



OIFIG AN PHRÍOMH-ATURNAE STÁIT
CHIEF STATE SOLICITOR'S OFFICE

26th February 2019

Ms Éilís Fallon,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.

YOUR REF: PAC32-I-1314

OUR REF: 2019/00355

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Via Post and Email

**Re: Public Accounts Committee appearance by the Chief State Solicitor on
7 February 2019 - Request for further information**

Dear Ms Fallon,

I refer to your letter of 12 February 2019 requesting further information, following on from my appearance before the Public Accounts Committee on 7 February 2019 in relation to my Office's 2017 Appropriation Account.

Please find below information on each of the points raised in your letter:

1. A breakdown of the annual operating costs for the Cost Recovery Unit

A number of legal executive staff are engaged on costs recovery work as part of their overall workload. The annual estimated cost for 2019 for these staff attributed to costs recovery work is €179,000¹.

In addition, in 2018 an amount of €34,563 was paid to external Legal Costs Accountants for work relating to costs recovery and €55,460 to external cost recovery solicitors.

The Office remains committed to the recovery of costs awarded to the State in litigation where the State has been successful. This is seen as being an exercise in accountability in its own right. It is also seen as giving a clear signal to prospective litigants that their risk of liability to pay the costs of the State is real and substantial should they lose the case.

While it is the policy of the Office to pursue costs awarded to the State, it is also necessary to make an assessment in all cases as to whether it makes economic sense to pursue the costs, as the cost of commencing enforcement procedures might not be justified in all the circumstances. The Committee will appreciate that, quite frequently, the person against whom an order for costs is made may not be in a position to pay. Therefore, while costs are not written off, a decision can be made on the basis of available information not to pursue costs at a particular point in time. Such decisions can be reviewed where the debtor's circumstances

¹ Staff costs calculated in accordance with the guidance in the Public Spending Code

change or where the debtor brings a further set of proceedings against the State. In certain circumstances, costs awarded to the State can be set off against monies owed by the State in another case involving the same debtor. There may also be circumstances where the State is aware of property owned by the debtor. In these circumstances, consideration is given to registering a judgement mortgage on that property.

I should also point out that the management of claims for costs awarded to the State after 29 May 2018 has been delegated to the NTMA pursuant to SI 191 of 2018.

2. A breakdown of the number of vacancies within the CSSO; including the length of time the vacancies have been open

As is the case with many Public Sector Offices, my Office will always have some level of vacancies. Retirements and resignations, transfers, promotions and consequential vacancies all impact on the ongoing maintenance of a full staffing complement. As I indicated to the Committee, as of 7 February 2019, my Office was carrying 30 vacancies. 15 of these vacancies are new posts provided for in the 2019 Estimates and we will proceed to fill these posts as quickly as possible. The other 15 posts relate to consequential vacancies following internal promotions or staff leaving the Office on retirement or to take up other posts.

The Public Appointments Service completed a competition to recruit permanent State Solicitors for the Office in November 2018. A panel has been formed and my Office is proceeding to fill 8 State Solicitor vacancies from that panel. Given vetting and notice period requirements, this process will take a number of months.

Table 1 shows a breakdown of the 15 pre-existing vacancies:

Table 1

Grade	Earliest unfilled vacancy	Current status
Deputy Assistant Chief State Solicitor (PO1 Equivalent)	January 2019	Position to be filled in May 2019
Principal Solicitor (PO Equivalent)	January 2019	Specialist post to be filled later in 2019
State Solicitor X8 (AP Equivalent)	January 2018	2 posts filled since 7 Feb 2019. Balance being filled from current SS permanent panel.
State Solicitor Higher (AP1 Equivalent)	December 2018	Specialist post to be filled later in 2019
Knowledge Manager (AP Equivalent)	October 2018	Competition to be held in Q1 2019
Deputy Principal Legal Executive (AP1 Equivalent)	September 2018	Competition to be held in Q1 2019
Clerical Officer X2	November 2018	Awaiting assignment of COs from PAS

3. A note on the process for lottery grant approval in the CSSO, including a breakdown of the number of cases involved and any issues which can delay the approval of the grants.

Process for approval

By way of clarification, capital grants for sports and arts and culture projects are no longer referred to as “lottery grants”, as these grants have been paid out of Exchequer funds since the disposal of the National Lottery.

The process for completing the legal formalities in relation to a grant approved by either the Department of Transport, Tourism and Sport (DTTS) or the Department of Culture, Heritage and the Gaeltacht (DCHG) is summarised below. Please note that the CSSO is not involved in the decision to approve any particular grant application, which is a matter for the relevant Department.

Grantees make their application for a grant directly to the relevant Department and, if successful, the Department then instructs the CSSO in respect of the legal formalities. These generally involve the placing of a first legal charge in favour of the relevant Minister on the grantee’s property, which provides the Minister with a security interest in the property.

On receipt of instructions, the CSSO immediately issues a legal grant pack to the grantee’s solicitor. This contains all necessary template documents for the creation of the legal charge together with guidelines for their completion and checklists of the supporting materials required. Once the legal documents have been returned to the CSSO, completed and executed on behalf of the grantee, and all are confirmed to be in order, the grantee’s solicitor is requested to carry out closing searches against the property. If the search results are satisfactory, the CSSO will inform the Department that the legal formalities are completed. This will then allow the Department to progress its grant process.

Number of cases involved

A breakdown of the number of cases opened by the CSSO following instructions received on grant applications from DTTS and DCHG in each of 2017 and 2018 is set out below in Table 2.

Table 2

Number of files	2017	2018	2019
Client			
Minister for Transport, Tourism and Sport	64	247	16
Minister for Culture, Heritage and the Gaeltacht (includes Arts, Gaeltacht, Heritage grants)	25	17	3
Total	89	264	19

Causes of delay

A number of factors may delay the legal process which will, in turn, delay payment of the grant by the Department. These largely relate to issues in complying with the requirements set out in the grant pack. The most common of these are listed in the grant pack for the information of grantees’ solicitors and include:

- Documentary issues – documents returned to the CSSO inaccurately completed, incorrectly executed, or incomplete (e.g. schedules or supporting evidence omitted) and/or documents provided on a piecemeal basis.
- Trustees holding the property on behalf of the grantee not being up to date - e.g. where there has been appointment of new trustees on death or retirement.
- Title issues – grantees not having title to charge or pre-existing title problems not rectified prior to grant application.
- Entries revealed in search results not satisfactorily explained.
- Non-completion by the grantee’s solicitor of registration of the Minister’s charge prior to application for a subsequent grant.

I trust the above addresses the outstanding questions raised by members of the Committee during my attendance on 7 February 2019.

Yours sincerely,



MARIA BROWNE
CHIEF STATE SOLICITOR

Communications with Maria Browne as a Designated Public Official under the Regulation of Lobbying Act 2015 may require you to register under the Regulation of Lobbying Act. See www.lobbying.ie for further detail.