27 However, the changes described in the preceding paragraph remain isolated examples of procedures available under the rules of court expressly allowing for peremptory adjournments, i.e. adjournments granted to allow a party to comply with a direction, in default of which a sanction will issue against the party in default.

Determining liability for costs

8.28 Changes have also been introduced in limited categories of litigation to the approach to be taken to the costs of pre-trial applications (which will usually remain uncertain until the disposal of the proceedings at trial). In proceedings entered before the Commercial Court or in the Competition List, where any interlocutory application has been determined by the court, the court is required to make an award of costs “*save where it is not possible justly to adjudicate upon liability for costs on the basis of the interlocutory application*”.

Exchanging of offers in personal injury actions

8.29 Section 17 of the Civil Liability and Courts Act 2004 has introduced, in respect of personal injuries actions governed by the Act, a new procedure – operating in parallel to the lodgement/tender procedure mentioned above – requiring the exchange by both plaintiff and defendant of formal offers of terms of settlement. Section 17(1) requires the plaintiff and defendant, respectively, after the prescribed date (viz. the date on which the personal injuries summons is served) to serve a notice in writing of an offer of terms of settlement on each other. The defendant may alternatively serve, after that date, a statement that he or she is not prepared to pay any sum of money to the plaintiff in settlement of the action. Each party must, after the expiration of the prescribed period (14 days after service of the notice of trial in the High Court and Circuit Court) file a copy of their formal offer in court. The formal offers will not be communicated to the trial judge until after delivery of judgment, after which the court will be obliged, when considering its order as to costs, to have regard to the terms of each offer and the reasonableness of the conduct of the parties in making their offers. This procedure like the lodgment/tender procedure, does not apply until proceedings have commenced.

Recommendations for procedural reform

A fundamental change in culture

8.30 We set out in the paragraphs following a range of proposals for procedural reform, mostly to be achieved by way of amendment to rules of court. However, we share the view, expressed in the foreword to the report of the Case Management Group mentioned earlier, that no amount of amendment to procedural rules is likely to be effective in the absence of a change in the attitude by practitioners to adherence to prescribed time limits, and in the approach by the courts in applying those time limits with rigour. Where the rules allow for departure from set time limits in exceptional circumstances, such a facility should be afforded only to exceptional cases, and should never become the norm.

An overriding objective

8.31 New procedural initiatives are required to address problems of delay, the phenomenon of serial adjournments, and the lack of certainty as to the exposure to liability for costs. However, it appears that the existing procedural rules available to the courts to minimise delay and contain costs levels are underutilised. An overriding rule of interpretation which prescribes the objectives which should be pursued by the courts in interpreting the rules and employing the measures available, should lead to a more rigorous application of the rules.

8.32 Significantly, the overriding objective of the Civil Procedure Rules for England and Wales cited above is to enable the court to deal with cases justly, and this expressly requires the court

to allot to individual cases an appropriate share of the court's resources, while considering the needs of other cases. This is an acknowledgement that, for any system of administration of justice to operate effectively, the right of access of individual litigants to justice must, in reality, be reconciled with the rights of access of parties to other cases. We recommend that consideration be given, if need be in primary legislation, to the formulation of a principle of interpretation which would require that a similar balance be struck by the courts when applying the rules of court in individual cases.

Sanctions for delay

8.33 The rules of court should contain a specific Order facilitating supervision by the court of the pace of litigation and containing measures to sanction delay. The Order should, for the avoidance of doubt, incorporate rule 11 of Order 33, and should contain rules expressly authorising the use of, and detailing the consequences of peremptory adjournments. With a view to limiting the burden on judicial time which this might involve, the rules could, assign appropriate supervisory functions to suitably qualified court officers. Such functions could extend to the making of a limited category of orders of an interlocutory nature.

8.34 With a view to reducing the need for repetitive applications to court, the Order should also provide for the making of “*unless*” orders in respect of directions given by the court, i.e. orders designating that, unless the party concerned complied with the direction concerned within a specified period of time, the party would, without the need for a further application to the court, suffer judgment, or dismissal of their claim, or liability for costs.

Fixing of liability for costs at the pre-trial stage

8.35 The rules now applicable in the lists for commercial and competition proceedings in the High Court which place an onus on the court to determine liability for the costs of interlocutory applications when disposing of those applications should be extended in their application to all proceedings. The new Order should contain a provision that the judge, if he decides not to allocate liability for costs at the time of the disposal of the application, must specify in the order the reasons for not so deciding.

8.36 In its report on case management referred to above, the Case Management Group noted that “*the fact that orders for costs (other than reserving costs or directing that costs be costs in the cause) are rarely made on interlocutory or procedural applications encourages unnecessary applications and wastage of court time*” and recommended that “[w]herever possible orders for costs should be made on interlocutory procedural applications”.

8.37 The Group endorses this view. Costs of motions (including those seeking judgement in default of delivery of a pleading) should, save where it would, in the circumstances of the case, be unjust to do so, be awarded to the successful party to the motion, measured at the hearing, and be set off against any award of damages or costs which may ultimately be made in favour of the successful litigant.

8.38 The rules now applicable in the lists for commercial and competition proceedings in the High Court place an onus on the court to determine liability for the costs of interlocutory applications when disposing of those applications. This approach should be extended to all proceedings.

Post-proceedings letters of offer

8.39 Provision should also be made, if necessary in primary legislation, to give effect to a letter of offer of settlement of the proceedings by a defendant in relation to the claim of the plaintiff on a “*without prejudice save as to costs*” basis particularly in cases where satisfaction other than by means of a monetary payment is involved in the settlement e.g., proceedings under section 117 of the Succession Act 1965 and section 205 of the Companies Act 1963. If the offer is not accepted and the plaintiff succeeds in the action, the trial judge should be required to consider the terms of the letter before making any award as to costs. A plaintiff ought also be entitled to make an offer to settle his/her case which if the defendant rejects and subsequently fails to beat be accompanied by a financial disincentive, e.g., an increased rate of interest on any award.

Costs penalties for delay

8.40 The terms of Order 99, rule 6 of the Rules of the Superior Courts, which allows for penalties in costs to be applied to a solicitor responsible for delay in the trial of proceedings, should be amended so as to apply to all steps in the litigation process and not just the trial.

The provision of estimates of costs

8.41 The court should be empowered by rule of court to require the parties to produce to the court and exchange with each other estimates of costs incurred at any stage of the proceedings, including the pre-trial stage.

Appendix 1

List of submissions

Garrett Simons BL
Glenn Cooper, Solr, Limerick
Irish Insurance Federation
Matheson Ormsby Prentice
Denis O'Shea
Tomás Ó Scannláin
Owen McCarthy
Lyons, Solrs
Michael C.O'Connor BL
Twomey & Scott
Niall J Walsh & Co, Solrs
AXA Insurance
Dr Brendan O'Reilly
CIE
ESB
Self-insured Task Force
Muriel Walls – McCann Fitzgerald
Richard R O'Hanrahan, Solr. Limerick
P O'Connor & Son, Solrs, Swinford
Cahill & Cahill, Solrs, Castlebar
Institute of Legal Costs Accountants
Free Legal Advice Centres
Law Society
Family Lawyers Association
Bar Council
State Claims Agency

Appendix 2

Research into the Level of Legal Costs

By Vincent Hogan, Department of Economics, UCD

Data relating to High Court cases taken from the records of the Taxing Masters' Office was analysed; two samples were generated, one from 1984 and the other from 2003.¹ The vast majority of cases in the sample are personal injury (PI). Data from four Circuit Courts (Dublin, Cork, Limerick and Sligo) for 2003-4 has also been analysed.

The conclusions of the analysis can be summarized as follows:

- There is a very large variation in fees charged even for the same class of case
- In the High Court, the most important determinant of fees charged in PI cases would seem to be the level of the award to the plaintiff. Measures of the quality/quantity of legal services provided do not appear to be major factors
- In the Circuit Court, the level of the award does appear to influence the levels of the fees – but the effect is weaker than in the High Court. Furthermore, the effect holds only for solicitors.

High Court

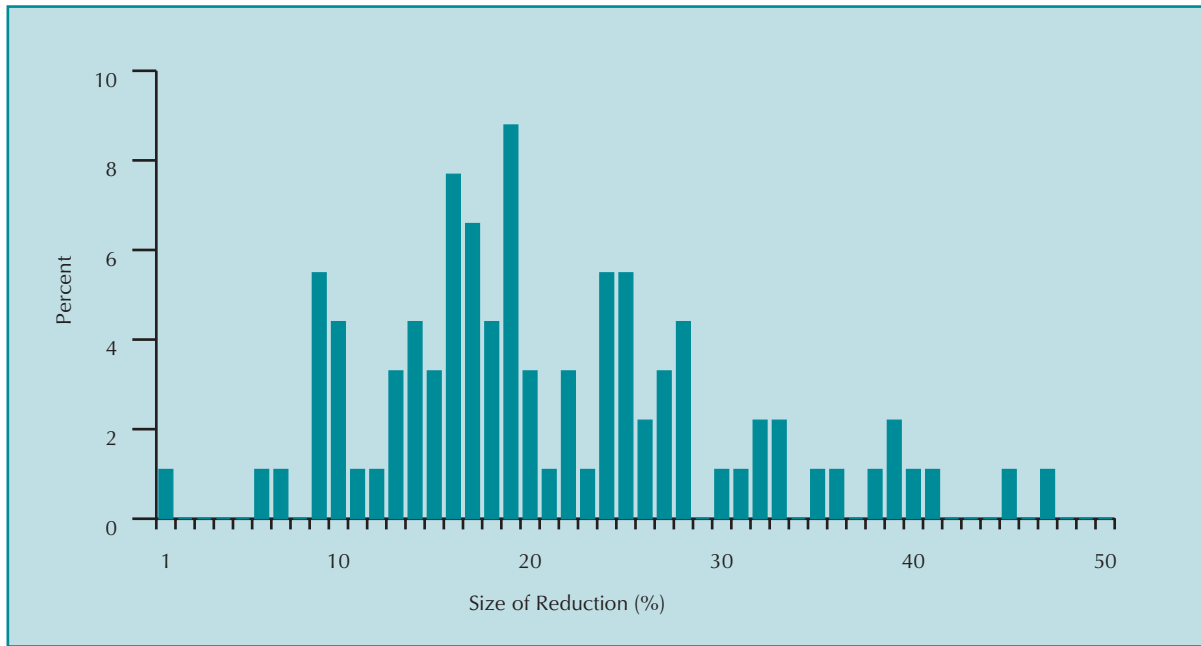
Fee reductions

Figure 1 shows a histogram of the percentage reduction imposed by the Taxing Master on the total legal fees in 2003 for PI and non-PI cases.² The height of each bar represents the frequency of reductions of each size. As can be seen, there is some variance in the percentage reduction with very large reductions imposed by the Taxing Master – and very few cases are passed without some reduction. In fact the mean reduction is 20% in both 1984 and 2003.

¹ 91 cases were selected from the Taxing Master' caseload in 2003 and 105 from their 1984 caseload. The Circuit Court sample consisted of 192 cases.

² $(\text{Fee allowed} - \text{fee claimed}) / (\text{fee claimed})$ for both barristers and solicitors. The graph for the 1984 data is almost the same so is not included.

Figure 1: % Reduction in Total Fees 2003



Growth in Allowed Fees

Table 1 shows the growth of legal fees over the period in absolute terms relative to other prices. It sets out summary statistics in respect of the solicitor’s instructions fee, the Senior Counsel’s brief fee and the Junior Counsel’s brief fee for PI cases before the High Court in 1984 and 2003. The 1984 data has been adjusted for inflation (as measured by the CPI) and converted to Euro and so is directly comparable with the 2003 data.

For legal fee type, the table shows the mean (the average) and the standard deviation (a measure of the ‘spread’ of the data around the mean). The final column shows the annual average growth in the fees over the 20 years. Note that since the fees have already been adjusted for inflation, this is a measure of *real* growth i.e. growth in excess of inflation.

Table 1: Fees Allowed for PI High Court 1984 & 2003

Type		1984	2003	Increase	Annual average growth
Solicitor’s Instructions Fee	Mean	6,494	14,680	126	4.2
	Stn. Dev.	6,391	17,406	172	
SC’s Brief Fee	Mean	1,015	1,954	92	3.3
	Stn. Dev.	1,090	3,276	200	
JC’s Brief Fee	Mean	663	1,235	86	3.2
	Stn. Dev.	705	2,212	213	
Wages in Business Sector*					2.4
*defined by the OECD to include industry, services etc. but to exclude the non-commercial government sector.					

The solicitors' fee has increased by 4% in real terms every year. This is a significant return: 4% over and above consumer inflation.³ This increase is almost twice that received by the average worker in the rest of the economy.

This rise in fees coincided with an increase in variability of fees across PI cases, as evidenced by the increase in the standard deviation. This could occur for two reasons. Firstly, fee setting could be very ad hoc leading to an almost random distribution of prices for the same services. This could occur given that clients would be at a disadvantage when compared to the lawyers when it comes to judging the price of the service provided. The alternative explanation is that costs vary because the amount of work done varies dramatically even within the same class of cases.

Senior Counsel's brief fees rose by 3.3%. While this is less than the increase enjoyed by solicitors, it remains almost one percent greater than the increase enjoyed by the rest of the workforce.

In 1984 the typical High Court PI case had two Senior Counsel whereas in 2003 the norm was one Senior Counsel. This reduction in the number of Senior Counsel was an explicit attempt to reduce costs. The data suggest that what, in fact, seems to have happened is that, after the change, the single Senior Counsel received the same fee that previously would have been shared by the two Senior Counsel.

Finally, in relation to Junior Counsel fees, it is noted that the brief fee was almost always 2/3 of the Senior Counsel's fee. The two-thirds rule was violated in only 5% of cases.

Controlling for Quality and Quantity of Legal Services in 2003

Table 1 shows that fees were not only increasing, but were getting more variable. In this section, an attempt is made to explain that variation. In particular, the question is posed whether it is possible that higher fees are charged simply because more work is done. The link between fees and the lawyers' input into the case as measured by three variables is explored:

- whether the case goes to trial;
- whether expert witnesses are called;
- whether motions of discovery are employed.

The link between the fee and the level of the award is also considered.

It is self evident that uncontested cases generally should involve somewhat less work than contested cases that actually go to trial and, therefore, should attract lower fees. Similarly, the number and type of motions presented in a case should be an indicator of how complicated it was. Both motions of discovery and the presence of expert witnesses will likely increase the workload of the lawyers. The final control variable is the size of the award which, while it may be of some relevance to costs, should not be the primary factor in determining the level of the fee. For instance, in a case where more is at stake, it might be expected that a client would hire better lawyers and this higher quality will be reflected in higher prices.

³ In nominal terms fees grew by about 8% per year.

The results indicate, however, that the level of the award is (almost) the only variable that matters – both in 1984 and 2003 – for all three types of fees. Put simply, the size of the award is by far the most important determinant of the fees of both barristers and solicitors.

It is striking that the measures of legal difficulty (discovery, experts and whether case is contested) do not seem to influence costs to any great extent. By the normal statistical criteria neither the presence of expert witnesses nor the necessity of discovery motions have any effect for either barristers' or solicitor's fees. Whether a case goes to trial does matter for solicitors, however. On average, a solicitor received just over €7,460 extra for a case that went to trial in 2003. However, whether a case is tried or not does not seem to matter for barristers' brief fees – the lack of variation may be due to the fact that the brief fee may, subject to the circumstances of the case, be payable regardless of whether the case is settled or goes to trial.

What all this suggests is that fees for PI cases in 2003 can be determined by a simple formula: the solicitor receives €5,029 plus 15% of the award. This simple formula explains nearly 60% of the variation in fees across PI cases. For Senior Counsel, the corresponding formula is €410 and 2.3% of the award (with two thirds of that for Juniors). The accuracy of the formula can be seen from the following two graphs. These show a scatter plot of the actual fees allowed versus the award. The dashed line on each graph shows the level of the fee predicted by the formula.

Figure 2a: Rule for Solicitors 2003

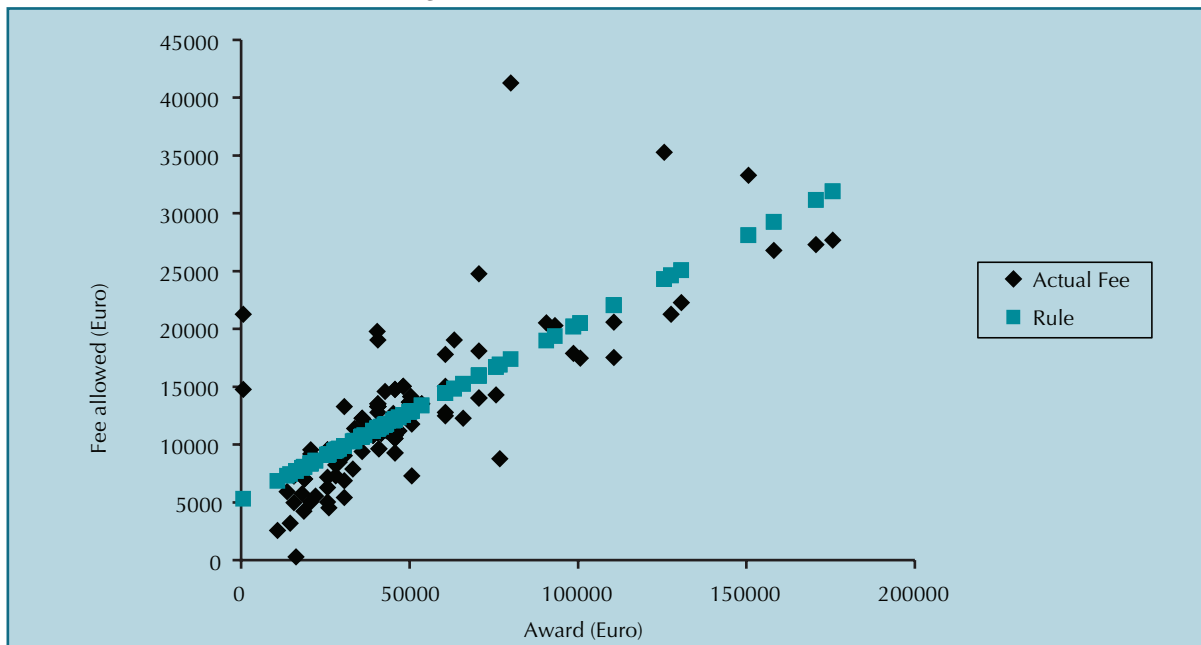
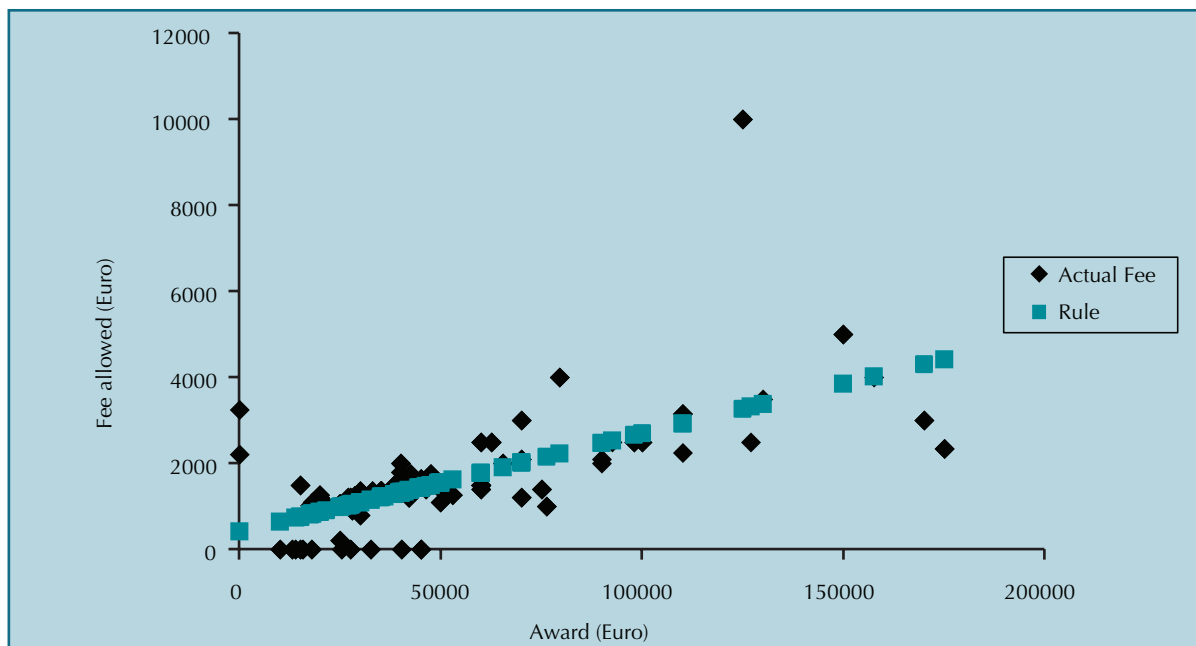


Figure 2b: Rule for Senior Counsel 2003



Controlling for Quality and Quantity of Legal Services in 1984

The conclusions in relation to the 1984 data are much the same as for the 2003 data. The same sort of simple formula explains how fees were set in 1984. There is, however, one important difference. The marginal effect of the award on the solicitor’s fee was much lower in 1984. In 1984, solicitors received an average of €2,597 and 6% of the award. In 2003, the corresponding figures are €5,029 and 15%. Thus, both the fixed element and the percentage more or less doubled in the 20 years from 1984 to 2003 (see Table 2). This means that fees have risen far more than awards.

In 1984 Senior Counsel received an average of €545 and 0.6 percent of the award. In 2003, the corresponding figures are €410 and 2.3%. Thus, between 1984 and 2003 their fixed element decreased by 25% but their percentage almost quadrupled.

Table 2: Summary of the Fee Rule for PI High Court 1984 & 2003

Type		1984	2003	Cumulative Growth
Solicitor’s Instructions Fee	Fixed	2,597	5,029	93%
	% of Award	6%	15%	150%
SC’s Brief Fee	Fixed	545	410	-25%
	% of Award	0.6%	2.3%	283%

Circuit Court

Data from four Circuit Courts (Dublin, Cork, Limerick and Sligo) for 2003-4 has been analysed. In contrast with the High Court data, there is a greater mix of cases in the Circuit Court sample – although PI is still the largest category. Table 3 provides a break down of the mean total costs across the four circuits.

Table 3: Average Total Fees Allowed by Circuit and Case Type

Type	Dublin	Cork	Limerick	Sligo	Total
PI	7,650	5,307	7,928	6,119	6,162
Property	16,964	10,406	11,519	8,954	10,240
Defamation etc	18,837	4,136	8,894	0	9,518
Contract	6,297	4,118	7,340	3,172	5,513
Total	8,648	6,168	10,936	8,811	7,849

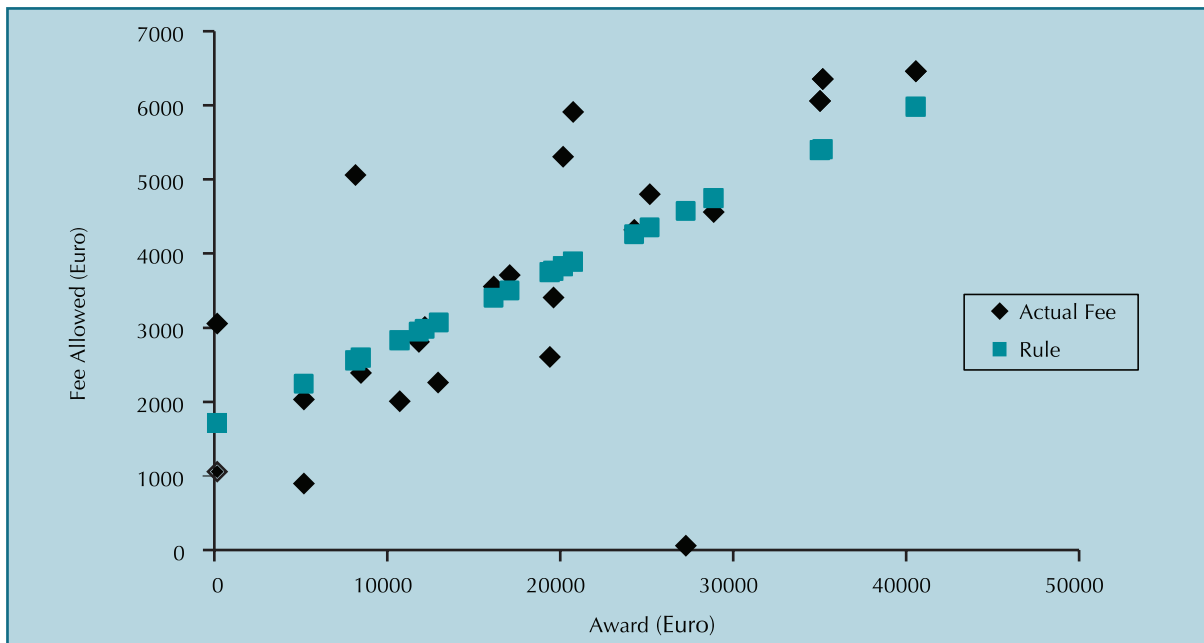
Where costs are taxed, the average reduction is 20%.

There is a simple formula for solicitors’ fees at the Circuit Court, but it holds for PI cases only. The formula is that the solicitors’ fee is €1,655 plus 10% of the award (see Figure 3). This formula is statistically significant by the standard criteria. But it is much less robust than the corresponding rule for the High Court as it is estimated from a smaller sample. It also fits the data less well than the High Court data, explaining only 40% of the variation in fees.

However, there is no similar rule for the brief fee, i.e. the Junior Counsel’s brief fee appears to be unrelated to the award.

Finally, the only measure of legal input available at the Circuit Court level is whether a case goes to trial or not and this appears to have no impact on either the solicitors or barristers’ fee.

Figure 3: Rule for Solicitors



Appendix 3

Civil and Criminal Legal Aid Schemes

Civil Legal Aid

The Legal Aid Board provides legal advice and legal aid in civil cases to persons who satisfy the requirements of the Civil Legal Aid Act, 1995, principally, a person's means must be below a certain limit and there must be merit to the case. The function of the Board is to make the services of solicitors and, where necessary, barristers available to qualifying persons. Legal aid and advice are provided, in the main, through law centres by solicitors in the full-time employment of the Board.

Fees payable to barristers in the District, Circuit, High and Supreme Courts

The services of barristers are provided in accordance with the terms of an agreement between the General Council of the Bar of Ireland and the Board.

An hourly rate is payable in respect of Counsel Opinions requested by the Board. With regard to legal aid cases, the agreement provides for the payment of a brief fee. The brief fee includes all work carried out by the barrister in relation to the case to include, as appropriate, consultations, drafting or settling of pleadings, preparatory work, settlement negotiations and/or court appearances. Additional fees are payable in respect of interim or interlocutory applications.

In general, the services of a barrister are not engaged in District Court cases or District Court appeals to the Circuit Court, save in exceptional circumstances and the case is unusually complex.

In exceptional cases, a special fee may be agreed between the Board and the barrister prior to the case being undertaken by him or her. This would only arise in cases of unusual length or difficulty and occurs very rarely. Travelling and subsistence rates are payable to barristers equivalent to civil service rates.

In the event of a client obtaining an award of costs against a non-legally aided person, the barrister is entitled to be paid such sums as may be recovered on a party and party basis, from the non-legally aided person, if greater than the case fee.

Fees Payable in District Court Private Practitioner Cases

The private practitioner scheme in the District Court assists the Board in its efforts to provide a service to all applicants within a reasonable period of time. This scheme provides a complementary legal service to that provided by law centres in maintenance, access, custody and domestic violence District Court cases. The fee payable to private practitioners in such cases is €292 plus VAT.

Fees payable in the Circuit Court Private Practitioner Scheme

The private practitioner scheme in the Circuit Court covers judicial separation and divorce cases. The Board has recently received formal confirmation that the fee in such cases is €4,000 plus VAT

(to include any necessary payment for the use of a barrister in the case) and €700 per additional day in court.

Fees payable in Refugee Appeal Cases

To complement the staff based services of the Refugee Legal Service, the Board engages the services of private practitioners and barristers to submit appeals on behalf of legally aided asylum applicants and represent them before the Refugee Appeals Tribunal. The fee payable to both private practitioners and barristers in such cases is €456 plus VAT. Travel and subsistence is also payable at public transport rates, where applicable.

Costs deducted by the Board

The Board may recover the costs of providing legal services from:

- (i) the other party to a dispute, either as a result of a court order or as part of an agreement to settle a dispute or,
- (ii) from a legally aided person, out of monies/property received by the person as a result of the provision of legal services.

Over 90% of the litigation services provided by the Board in 2003 was to clients in the family law area. Approximately, €905,000 was recovered by the Board in costs in 2003. The amount of costs recovered can vary significantly from year to year, especially if a legally aided person obtains an award for costs in a case in which the other party is in a position to meet the costs. This does not generally arise in family law cases. The hourly rate in respect of a Board solicitor's time is calculated at €110.

Criminal Legal Aid Schemes

The Criminal Justice (Legal Aid) Act 1962 (the primary legislation covering the operation of the Criminal Legal Aid Scheme) and subsequent Regulations provides that free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings.

An accused person is entitled to be informed by the court in which he/she is appearing of his/her possible right to legal aid. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, up to two counsel, in the preparation and conduct of his/her defence or appeal. In addition, once legal aid has been granted the case cannot proceed unless the accused is legally represented.

The Department of Justice, Equality and Law Reform is responsible for the payment of legal aid fees and expenses to the legal practitioners who operate the scheme in accordance with the provisions of the Criminal Justice (Legal Aid) Act 1962 and the Regulations made under it. Two separate payment systems are in place to pay legal practitioners for appearances in court under the Criminal Legal Aid Scheme, one covers appearances in the District Court and appeals to the Circuit Court and the other covers appearances in the Circuit Court, Central Criminal Court, Special Criminal Court and Court of Criminal Appeal.

District Court

The fees payable to solicitors in the District Court and appeals to the Circuit Court are set out in S.I. No. 713 of 2003. They are paid an initial brief fee for the first appearance in court in the

amount of €232.62 in respect of the first four cases and €139.56 thereafter. A refresher fee for each subsequent day in court (€58.17) is also paid.

Circuit Court

Under parity agreements introduced by Regulation under the Criminal Justice (Legal Aid) Act, fees payable to counsel in the Circuit and Higher Courts in respect of indictable offences are determined entirely by the fees which the Director of Public Prosecutions (DPP) pays to the prosecution counsel. The fees payable to solicitors in respect of their services in the Circuit and Higher Courts are related to the fees payable to the defence counsel which are in turn based on the fees payable to the prosecution counsel as determined by the DPP.

Attorney General's Scheme

The Attorney General's Scheme provides payment for legal representation in certain types of legal cases not covered by civil legal aid or the criminal legal aid scheme. The kinds of cases covered include certain types of judicial review, bail applications, extradition and habeas corpus applications. It is an ex gratia scheme set up with funds made available by the Oireachtas. The scheme is administered on behalf of the Attorney General by the Chief State Solicitor's Office.

Appendix 4

Recent Developments Impacting on Legal Costs

The establishment of PIAB

1. The Group expect the PIAB to play an important role in transforming the way in which personal injury cases are dealt with. The Personal Injuries Assessment Board (PIAB) is a statutory body set up to provide independent assessment of personal injury compensation for victims of Workplace, Motor and Public Liability accidents. This assessment is provided without the need for the majority of litigation costs traditionally associated with such claims. PIAB is funded by way of fees payable by respondents (those who pay the compensation).
2. The Board assesses how much compensation should be given to someone who has had an injury when the person they are looking for payment from does not dispute the legal issues including liability. From 22 July 2004 all claims for personal injury (excluding medical negligence) must be submitted to PIAB before starting legal proceedings no matter what date the accident occurred. PIAB works using documents only. There are no oral hearings, so neither the claimant nor the respondent has direct access to the assessment team.
3. Although assessments are not binding on either party, statistics to date indicate acceptance by both parties in 75% of cases which should in time result in a significant reduction in the number of personal injury cases proceeding to formal legal action. It should also be noted that both the average cost and the time required to deliver awards through the PIAB have been dramatically reduced compared to processing a claim through the court system.

Civil Liability and Courts Act 2004

Sections commenced in September 2004

4. The Civil Liability and Courts Act 2004 changes the way in which personal injury actions are processed. In September 2004, a Commencement Order brought some seventeen sections of the Act into operation. These include:

Section 8: which deals with the service of a letter of claim within two months of an incident.

Section 22: which provides that the court shall, in assessing damages for personal injury, have regard to the Book of Quantum published by the PIAB.

Section 25: which makes it an offence to give or cause to be given false evidence in a personal injuries action. A significant feature of this section is that it applies not only to actions brought on or after 20 September, 2004 but also to actions pending at that time.

Section 26: which provides for the dismissal of a plaintiff's action where a plaintiff gives or dishonestly causes to be given evidence which is false or misleading. Again in this section, the provision applies also to actions pending on the date of commencement (20 September, 2004).

Section 29: which outlines the penalties for persons found guilty of offences under the Act. If found guilty on indictment the person is liable to a fine not exceeding €100,000 or imprisonment for a term not exceeding ten years or both. If the person is tried summarily

and convicted, that person shall be liable to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Sections commenced in March 2005

5. On 31 March 2005, a further seventeen sections of the Civil Liability and Courts Act 2004 came into operation and the Minister also signed a number of orders and regulations relating to the Act. Of particular importance are:

Section 7: Amendment of the Statute of Limitations Act – This reduces the period of limitation from 3 years to 2 years.

Section 10: Bringing of Proceedings – This section includes provision for a personal injuries summons.

Section 14: Verifying Affidavit – This section addresses the issue of exaggerated claims. It provides for the swearing of affidavits and it also provides that a person who makes a false or misleading statement in an affidavit shall be guilty of an offence (fine of up to €100,000 or a maximum of 10 years imprisonment).

Section 15: Mediation Conferences – This section provides for the process of mediation in personal injuries cases. It provides that the Court may, at the request of a party to a personal injuries action, direct the parties to take part in a mediation conference.

Section 40: Proceedings heard otherwise than in public (the *in camera* rule). – This section relaxes the *in camera* rule in *in camera* proceedings. It allows barristers and solicitors to attend *in camera* cases (mainly family law cases) in order to draw up a report and that report may be published. Other categories of persons may be prescribed by the Minister. The section also allows a person in a family law case to be accompanied by another person subject to the approval of the court. It also provides for certain information in *in camera* cases to be given to bodies conducting hearings etc.

Orders made in March 2005

6. The Orders concerned include:

The Civil Liability and Courts Act 2004 (Section 15) Order 2005

This Order prescribes six bodies which can nominate persons to act as the chairperson of mediation conferences. This will provide a choice for the courts in appointing a chairperson of a mediation conference in personal injuries actions, where the parties themselves do not agree on a chairperson.

The Civil Liability and Courts Act 2004 (Section 17) Order 2005

Section 17 of the Act deals with the making of formal offers of settlement in personal injuries actions. The section provides that all parties to such an action must indicate their terms of settlement. The Order stipulates that the offer may be made at any time after the “prescribed date” and be lodged in court after a “prescribed period” specified by the Minister.

In making the Order, the Minister stated that “I am anxious that formal offers may be made at the earliest opportunity following the commencement of proceedings. I have therefore ensured that the “prescribed date” shall be the date on which proceedings are brought by the issue of a personal injuries summons. In relation to the period to be prescribed, I am mindful that parties to an action require as much information regarding that action before they are required to make a formal offer. I have linked the end of the prescribed period to the service of a notice for trial in

the case of both the High Court and the Circuit Court and with the delivery of a defence in the District Court.”

Radical changes in the structure for payment of legal fees of Tribunals and other forms of Inquiry

7. In July 2004, the Minister for Finance announced that he had secured Government approval for a radical new structure for payment of legal fees at Tribunals and other forms of Inquiry. The Minister also announced changes in the working methods of Tribunals which should lead to more efficient and effective conduct of business as well as reducing their duration.

8. The cost of all legal representation, including third parties, at newly-established Tribunals of Inquiry or other forms of Inquiry, will be paid by way of a set fee payable for the entirety of the Tribunal. The calculation of daily rates will be based on this fee. The set fee to be paid to a Senior Counsel will be based on the current annual salary of a High Court Judge (plus 15 per cent in respect of pension contribution), with related payments being made to other legal staff, including barristers and solicitors. The remuneration packages will, therefore, be as follows:

- Senior Counsel €213,098 p.a. or €969 per day
- Junior Counsel €142,065 p.a. or €646 per day
- Solicitor €176,000 p.a. or €800 per daily appearance or €100 per hour for work undertaken other than appearing at the Tribunal
- a fee based on the above for preparatory work will be paid to counsel and solicitors subject to a time ceiling to be set on a tribunal-by-tribunal basis
- the daily rates indicated above will be paid where legal personnel work less than the full calendar year
- no brief fee will be paid in respect of legal representation.

9. Speaking of the new arrangements, the then Minister for Finance, Mr McCreevy said “I am strongly of the view that the equivalent of an annual salary is the most appropriate form of payment for legal personnel on Tribunals and other forms of Inquiry and I am satisfied that the revised arrangements will provide adequate remuneration and an appropriate framework to ensure the future conduct of the business of Tribunals. It is worth noting, in this regard, that the new proposed fee structure for a Senior Counsel will still be more than seven times the average industrial wage.”

Appendix 5

The caseload of taxations handled by the Taxing Masters and County Registrars

Annual statistics, Office of the Taxing Masters 2000-2003

	2003	2002	2001	2000
Bills certified	519	446	455	477
Items certified	55,736	44,944	57,609	52,711
Costs claimed	€33,014,989	€20,805,517	€37,099,669	€29,753,168
Costs allowed	€25,759,931	€16,014,523	€26,824,982	€24,137,997
Fees (duty)	€1,204,340	€687,135	€1,212,637	€1,031,611

Statistics in relation to Bills taxed by County Registrars 2003-2004

Location	Bills Taxed 2003	Bills Settled or otherwise withdrawn 2003	Bills Taxed 2004	Bills Settled or otherwise withdrawn 2004
Carlow	1	5	3	3
Carrick-on-Shannon	5	3	9	4
Castlebar	25	5	21	7
Cavan	14	1	24	2
Clonmel	22	16	32	12
Cork	265	23	207	18
Dublin	213	323	165	334
Dundalk	17	7	22	17
Ennis	42	8	28	6
Galway	113	0	94	0
Kilkenny	21	6	14	7
Letterkenny	46	5	16	7
Limerick	60	15	64	38
Longford	17	3	10	2
Monaghan	27	1	25	4
Mullingar	27	4	7	7
Naas	17	14	12	8
Portlaoise	7	4	4	2
Roscommon	9	3	13	8
Sligo	21	27	28	37
Tralee	21	7	27	9
Trim	15	5	19	3
Tullamore	2	1	4	1
Waterford	10	5	20	12
Wexford	14	6	14	1
Wicklow	22	7	41	6

Appendix 6

Statistical Information Received from the State Claims Agency

The Group was pleased to receive statistical information on costs from the State Claims Agency, for which we want to place on record here our appreciation. The table below sets out a sample of cases recently dealt with by the Agency.

Year of court order CC – Circuit Ct. HC – High Ct.	Case type	Damages (€)	Year costs taxed	Legal fees (€) (excl. expert/ witness fees)	% fees of damages
2002 (HC)	Motor Accident	95,000	2004	26,692	28
2002 (HC)	Motor Accident Personal Injury	195,000	2004	46,640	24
2002 (HC)	Personal Injury	70,000	2004	21,998	31
2002 (HC)	Personal Injury	118,000	2004	30,146	26
2002 (HC)	Personal Injury	40,000	2004	62,486	156
2002 (HC)	Motor Accident Personal Injury	50,000	2004	19,893	40
2003 (HC)	Employee injury	45,500	2004	18,664	41
1998 (HC)	Employee Injury	26,000	2004	14,628	56
2003 (HC)	Motor Accident Personal Injury	190,000	2004	33,641	18
2002 (HC)	Personal injury	38,000	2003	20,438	54
2004 (CC)	Personal injury	30,000	2004	7,375	25
2003 (HC)	Personal injury	32,000	2004	23,724	74
2003 (HC)	Personal injury – struck out	N/A	2004	12,067	N/A
2003 (HC)	Occupational fatality	420,000	2004	93,428	22
2004 (CC)	Personal injury	20,000	2004	6,293	31
Total		1,369,500		438,113	32

Appendix 7

Statistical Information received from the Irish Insurance Federation (IIF)

According to figures supplied by the IIF to the Group;

- taking all types of claim together, non-compensation as a percentage of compensation has risen from 35.5% in 1996 to 45.9% in 2003;
- for motor injury claims, non-compensation costs have risen from 34.5% in 1996 to 41.5% in 2003;
- for employer's liability claims, non-compensation costs have risen from 42.2% in 1996 to 51.7% in 2003;
- for public liability claims involving injury, non-compensation costs have risen from 52.7% in 1996 to 65.3% in 2003.

Non-Compensation Costs as a % of Compensation (IIF statistics)

All Classes (€m)

	1996	1997	1998	1999	2000	2001	2002	2003
Compensation	191.3	222.9	245.9	350.2	407.2	396.3	364.5	392.7
Non-Compensation	67.9	85.1	95.0	145.8	172.6	160.0	159.4	180.3
Total Outlay	259.2	308.0	340.9	496.0	579.8	556.3	523.9	573.0
	Percentage %							
Non-Compensation as % of total outlay	26.2	27.6	27.9	29.4	29.8	28.8	30.4	31.5
Non-Compensation as % of compensation	35.5	38.2	38.6	41.6	42.4	40.4	43.7	45.9

Motor Third Party Personal Injury Claims (€m)

	1996	1997	1998	1999	2000	2001	2002	2003
Compensation	177.4	206.1	232.5	270.9	299.5	297.1	265.1	285.0
Non-Compensation	61.2	77.2	88.8	105.1	118.4	112.8	107.2	118.2
Total Outlay	238.6	283.3	321.3	376.0	417.9	409.9	372.3	403.2
	Percentage %							
Non-Compensation as % of total outlay	25.6	27.3	27.6	28.0	28.3	27.5	28.8	29.3
Non-Compensation as % of compensation	34.5	37.5	38.2	38.8	39.5	38.0	40.4	41.5

Employer's Liability Claims (€m)

	1996	1997	1998	1999	2000	2001	2002	2003
Compensation	4.5	10.0	6.0	51.0	63.0	55.6	56.8	60.2
Non-Compensation	1.9	4.1	2.4	23.7	28.9	25.0	28.0	31.1
Total Outlay	6.4	14.1	8.4	74.7	91.9	80.6	84.8	91.3
	Percentage %							
Non-Compensation as % of total outlay	29.6	29.1	28.6	31.7	31.4	31.0	33.0	34.0
Non-Compensation as % of compensation	42.2	41.0	40.0	46.5	45.9	45.0	49.3	51.7

Appendix 8

Appendix W Costs – Consolidated Superior Court Rules

Amendment history

The Rules of the Superior Courts (No. 4) (Euro Changeover), 2001, (S.I. No. 585 of 2001), which came into effect on January 1, 2002, made the following amendments—

Regulation 2 – any references to money or monies shall be taken to refer to the Euro.

Regulation 3 – any place where a pound sign occurs, without any amount being specified therewith, the Euro sign (€) shall be inserted in its place.

Regulation 5 – provided “convenient Euro equivalents” for some of the figures in the rules.

Regulation 7 – provided that any other figure, not already covered, should be converted by reference to the fixed conversion rate.

PART I GENERAL

(1) Institution of Proceedings

Item	O.99, r. 13(1)
1. Drawing instructions to counsel to advise as to institution of proceedings	[€1.70 to €6.53]
2. Drawing, issuing, filing and service on one party of originating summons, petition, originating notice of motion or third party notice (excluding attendance on counsel)	[€4.27 to €17.07]
3. Issue and service on one party of concurrent originating summons	[€1.28]
<i>Note to items 1 and 2:</i>	
References in these items to service on one party of an originating summons shall, in relation to a summons in an admiralty action in rem, be construed as reference to service of the summons on a ship.	
4. Renewing originating summons issued—	
(a) in an admiralty action	[€10.23]
(b) in any action	€3.42]
including drawing and filing affidavit, attending on application for renewal and obtaining order.	
5. Drawing, issuing, filing and service on one party of notice of motion (other than an originating motion)	[€2.13 to €8.53]
6. Drawing, filing and service on one party of notice of appeal or case stated (subject to Order 99, rule 47)	Discretionary
7. Drawing, filing and delivery to one party of statement of claim, defence (and counterclaim), answer to petition, reply or other pleading	[€2.56 to €11.94]
8. Drawing, filing and delivery to one party of particulars of pleading and drawing and delivery to one party of request for such particulars	[€1.70 to €8.53]

Item		
9.	Drawing and filing of preliminary act, or declaration of insolvency, drawing notice of filing and service on one party of such notice	Discretionary
10.	Drawing amendment of document referred to in item 2 or 7, and service on or delivery to, one party of amended document	[€1.70 to €5.12]
11.	Drawing notice of originating summons or intimation of issue of process, for service out of jurisdiction	[€1.28]
12.	Drawing any document, attending on any application, and doing any other work necessary to obtain—	
	(a) order for substituted service of any document;	
	(b) order giving leave to serve any document out of the jurisdiction;	Discretionary
	(c) any other ex parte order, whether preliminary to or in the course of the proceedings, not otherwise provided for under any other item and obtaining order	
	(d) a citation and obtaining order	[€3.42]

(2) Discovery and Inspection

13.	Drawing, filing and service of—	
	(a) affidavit of documents or list of documents, or	
	(b) interrogatories for examination of a party, or	
	(c) affidavit in answer to interrogatories	[€5.12 to €13.65]

(3) Preparation for Trial, &c.

14.	Drawing and issue of order or notice of subpoena for any number of persons not exceeding three and the same for every additional number not exceeding three	
	Ad testificandum	[€1.07]
	Duces tecum	[€1.28]
15.	Drawing and service of notice	
	(a) to produce for inspection document referred to in pleading or affidavit	[€1.28]
	(b) to produce document at trial or hearing	€1.28
	(c) to admit any document or fact	[€1.28]
16.	Instructions for trial or hearing of any cause or matter, petition or motion, whatever the mode of trial or hearing (including the taking of accounts or making of inquiries)	Discretionary
17.	Instructions for appeal from an interlocutory or final order or judgment	Discretionary

Notes to items 16 and 17:

These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including

- (a) taking instruction to sue, defend, counter-claim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or a reference under Order 64, rule 46;
- (b) considering the facts and law;
- (c) attending on and corresponding with client;
- (d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;
- (e) arranging to obtain reports or advice from experts and plans, photographs and models;
- (f) making search in Public Record Office and elsewhere for relevant documents;

Item

- (g) inspecting any property or place material to the proceedings;
- (h) perusing pleadings, affidavits and other relevant documents;
- (i) where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and
- (j) the general care and conduct of the proceedings.

18. Drawing instructions to counsel to advise in writing or in consultation	[€1.70 to €8.53]
19. Attending counsel in consultation	[€4.27]
For each half hour beyond the first hour	€1.70]

Note:–
This item includes attending to make appointment for consultation.

20. Drawing brief with observations to counsel and proofs of evidence, per folio	[€0.15]
21. Attending to obtain appointment to examine witness and on examination of witness before any commissioner, officer of the Court or other person appointed to examine him, for each day of examination	[€6.82 to €20.47]

Note:–
The solicitor shall also be allowed travelling expenses reasonably incurred by him.

22. Attending to obtain fiat of Attorney General, where required	[€1.70]
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(4) Trial or Hearing

23. Attending sittings within 20 miles of the place where the solicitor practices, for purposes of	
(a) trial or hearing of a cause, matter or appeal for each day	
(i) on which cause, matter or appeal is included in list to be tried or heard, but is not begun	[€2.56 to €8.53]
(ii) of trial or hearing	€5.12 to €20.47
(b) hearing reserved judgment	€1.70 to €5.12]

24. Attending at sittings elsewhere for any purpose mentioned in item 23 for each day (except Sunday) on which solicitor is necessarily absent from his office	[€13.65 to €20.47]
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Notes to items 23 and 24:
(a) if the solicitor has to attend on more than one hearing or trial at the same time and place, the expense shall in such case be reasonably divided;
(b) the solicitor shall also be allowed travelling expenses reasonably incurred by him;
(c) these items do not relate to the attendances mentioned in item 26

25. Attending to enter or bespeak order or judgment	[€1.28]
26. Attending hearing of summary or special summons or motion before the Court, for each day... ..	[€2.56 to €20.47]
27. Attending to obtain appointment for hearing before the Master, the Examiner, or a Registrar, or to vouch publication of advertisement or any necessary service	[€1.28]
28. Attending to deliver papers required for the use of Judge, the Master, the Examiner, or a Registrar	[€1.28]
29. Attending the Examiner or a Registrar to bespeak (where necessary) and settle draft order	[€2.56 to €10.23]

(5) Taxation

30. Drawing and engrossing bill of costs, including copy for Taxing Master and one copy for service, per folio	[€0.17]
31. Lodging and serving bill of costs and issuing, serving and filing notice to tax	[€3.40]
32. Attending taxation, completing bills, vouching, completing affidavit of tots and certificate and taxation	[€2.98 to €15.35]
33. Drawing objections to decisions of Taxing Master, or answer to objections, including copies for service and filing; delivery to one party of such objections or answers and attending hearing or review by Taxing Master if objections sustained	Discretionary

(6) Execution

34. (a) Drawing and attending to obtain issue of order of fieri facias capias, elegit, sequestration or attachment, any subsequent order for giving effect thereto and any other order to enforce a judgment or order	[€1.70]
(b) Copies of any such order (where necessary) per folio	[€0.06]
35. (a) Drawing notice of renewal of order of execution	[€1.28]
(b) Procuring renewal of order of execution	[€1.28]

(7) Attendances

36. To obtain	
(a) consent of person to act as next friend or guardian ad litem and consent or approval of any other interested party	[€2.13 to €5.12]
(b) any other consent	€1.28 to €5.12]

Note:

This item includes drawing the form of consent or approval.

37. To give consent or sign admission	[€1.28]
38. (a) to enter appearance and give notice thereof	[€1.70]
(b) if appearance entered for more than one person at the same time, for each additional person	[€0.17]
39. To obtain any certificate from the Central Officer or any other office of the High Court or Supreme Court	[€1.28]
40. To register a judgment, order, bond, lis pendens or recognisance	[€3.92]
41. To vacate a recognisance or enter satisfaction of a judgment (over and above outlay)	[€4.69]
42. At the Central Office or other office of the High Court or Supreme Court, Registry of Deeds, Land Registry or other public office, to file, search for or bespeak any document including a certificate of the result of any search (not covered by any other item)	[€1.28]
43. To set down for trial or hearing	[€1.28]
44. On the appropriate officer to inform him that a cause or matter set down for trial or hearing is settled and may be listed accordingly	[€1.28]
45. On a deponent swearing, or by solicitor or clerk deposing to, any affidavit other than an affidavit of service	[€1.28]
46. (a) to search for and obtain a certificate of birth, marriage or death	[€1.28]
(b) For every certificate in excess of three obtained at the same time	[€0.42]

Item	
47. To make a general search for certificates of birth, marriage or death, per hour ...	[€2.56]
48. On printer to insert advertisement in Iris Oifigiúil or other paper, for each publication	[€1.28]
49. (a) On counsel with brief, case for written opinion or instructions to settle any document	[€1.28]
(b) or where counsel's fee is [€26.66] or more	[€2.56]
50. To lodge a notice or other document in the Central Office for transmission not otherwise provided for	[€1.28]
51. At the Bank of Ireland and Accountant's Office, on lodgment of money with a pleading or under order or direction of the Court	[€2.56]
52. On transfer of stocks or securities in or out of Court under any order or direction of the Court	[€2.13 to €34.13]
53. On transfer of any Government or other stock under power of attorney, for each such transfer	[€1.70 to €5.12]
54. To obtain draft for payment of cash under an order and payment to payee, for each draft.	
<i>Note:</i>	
The total fee for drafts obtained under the same order shall not exceed	[€1.70]
55. To bespeak and procure certificate of funds or copy of Accountant's account	[€1.28]
56. On the Accountant and the Bank of Ireland for the purpose of depositing effects with the Bank.	[€2.13]
57. Necessary and proper attendances not provided for or allowed under any other item	[€1.28 to €7.77]
<i>Note:</i>	
The solicitor shall also be allowed reasonable travelling expenses actually incurred.	

(8) Drawing Documents not otherwise Provided for

58. Affidavit of service or other formal affidavit	[€2.56]
<i>Note:</i>	
This item includes engrossing affidavit, attending to have it sworn and to file it.	
59. Affidavit (other than affidavit of service, or other formal affidavit), consent, undertaking admission or other similar documents, per folio	[€0.17]
60. Preparation for marking by commissioner for oaths of exhibit to affidavit for each exhibit	[€0.25]
61. Advertisement for Iris Oifigiúil or newspaper or other advertisement to be approved by the Examiner or a Registrar	[€1.28]
<i>Note:</i>	
This item includes attending to obtain approval	
62. Accounts, statements and other documents required for use in Court, per folio	[€0.17]
63. Pedigree, for each completed ring	[€0.17]
64. Drawing, issuing, filing and service on one party of—	
(a) notice to proceed under a judgment or order (to include transmission if required)	[€2.13]
(b) other notices issued, by direction of the Court, a Taxing Master or Registrar	[€2.13 to €5.12]

Item		
65. Drawing motion docket on ex parte application to the Master		[€0.63]
66. Drawing notice of setting down of summons before the Master... ..		[€0.85]
67. Drawing notice for Iris Oifigiúil or newspaper to a corporation or public body, of issuing a summons		[€1.07]
68. Drawing and engrossing recognisance		[€2.13]
69. Drawing and engrossing satisfaction piece and affidavit		[€1.49]
70. Drawing or filling up a notice to creditor requiring him to prove his claim		[€0.13]
71. Drawing any notice or document not otherwise provided for		Discretionary

(9) Copies

72. Copy of document—		
(a) typewritten or manuscript copy, per folio		[€0.09]
(b) carbon copy, per folio		[€0.04]
(c) copy printed or reproduced by photographic or other means		Discretionary
73. Examining and correcting proof print, per folio		[€0.03]

(10) Letters, etc.

74. (a) Writing, signing and entering letters or telegrams not exceeding one folio... ..		[€0.63]
Exceeding one folio		[€0.09]
(b) If several letters or circular of the same import		
For the first		[€0.51]
For each subsequent letter or circular		[€0.17]
(c) Carbon copy of letter to send		[€0.22]
75. Messages and telephone calls not provided for or allowed under any other item		Discretionary

(11) Perusals

76. Perusing draft certificate, report, scheme or like document submitted for approval or examination by solicitor		[€1.70 to €8.53]
77. Perusing any document not provided for or allowed under any other item, per folio		[€0.09]
78. Examining, where necessary, claims under Order 55, Part VI		
(a) where the number does not exceed five		[€1.07]
(b) for each additional five		[€1.07]

(12) Service

79. Where more than one attendance is necessary to effect service on, or delivery to, one party of any summons, petition, pleading or notice, or where service is effected within the jurisdiction otherwise than by personal service or by post, or is effected out of the jurisdiction		Discretionary
80. Where a summons, petition, pleading or notice is required to be served on, or delivered to, more than one person, service on, or delivery to, each additional person		
(a) if required to be served personally or delivered		[€0.85 to €2.56]
(b) if service by post authorised		[€0.42]

Item

81. Service or delivery of any document, not provided for or allowed under any other item
- (a) if required to be served personally or delivered [€1.07]
- (b) if service by post authorised [€0.42]
- In addition to the amount allowed under paragraph (a) of this item, a mileage allowance in respect of each mile after the first two miles between the place at which service or delivery is effected and the nearest place of business of the solicitor effecting it [€0.13]

PART II COSTS OF JUDGMENT IN DEFAULT OF APPEARANCE

O. 99, r. 39

- (1) DISTRICT COURT JURISDICTION IF the amount of the judgment does not exceed [€3,174.35] – Such sum as would be appropriate to a judgment for a like amount in the District Court.
- (2) CIRCUIT COURT JURISDICTION If the amount of the judgment exceeds [€3,174.35] but does not exceed [€19,046.07] – Such sum as would be appropriate to a judgment for a like amount in the Circuit Court.
- (3) HIGH COURT JURISDICTION If the amount of the judgment exceeds [€19,046] – [€120.63] and [€6.35] for each additional service after the first; and this amount shall in every case be exclusive of and in addition to all actual and necessary outlay.

PART III NON-CONTENTIOUS PROBATE MATTERS

O. 99, r. 45

(1) Probates

Effects sworn under	Oath of executor and attendance on the party being sworn	Affidavit for Revenue purposes and attendance on the party being sworn	Probate under seal	Extracting
[€6.35]	[€0.50]	[€0.50]	[€0.22]	[€0.22]
[€25.39]	[€0.50]	[€0.50]	[€0.22]	[€0.22]
[€126.97]	[€0.99]	[€0.99]	[€0.22]	[€1.70]
[€253.95]	[€1.35]	[€1.35]	[€0.57]	[€1.70]
[€380.92]	[€1.99]	[€1.99]	[€1.50]	[€1.70]
[€571.38]	[€1.99]	[€1.99]	[€2.41]	[€1.70]
[€761.84]	[€1.99]	[€1.99]	[€3.28]	[€1.70]
[€1,015.79]	[€1.99]	[€1.99]	[€4.48]	[€1.70]
[€1,269.74]	[€1.99]	[€1.99]	[€6.48]	[€1.70]
[€1,904.61]	[€1.99]	[€1.99]	[€8.96]	[€2.35]
[€2,539.48]	[€1.99]	[€1.99]	[€11.95]	[€2.35]
[€3,809.21]	[€1.99]	[€1.99]	[€15.01]	[€3.63]
[€5,078.95]	[€1.99]	[€1.99]	[€17.99]	[€3.63]
[€6,348.69]	[€1.99]	[€1.99]	[€18.98]	[€4.13]

Effects sworn under	Oath of executor and attendance on the party being sworn	Affidavit for Revenue purposes and attendance on the party being sworn	Probate under seal	Extracting
[€7,618.43]	[€1.99]	[€1.99]	[€19.99]	[€4.13]
[€8,888.17]	[€1.99]	[€1.99]	[€20.98]	[€4.13]
[€10,157.90]	[€1.99]	[€1.99]	[€21.97]	[€4.13]
[€11,427.64]	[€1.99]	[€1.99]	[€22.97]	[€4.13]
[€12,697.38]	[€1.99]	[€1.99]	[€23.96]	[€4.13]
[€15,236.86]	[€1.99]	[€1.99]	[€24.96]	[€4.13]
[€17,776.33]	[€1.99]	[€1.99]	[€25.95]	[€4.13]
[€20,315.81]	[€1.99]	[€1.99]	[€27.45]	[€4.13]
[€22,855.29]	[€1.99]	[€1.99]	[€28.94]	[€4.13]
[€25,394.76]	[€1.99]	[€1.99]	[€30.44]	[€4.13]
[€31,743.45]	[€1.99]	[€1.99]	[€32.49]	[€4.13]
[€38,092.14]	[€1.99]	[€1.99]	[€34.98]	[€4.13]
[€44,440.83]	[€1.99]	[€1.99]	[€37.47]	[€4.13]
[€50,789.52]	[€1.99]	[€1.99]	[€41.24]	[€4.13]
[€57,138.21]	[€1.99]	[€1.99]	[€44.94]	[€4.13]
[€63,486.90]	[€1.99]	[€1.99]	[€48.71]	[€4.13]
[€76,184.28]	[€1.99]	[€1.99]	[€52.48]	[€6.68]
[€88,881.67]	[€1.99]	[€1.99]	[€59.94]	[€6.68]
[€101,579.05]	[€1.99]	[€1.99]	[€67.47]	[€6.68]
[€114,276.43]	[€1.99]	[€1.99]	[€74.94]	[€6.68]
[€126,973.81]	[€1.99]	[€1.99]	[€82.48]	[€6.68]
[€152,368.57]	[€1.99]	[€1.99]	[€86.18]	[€6.68]
[€177,763.33]	[€1.99]	[€1.99]	[€92.44]	[€6.68]
[€203,158.09]	[€1.99]	[€1.99]	[€101.19]	[€6.68]
[€228,552.85]	[€1.99]	[€1.99]	[€108.71]	[€6.68]
[€253,947.62]	[€1.99]	[€1.99]	[€116.18]	[€6.68]
[€317,434.52]	[€1.99]	[€1.99]	[€123.72]	[€6.68]
[€380,921.42]	[€1.99]	[€1.99]	[€142.21]	[€6.68]
[€444,408.33]	[€1.99]	[€1.99]	[€161.90]	[€6.68]
[€507,895.23]	[€1.99]	[€1.99]	[€167.45]	[€6.68]
[€634,869.04]	[€1.99]	[€1.99]	[€173.71]	[€6.68]

And for every additional [€126,973.81] or any fractional part of [€126,973.81] under which the personal estate is sworn, in addition to the above fees, a further fee, for probate under seal of [€12.44]

Instructions for grant and work under the Finance Acts, such sum as may be fair and reasonable, having regard to all the circumstances including:—

- (a) the complexity, importance, difficulty, rarity, or urgency of the question raised;
- (b) the value of the property passing or deemed to pass on the death;
- (c) the amount of duty involved;
- (d) the importance of the matter to the beneficiaries;
- (e) the skill, labour and responsibility involved therein and any specialised knowledge given or applied on the part of the solicitor;
- (f) the number and importance of any documents perused;
- (g) the place where and the circumstances in which the business or any part thereof is transacted and
- (h) the time reasonably expended thereon.

For engrossing and collating the will,

if not exceeding three folios including parchment [€0.71]

if exceeding three folios per folio, including parchment [€0.22]

When there are two or more executors, and they are not sworn at the same time, for each attendance after first on their being sworn to oath and affidavit:—

If the effects are sworn at less than [€25.39]... .. [€0.50]

If the effects are sworn at less than [€126.97] [€0.99]

If the effects are sworn at [€126.97] or upwards [€1.28]

In addition to the foregoing fees, there is to be allowed for attending to pay the stamp duty, if the effects are sworn at less than [€380.92] a fee of [€1.28]

If sworn at [€380.92] or upwards, a fee of [€2.63]

(2) Letters of Administration with Will Annexed

In addition to the fees in section (1) for preparing and attendance on the execution of the bond, if the effects are:

Under [€25.39] [€0.50]

[€25.39] or under [€126.97] [€1.28]

[€126.97] or upwards [€1.99]

The engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil marks in the will or codicil, or when the will or codicil is to be registered facsimile in addition to any other fee for engrossing or collating the same:

If the pencil marks in the will or codicil or in the part or parts thereof to be registered facsimile are two folios, or under [€0.14]

If exceeding two folios, for every additional folio or part of a folio [€0.08]

(3) Letters of Administration Intestate

Effects sworn under	Oath of executor and attendance on the party being sworn	Affidavit for Revenue purposes and attendance on the party being sworn	Probate under seal	Extracting
[€6.35]	[€0.50]	[€0.50]	[€0.22]	[€0.22]
[€25.39]	[€0.63]	[€0.50]	[€0.22]	[€0.85]
[€126.97]	[€0.99]	[€0.99]	[€0.57]	[€1.70]
[€253.95]	[€1.78]	[€1.78]	[€0.85]	[€1.70]
[€380.92]	[€1.99]	[€1.78]	[€2.41]	[€1.70]
[€571.38]	[€2.63]	[€1.99]	[€3.28]	[€1.70]
[€761.84]	[€2.63]	[€1.99]	[€4.48]	[€1.70]
[€1,015.79]	[€2.63]	[€1.99]	[€6.48]	[€1.70]
[€1,269.74]	[€2.63]	[€1.99]	[€8.96]	[€1.70]
[€1,904.61]	[€2.63]	[€1.99]	[€13.51]	[€1.70]
[€2,539.48]	[€2.63]	[€1.99]	[€17.99]	[€3.63]
[€3,809.21]	[€2.63]	[€1.99]	[€18.70]	[€4.13]
[€5,078.95]	[€2.63]	[€1.99]	[€19.48]	[€4.13]
[€6,348.69]	[€2.63]	[€1.99]	[€20.98]	[€4.13]
[€7,618.43]	[€2.63]	[€1.99]	[€22.47]	[€4.13]
[€8,888.17]	[€2.63]	[€1.99]	[€23.96]	[€4.13]
[€10,157.90]	[€2.63]	[€1.99]	[€25.46]	[€4.13]
[€11,427.64]	[€2.63]	[€1.99]	[€27.02]	[€4.13]
[€12,697.38]	[€2.63]	[€1.99]	[€28.44]	[€4.13]
[€15,236.86]	[€2.63]	[€1.99]	[€29.94]	[€4.13]
[€17,776.33]	[€2.63]	[€1.99]	[€31.50]	[€4.13]
[€20,315.81]	[€2.63]	[€1.99]	[€33.70]	[€4.13]
[€22,855.29]	[€2.63]	[€1.99]	[€35.98]	[€4.13]
[€25,394.76]	[€2.63]	[€1.99]	[€38.18]	[€4.13]
[€31,743.45]	[€2.63]	[€1.99]	[€41.24]	[€4.13]
[€38,092.14]	[€2.63]	[€1.99]	[€44.94]	[€4.13]
[€44,440.83]	[€2.63]	[€1.99]	[€48.71]	[€4.13]
[€50,789.52]	[€2.63]	[€1.99]	[€54.26]	[€4.13]
[€57,138.21]	[€2.63]	[€1.99]	[€59.94]	[€4.13]

Effects sworn under	Oath of executor and attendance on the party being sworn	Affidavit for Revenue purposes and attendance on the party being sworn	Probate under seal	Extracting
[€63,486.90]	[€2.63]	[€1.99]	[€65.49]	[€6.68]
[€76,184.28]	[€2.63]	[€1.99]	[€71.25]	[€6.68]
[€88,881.67]	[€2.63]	[€1.99]	[€82.48]	[€6.68]
[€101,579.05]	[€2.63]	[€1.99]	[€93.86]	[€6.68]
[€114,276.43]	[€2.63]	[€1.99]	[€104.96]	[€6.68]
[€126,973.81]	[€2.63]	[€1.99]	[€116.18]	[€6.68]
[€152,368.57]	[€2.63]	[€1.99]	[€121.83]	[€6.68]
[€177,763.33]	[€2.63]	[€1.99]	[€133.11]	[€6.68]
[€203,158.09]	[€2.63]	[€1.99]	[€142.92]	[€6.68]
[€228,552.85]	[€2.63]	[€1.99]	[€155.58]	[€6.68]
[€253,947.62]	[€2.63]	[€1.99]	[€166.95]	[€6.68]
[€317,434.52]	[€2.63]	[€1.99]	[€178.12]	[€6.68]
[€380,921.42]	[€2.63]	[€1.99]	[€187.44]	[€6.68]
[€444,408.33]	[€2.63]	[€1.99]	[€196.82]	[€6.68]
[€507,895.23]	[€2.63]	[€1.99]	[€206.21]	[€6.68]
[€634,869.04]	[€2.63]	[€1.99]	[€215.59]	[€6.68]

And for every additional [€126,973.81], or any fractional part of [€126,973.81] under which the personal estate is sworn in addition to the above fees, a further fee, for letters of administration under seal [€18.70]

When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath, and affidavit to include attendance on execution of the bond:—

If the effects are under [€25.39] [€0.50]

If the effects are [€25.39] or under [€126.97] [€0.99]

If the effects are [€126.97] or upwards [€1.99]

In addition to the above fees, or preparing bond, if the effects are:—

Under [€25.39] [€0.36]

[€25.39] and under [€63.49] [€0.63]

[€63.49] and under [€126.97] [€0.99]

[€126.97] and upwards [€1.28]

In addition to the foregoing fees, there is to be allowed for attending to pay the stamp duty, same as for probate.

For instructions for grant and work under the Finance Acts as in the case of Probates.

(4) Double or Cessate Probate

If the effects are sworn under	Attendance in the Probate Office and looking up the will and bespeaking the engrossment	Oath of the executor and attendance on his being sworn	Affidavit for Revenue purposes and attendance on the executor being sworn	Drawing and copying statement in support of application for the duty-paid stamp	Double or cessate probate under seal	Extracting
[€6.35]	[€0.63]	[€0.50]	[€0.33]	—	[€0.22]	[€0.22]
[€25.39]	[€0.63]	[€0.50]	[€0.33]	—	[€0.93]	[€0.17]
[€126.97]	[€1.28]	[€0.99]	[€0.67]	[€1.28]	[€0.22]	[€1.70]
[€253.95]	[€1.28]	[€1.28]	[€0.89]	[€1.28]	[€0.57]	[€1.70]
[€380.92]	[€1.28]	[€1.99]	[€1.33]	[€1.28]	[€1.50]	[€1.70]
[€571.38]	[€1.28]	[€1.99]	[€1.33]	[€1.28]	[€2.41]	[€1.70]
[€761.84]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€1.70]
[€1,015.79]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€1.70]
[€1,269.74]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€1.70]
[€1,904.61]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€2.27]
[€2,539.48]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€2.27]
[€3,809.21]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€3.63]
[€5,078.95]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€3.63]
[€6,348.69]	[€1.28]	[€1.99]	[€1.33]	[€1.99]	[€2.49]	[€3.63]

If [€6,348.69] or upwards: The fees to be taken are the same as above, except the extracting fee, which if the effects are of the value of [€88,881.67] or upwards, is... .. [€6.83]

The above fee for drawing and copying the statement in support of an application for the duty-paid stamp is to be taken when the statement is five folios or under. If the statement exceeds five folios, for each additional folio [€0.28]

Instructions-same as for Probates

When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance, after the first on their being sworn, the same fee as on a first grant under the same sum.

(5) Exemplification of Probate or Letters of Administration with or without Will Annexed

Attending at the Probate Office (or District Registry), looking up the grant of probate and original will, or grant of administration and bespeaking exemplification	[€1.28]
Exemplifications under seal and stamp	[€4.27]
Extracting	[€1.78]

(6) Duplicate and Triplicate Probates or Letters of Administration with or without Will Annexed

Attending at the Probate Office (or District Registry), looking up the will and bespeaking duplicate or triplicate of a grant and engrossment	[€1.28]
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Drawing and copying statement in support of application for the duty-paid stamp-The same fee as on a double cessate or probate	[€2.63]
Attending and procuring the duty-paid stamp	
Duplicate or triplicate probate, or letters of administration with or without will annexed; if the personal estate is under [€126.97] or any smaller sum, the same fee as on the original grant, if the personal estate is of the value of [€126.97] or upwards	[€2.49]
Extracting	[€1.78]

(7) Letters of Administration with or without Will annexed De bonis non or cessate

If effects sworn under	Attending at Probate Office looking up and perusing will, and taking account of former grants	Oath of administrator and attendance on his being sworn and on execution of bond	Affidavit for Revenue purposes and attendance on administrator being sworn	Drawing and copying statement in support of application for the duty-paid stamp	De bonis non or cessate administration with or without will under seal and duty-paid stamp	Extracting
[€6.35]	[€1.28]	[€0.99]	[€0.39]	—	[€0.22]	[€0.22]
[€25.39]	[€1.28]	[€0.99]	[€0.39]	—	[€0.22]	[€0.85]
[€63.49]	[€1.28]	[€1.28]	[€0.99]	—	[€0.28]	[€1.28]
[€126.97]	[€1.28]	[€1.99]	[€1.28]	[€0.99]	[€0.57]	[€1.70]
[€253.95]	[€1.28]	[€2.63]	[€1.28]	[€1.28]	[€0.85]	[€1.70]
[€380.92]	[€1.28]	[€3.28]	[€1.99]	[€1.28]	[€2.35]	[€1.70]
[€571.38]	[€1.28]	[€3.28]	[€1.99]	[€1.28]	[€2.35]	[€1.70]

If [€571.38] or upwards: The fees to be taken are the same as above except the extracting fee which, if the effects are [€1,904.61] and upwards, is [€3.63]

If there has been more than one previous grant, for each grant looked up after the first, a further fee of [€0.99]

The above fee, for drawing and copying the statement in support of application for the duty-paid stamp is to be taken, if the statement is five folios or under. If it exceeds five folios, for each additional folio ... [€0.28]

Attending to pay stamp duty – same as for Probates

In addition to the above, for preparing the bond, and for each attendance after the first on the administrators being sworn, and on execution of the bond, when there are two or more administrators and they are not sworn at the same time, the same fee as on ordinary grants of letters of administration.

(8) Probates, Special or Limited

Instructions – same as for probates

Affidavit for Revenue purposes, and attendance on the executor being sworn thereto-the same fee as on ordinary probates.

Drawing oath of executor, per folio	[€0.22]
Fair copy of the oath for the Probate Office (or District Registry) per folio	[€0.08]
Attending at the Probate Office (or District Registry) thereon	[€2.63]
Engrossing same, per folio	[€0.08]
Each attendance on the executors being sworn	[€1.28]

Engrossing and collating the will	...	...	...	...	...	...	...	...	...	The same fees as on ordinary probates.
Special or limited probate, under seal	...	...	...	...	...	...	...	...	...	The same fees as on ordinary probates.
Extracting	...	...	...	...	...	...	...	...	...	The same fees as on ordinary probates.

(9) Letters of Administration, with or without Will Annexed, Special or Limited

Consulting fee	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€1.28]
Perusing and abstracting deeds or other instruments, when necessary, at per folio	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.08]
Proxy of nomination	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€2.63]
Affidavit for Revenue purposes and attendance on the administrators being sworn thereto	the same fees as on ordinary grants of letters of administration														
Drawing special oath of the administrator, per folio...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.22]
Fair copy of the oath for the Probate Office (or District Registry) to peruse, per folio	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.08]
Attending at the Probate Office (or District Registry) thereon	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€2.63]
Engrossing same, per folio	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.08]
Each attendance on the administrators being sworn, and on execution of the bond	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€1.28]
Engrossing and collating the will	The same fees as on ordinary grants of letters of administration, with or without will annexed.														
Letters of administration under seal and stamp															
Extracting															

(10) Copies of, or Extracts from, Records, Wills and Other Documents

For attendance at the Probate Office (or District Registry) or Public Record Office and searching for a record, will or other document, or for a grant of probate, letters of administration, with or without will annexed, for five years, or any period less than five years, including the ordering of a copy	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€1.28]
For every five years after the first five years	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.63]
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts, or for any other purpose including the ordering of extracts, per folio	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.08]
For collating an office copy or extract of a record, will, or other document, with the original, or a registered copy thereof, including extracting fee, per folio	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.04]
For collating an office copy of the action granting probate or administration with the original entry thereof, including extracting fee	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.22]

(11) Caveats

For attendance in the Probate Office and entering or subducing a caveat	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€1.28]
For attendance in the Probate Office, and giving instructions for warning caveators to enter an appearance	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€1.28]
For service of warning to a caveat and copy...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	[€0.99]

(12) Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects

For taking instructions of every affidavit or declaration of personal estate and effects	[€1.28]
For drawing, and fair copy of the same, per folio	[€0.22]
For every attendance on the deponents or declarants being sworn or affirmed to such affidavit or declaration	[€1.28]

(13) Instruments of Renunciation and Consent, Letters of Attorney, and other Documents

For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document	[€1.28]
For drawing, and fair copy thereof, per folio	[€0.22]

(14) General

Any work not hereinbefore provided for may be charged in accordance with Part I.

PART IV BANKRUPTCY

O. 99, r. 51

Special Items Not Covered by Part I

Item	
1. Bankruptcy or Debtor's summons, including all affidavits in support thereof and prior demands for payment	[€12.80]
2. Petition of bankruptcy or in proceedings under Part VI of the Bankruptcy Act, 1988, including all affidavits in support thereof and form of order of adjudication and duplicate, and warrant of seizure	[€17.07]
3. Petition or arrangement, including all affidavits in support thereof, documents required to be filed in the Central Office, and form of protection order	[€27.30]
4. Accounting statement when required	[€5.12]
5. Special account of balance sheet required to be filed by the bankrupt or the arranging debtor in pursuance of an order of the Court, per item	[€0.06]
6. Statement of affairs per item (Subject to a minimum fee of [€8.53])	[€0.06]
Where a short or preliminary statement of affairs and list of creditors for the use of creditors in arrangements is filed in the office before the sitting, per item. (Subject to a minimum fee of [€5.12]).	[€0.06]
7. Application to dismiss bankruptcy or debtor's summons or show cause against adjudication, including affidavit of debtor in support	[€6.40]
8. Bankrupt's offer of composition after bankruptcy	[€6.46]
9. Proof of debt when filed	[€1.28]
10. Authority to vote when completed by creditor in favour of the proposal	[€0.22]
<i>Note to items 9 and 10</i> These items include all correspondence relative to such proofs of debt and authorities.	
11. Certificate of the vesting of estate in assignees or trustees, including filing copy and procuring office copy and attendances to register in the Registry of Deeds (when applicable)	[€3.42]
12. Composition bill or note (besides stamp duty)	[€0.13]

Note to items 1 to 12

The foregoing fees cover all work in taking instructions for and drawing, engrossing, swearing, issuing, filing and serving the documents respectively referred to.

13. Perusing bankrupt's or arranging debtor's statement of affairs	[€1.70]
14. Perusing bankrupt's or arranging debtor's accounting statement (when required)	[€1.70]
15. Perusing Bankruptcy Inspector's or Messenger's report or reports	[€1.70]
<i>Note to items 13, 14 and 15</i>	
These fees may be increased on special grounds.	
16. Attending at and conducting preliminary meeting of creditors in arrangement ...	[€5.97]
17. Drawing and engrossing and attending on execution of bonds of sureties	[€5.12]
18. Drawing, issuing and filing of notice of sittings in bankruptcy or arrangement, and transmitting to one party	[€2.56]
and to each additional party	[€0.22]

Amendment history

Part IV was substituted by the Rules of the Superior Court (No. 3), 1989 (S.I. No. 79 of 1989), which came into effect on April 24, 1989.

PART V APPEALS FROM CIRCUIT COURT

O. 99, r. 12(1)

Item

1. Instructions for and preparation and lodgment of notice of appeal, including copy for service	[€2.56]
2. Service thereof on solicitor where only one party to be served	[€0.43]
3. For each additional copy served	[€0.17]
4. Each additional service thereof if on a solicitor	[€0.22]
5. Service on person other than a solicitor such reasonable sum as has been paid	
6. Instructions for and preparation and lodgment of notice to vary... ..	[€2.56]
7. Service thereof on solicitor where only one party to be served	[€0.43]
8. For each additional copy served	[€0.22]
9. Each additional service thereof if on a solicitor	[€0.22]
10. Service on person other than a solicitor such reasonable sum as has been paid.	

PART VI FEES PAYABLE TO COMMISSIONERS FOR OATHS

1. On taking an affidavit, affirmation or declaration	[€10]
2. On marking exhibits therein referred to and required to be marked—	
for each exhibit... ..	[€2]
but not exceeding for all exhibits	[€30]
3. On attesting the execution of a bond	[€10]

Amendment history

Part VI was originally substituted by S.I. No. 281 of 1990 and amended by S.I. No. 585 of 2001. It was substituted for the above by r.1 of the Rules of the Superior Courts (Fees Payable to Commissioners for Oaths) 2003 (S.I. No. 616 of 2003), which came into effect on December 11, 2003.