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Correspondence 3C.1
Meeting 78 – 21/03/2013

Chief State Solicitor's Office



Briefing Material for Committee of Public Accounts

Chapter 15 Lease of Accommodation for a Probation Service Project	3
Function of the Office	3
Organisation Structure	4
Challenges facing Office	5
Position on Administrative subheads	8
Fees paid to Counsel	12
General Law Expenses	13
Appropriations in Aid	15

Chapter 15 – Lease of Accommodation for a Probation Service Project

The status of the lease the subject matter of chapter 15 remains in dispute between the Department of Justice & Equality, the Landlord/Receiver and the Architect of the Landlord/Receiver. I wish to bring to the attention of the Committee that discussion of the facts of this particular case publically before the Committee will prejudice negotiations and any litigation that may be issued either by the State against the Landlord and/or Architect, or by the Landlord against the State. In this regard I would draw the Committee's attention to s3 & s5 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997.

The Comptroller and Auditor General in chapter 15 of his report of 2011 made a recommendation to the Chief State Solicitors Office. As this recommendation was made in the context of the C & A G's examination of the issues outlined in chapter 15 I am constrained in any response that I can give at this time. I wish to assure this Committee that risk assesment is a matter that is taken with the utmost seriousness by me and my Office. A full response to the recommendation of the Comptroller & Auditor General will be made at the conclusion of this case. The outcome of this case will inform that response.

Functions of Office of Chief State Solicitor

The Office has it's own Vote and is a constituent part of the Office of the Attorney General and provides solicitor services within the Attorney General's Office and to Government Departments and Offices. The Office has a wide remit including but not limited to civil litigation in all courts (including the European Court of Justice in Luxembourg) and the provision of solicitor service in the areas of conveyancing and property law, Government contracts and public procurement issues for an array of civil service clients. Many matters are high profile, sensitive, capable of attracting publicity, and sometimes involving emergency applications to court, strict time limits and complex issues of law. It should be noted that my Office does not provide a service for the Director of Public Prosecutions in the prosecution of offences.

The main services provided are:

- The defence of all Constitutional actions taken against the State, both in the High Court and Supreme Court.
- Representation of the State in the European Court of Justice.
- Handling European Arrest Warrants, Extradition and Mutual Assistance requests in the High Court.
- The defence of all commercial cases instructed to the Office.
- The defence of all judicial review and *habeas corpus* proceedings on behalf of Government Departments, Offices and clients.
- The provision of an asylum law litigation service to support the Department of Justice, Equality and Law Reform and the immigration / asylum agencies.
- The provision of a conveyancing and property law service for the State.
- Defending all civil proceedings taken against An Garda Síochána or its members.
- Dealing with a residue of childhood abuse cases arising out of abuse in residential institutions and day schools.
- Provision of a solicitor service to support Government Departments and Offices in the bringing of court proceedings in Ireland on behalf of the State.
- Provision of solicitor service to State Offices in relation to Employment Law matters.
- Representation of State parties in the taxation of legal costs before the Taxing Masters.
- Recovery and taxation of costs.
- Advising and preparing commercial contracts, for the National Procurement Service and Departmental clients.
- Representing client Departments and the Public Interest at tribunals and commissions of inquiry.

The delivery of these legal services to clients is supported by an Administration Division which provides HR, Finance, IT, Archiving and Office Services.

Organisation Structure

The Chief State Solicitor's Office is organised into five legal Divisions. The Divisions are Public Law, Asylum and Legal Services, State Property, Justice and Common Law and

Advisory. Each Division is organised into Sections on the basis of similarity of work or client. The organisation takes account of the principal demands of clients including an increased involvement with the ECJ and on the domestic front, more ECHR related actions, an increase in the number of European Arrest Warrants received from other countries in the EU and a greater demand for advice in relation to Public Procurement and Commercial Contracts.

The Office also has an Administrative Division to support the work of legal staff by providing professional corporate support services such as Human Resources/Training and Development, Finance/Accounts, Corporate Services, Clerical Support, Change Management, Information Technology, Internal Audit, Registry and Records Centre and Library and Know-how.

Challenges facing the Office

The Office continues to see a high level of litigation and transactional caseload and a continuing complexity in legal work. Some of the challenges currently facing the office are:

- Meeting the demands for service in the difficult fiscal situation which will entail reductions in the level of resources and budget available to the Office.
- Balancing the need to achieve further savings in Counsel Fees while ensuring that the services provided are of the standard required to achieve maximum value for money.
- Dealing with the increasing extent to which public law issues, including the interpretation of legislation and administrative decision-making are the subject matter of legal challenge.
- Dealing with the demands of litigation arising out of the financial and banking situation.
- Dealing with class actions.
- Meeting the demands in relation to the volume, complexity and range of European Law and Litigation.
- Handling additional work arising from Ireland's Presidency of the European Union in 2013.

- Meeting challenges in relation to an increase in European Arrest Warrant applications and an expansion in work as a result of increased co-operation in Mutual Assistance in criminal matters between member States of the European Union.
- Managing the legal challenges posed by changes in society such as asylum and immigration work.
- Meeting the demands from Government Departments and Offices in providing an efficient comprehensive legal service in relation to all property transactions.
- Identifying the requirements of human rights law and ensuring that these are addressed when advising.
- Providing a comprehensive commercial contracts service to Government Departments and Offices including advising on procurement issues, assisting with contractual negotiations and drafting contracts.
- In the context of increasing demands on the CSSO to provide legal services, create conditions that attract high calibre staff, make time to comprehensively train new entrants and continue professional development.
- Managing the turnover of staff and minimising the loss of knowledge and skills as a result of staff changes.
- Maintaining a high quality pro-active law library and Office intranet as key information sources.
- Implementing the Office's Knowledge Management Strategy 2010 – 2013.
- Enhancing ACME (the CSSO's electronic case and records management system).
- Enhancing the Financial Management System and integration of the system with ACME to provide comprehensive financial and costs – related accrual management reports.
- Further embedding a system of legal costs control.
- Recovering costs where feasible in all cases where costs are awarded to the State.

- Providing a legal service that is cost effective and gives value for money.
- Delivering on the Public Service Reform Plan.
- Measuring monitoring and reporting on progress in relation to achievement of our objectives.

Caseload:

During 2011 the Office closed off 3,492 cases while opening 3,794 new cases with work continuing on 27,920 existing cases. In 2012 a further 3,289 cases were closed off while another 3,832 were opened. The Office had 28,463 open cases on hand at the end of 2012.

Subhead Expenditure 2011 and 2012 including 2013 Estimate

Chief State Solicitor's Office

Subhead	2011 Estimate €000	2011 Outturn €000	2012 Estimate €000	2012 Prov Outturn €000	2013 Estimate €000
A.1.	€14,995	€14,404	€14,843	€14,245	€14,793
A.2.	€61	€61	€61	€65	€61
A.3.	€1,070	€991	€1,055	€919	€1,105
A.4.	€400	€339	€350	€344	€350
A.5.	€835	€716	€750	€579	€850
A.6.	€412	€445	€410	€171	€370
A.7.	€29	€20	€29	€10	€29
A.8.	€280	€147	€248	€142	€248
B.	€14,350	€10,268	€12,550	€9,529	€11,850
C.	€3,616	€5,524	€4,516	€4,675	€2,216
Gross Total	€36,048	€32,915	€34,812	€30,679	€31,872

D.	€1,860	€2,332	€1,860	€1,876	€1,860
Net Total	€34,188	€30,583	€32,952	€28,803	€30,012

Subhead A1

A.1. SALARIES, WAGES AND ALLOWANCES

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Salaries	€13,841,000	€13,325,930	€13,739,000	€13,144,204	€13,694,000
Overtime and allowances	€140,000	€127,831	€140,000	€108,740	€140,000
Social Welfare – Employer's contribution	€1,014,000	€950,446	€964,000	€992,562	€959,000
Total	€14,995,000	€14,404,207	€14,843,000	€14,245,506	€14,793,000

Staffing

	01/01/2011	31/12/2011	31/12/2012
ECF	232	232	229
Professional	106	109.1	108.7
Legal			
Executives	28.33	27.83	29.83
Clerical/Admin	90.8	86.8	82.1
Total	225.13	223.73	220.63

Subhead A.2 – Travel and Subsistence

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Travel & Subsistence	€61,000	€61,373	€61,000	€64,790	€61,000
Total	€61,000	€61,373	€61,000	€64,790	€61,000

	2011	2012
Travel Company Charges	€903	€928
Air Travel Emission Offsetting Payment	€310	€0
Taxis	€16,725	€24,244
Foreign Travel & Subsistence	€25,601	€26,348
Home Travel & Subsistence	€17,834	€13,270
Total	€61,373	€64,791

	2011	2012
Cost of Home Travel for CSSO staff	€13,350	€9,354
Cost of Foreign Travel for CSSO staff	€20,398	€18,744
Cost of Home Subsistence for CSSO staff	€4,484	€3,916
Cost of Foreign Subsistence for CSSO staff	€5,023	€7,604

The CSSO maintains tight controls on all areas of Travel and Subsistence and complies with the relevant circulars in this area.

Foreign travel mainly relates to representing the State at the Court of Justice of the European Union in Luxembourg. Home travel relates to attendance at High Court cases outside Dublin, inquests and meeting with Departmental officials at decentralised locations.

The Chief State Solicitor had no home travel or foreign travel expenses in 2011 or 2012.

Subhead A.3 – Incidental Expenses

Sub Item	2011	2011	2012	2012	2013
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	Estimate	Outturn	Estimate	Prov Outturn	Estimate
Staff Training & Development	€220,000	€113,655	€200,000	€123,262	€220,000
Security	€455,000	€443,266	€455,000	€451,621	€455,000
Library Services	€170,000	€152,141	€150,000	€155,472	€180,000
Miscellaneous	€225,000	€282,448	€250,000	€188,969	€250,000
Total	€1,070,000	€991,510	€1,055,000	€919,325	€1,105,000

Breakdown of Miscellaneous Expenditure

	2011	2012
Bank Interest and Charges	€140	€128
Prompt Payment Interest	€2,547	€1,070
Cleaning Services and Materials	€127,314	€125,038
Catering	€5,654	€3,532
Advertising	€6,766	€6,192
Water Supplies	€14,411	€1,249
Off Site Storage	€15,877	€14,184
Recycling and Waste management	€26,754	€16,329
Office Plant rental	€5,505	€5,855
Other*	€77,480	€15,392
Total	€282,448	€188,969

*Other consists of Photocopying costs, Room Hire, Fire Safety management and some maintenance work.

Advertising consists of job adverts and information sought in relation to escheated estates.

Subhead A.4 - Postal and Telecommunication Services

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Postal & Telecommunication Services	€400,000	€339,088	€350,000	€343,814	€350,000
Total	€400,000	€339,088	€350,000	€343,814	€350,000

Breakdown of Postal & Telecommunication Services

	2011	2012
Telephone Equipment – Service	€11,283	€8,462
Telephonist Contract	€85,200	€86,608
Telephones	€162,354	€141,626
Couriers	€21,974	€24,928
Postal Services	€58,276	€82,189
	€339,088	€343,814

Telephones include landlines, mobile phones and datalines for access to network shared with AGO, Government network, and internet.

Postal Services include regular post, registered post and the DX service used among legal offices.

Subhead A.5 – Office Machinery and Other Office supplies and related services

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Computer & Data Preparation Equipment	€510,000	€474,618	€500,000	€430,893	€600,000
Photocopying & other Office Equipment	€70,000	€51,706	€50,000	€25,005	€50,000
Office Supplies	€205,000	€164,987	€150,000	€110,032	€150,000
IT External Service Provision	€50,000	€24,205	€50,000	€12,827	€50,000
Total	€835,000	€715,516	€750,000	€578,756	€850,000

This subhead provides for expenditure on the Office computer system, photocopying and printing and binding services.

Subhead A.6 – Office Premises Expenses

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Maintenance	€200,000	€190,059	€200,000	€18,477	€160,000
Heat, Light & Fuel	€140,000	€106,555	€140,000	€120,002	€140,000
Furniture & Fittings	€72,000	€148,655	€70,000	€32,390	€70,000
Total	€412,000	€445,270	€410,000	€170,869	€370,000

This subhead covers the maintenance and provision of utilities to buildings occupied by CSSO staff

Subhead A.7 – Consultancy Services

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
IT Consultancy Services					
Other Consultancy Services	€29,000	€19,786	€29,000	€10,514	€29,000
Total					

Subhead A.8 – External Legal Services

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
External Legal Services	€280,000	€146,797	€248,000	€141,960	€248,000
Total	€280,000	€146,797	€248,000	€141,960	€248,000

This subhead covers payments made to private solicitors who carry out civil work on behalf of the Office in courts outside the Dublin area. Cases such as ministerial prosecutions mainly on behalf of the Minister for Social Protection and Minister for Agriculture, Food and the Marine. The estimate allocation exceeds the actual expenditure to allow for contingency as it is not possible to predict the level of work with any accuracy.

Fees to Counsel

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Fees to Counsel	€14,350,000	€10,267,720	€12,550,000	€9,528,768	€11,850,000
Total	€14,350,000	€10,267,720	€12,550,000	€9,528,768	€11,850,000

Breakdown of Counsel Fees

	2011	2012
Fees to Senior Counsel	€3,969,641	€3,573,398
Fees to Junior Counsel	€6,287,202	€5,931,747
Counsel Travel*	€10,877	€23,624

Total	€10,267,720	€9,528,768
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*Counsel required to travel to the Court of Justice of the European Union in Luxembourg.

Expenditure

Expenditure on this subhead is dependent on the level of activity in the courts and as such is difficult to forecast. There is no indication of an overall reduction in the level of activity in 2011 or 2012. The Office continues to manage this Subhead actively to secure greater economy.

The management of expenditure on counsels' fees is a key activity for the Chief State Solicitor's Office. These are fees payable to counsel representing the departments and offices in litigation before the Irish courts and other tribunals and the European Court of Justice. They also include fees payable for the provision of legal advice for the State, whether sought for the Attorney General's Office or for client departments.

The CSSO has achieved an overall reduction of 46% when comparing the outturn for 2012 with that of 2008. The savings are not attributable in any way to reductions in volumes of work or significant changes in work types arising.

Review of Legal Services Expenditure

The Department of Public Expenditure and Reform are currently carrying out a "Focussed Policy Assessment of Legal Services Expenditure". The Chief State Solicitor and officials from the Office have met with the evaluation team. The Office has also provided data on expenditure and will cooperate fully with any further requests for meetings or data.

General Law Expenses

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
General Law Expenses	€3,616,000	€5,523,549	€4,516,000	€4,675,287	2,216,000
Total	€3,616,000	€5,523,549	€4,516,000	€4,675,287	2,216,000

General Law Breakdown 2011

	Misc	Law	Legal Cost	Stenographers	Medical	Total
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Attorney General Scheme	Legal Fees	Searches	Accountants	Fees	Fees	
€4,087,730	€523,115	€72,816	€490,529	€293,595	€55,764	€5,523,549

General Law Breakdown 2012

Attorney General Scheme	Misc Legal Fees	Law Searches	Legal Cost Accountants	Stenographers Fees	Medical Fees	Total
€3,540,405	€427,376	€44,090	€292,357	€307,428	€63,631	€4,675,287

This subhead covers the use of experts, stenographers and other services required in the handling of the legal work of the Office.

On the 1st February 2007, the administration of the Attorney General's Scheme transferred from the Chief State Solicitor's Office to the Department of Justice, Equality and Law Reform. The Chief State Solicitor's Office retained responsibility for funding the Scheme by reimbursing the Department for payments made out under the Scheme. Applicant's solicitors and counsel are paid on a parity basis with State counsel. An application for the Scheme must be made in Court at the commencement of proceedings and it is a matter for the Judge dealing with the case to decide whether to recommend the Scheme.

The Legal Aid Board took over responsibility for the administration of the Scheme from the Department on the 1st June 2012. As and from the 1st January 2013, the Legal Aid Board has responsibility for funding the Scheme which has been re-named the Legal Aid – Custody Issues Scheme.

Payments totalling € 4.087m million were made under the Scheme in 2012. As part of the new funding arrangement the Chief State Solicitor's Office made a once off transfer of €2 million from its vote to the Department of Justice and Equality's legal aid vote for this year as a contribution towards payments under the Scheme for 2013.

It will be noted that expenditure on external Legal Cost Accountants fell from a figure of €490,529 in 2011 to a figure of €292,357 in 2012. A number of factors contributed to this

saving. 2011 saw the handling of a larger number of party and party bills of costs arising as a result of Hepatitis C appeal litigation, compared to 2012. In addition, there was a considerable reduction (c.50%) in the number of external Legal Costs Accountants engaged by the Office in Costs Recovery cases, due to an increase in the preparation of in-house bills of costs in this area. Furthermore, the continued internal monitoring in the area of payment of fees to external Legal Cost Accountants (pursuant to the Office's Action Plan under the Public Service Agreement 2010 -2014) also served to achieve savings.

Subhead D – Appropriations in Aid

Sub Item	2011 Estimate	2011 Outturn	2012 Estimate	2012 Prov Outturn	2013 Estimate
Appropriations in Aid	€1,860,000	€2,332,000	€1,860,000	€1,876,176	€1,860,000
Total	€1,860,000	€2,332,000	€1,860,000	€1,876,176	€1,860,000

Breakdown of items within Appropriations in Aid

	2011	2012
Recovered Costs	€1,275,501*	€751,652
Fees	€83,260	€76,209
Refunds	€2,996.34	€129,376
Out of Date Cheques	€3,919.93	€2,453
Cancelled Cheques	€16,811.13	-
Pension Related Deduction	€949,523	€916,486
Total	€2,332,011	€1,876,176

*There were two cases in 2011 where the costs recovered accounted for fifty percent of all costs collected by the Office.

It is not possible to forecast accurately what amounts will be recovered in any year.

Costs Recovery

The Office remains committed to the recovery of costs awarded to the State in litigation in which the State has been successful. This is seen as being an exercise in accountability in its

own right. But it is also seen as giving a clear signal to prospective litigants that their risk to liability of paying the costs of the State is real and substantial.

The Office has recovered the sum of €751,652 in costs in 2012.