



6th December, 2022.

By E-mail: pac@oireachtas.ie

Ms. Sarah Cremin,
Committee of Public Accounts,
Leinster House,
Dublin 2 D02 XR20.

Our Ref: CB/PW/PAC

Please quote our reference number on all correspondence

Your Ref: S1087 PAC33

Dear Ms Cremin,

We acknowledge receipt of your letter of the 28th Ult with enclosures.

We have reviewed the transcript of the Committee's hearing of the 27th October 2022, as directed, and, in particular, pages 69-72 (inclusive) which record the relevant content concerning the issue of Tribunal and/or Commission of Investigations costs since 1997. In addition, we have considered your letter of the 28th ult requesting an information note to include details of third party costs in respect of Tribunals and Commissions of Investigation since 1997.

We confirm that the State Claims Agency (SCA) has managed third party legal costs arising from the Tribunals of Inquiry and State litigation, generally, since 4th February 2013, from which time the SCA's legal costs management functions have been employed principally in respect of the Mahon, Moriarty, Morris and Smithwick Tribunals of Inquiry. More recently, the Disclosures Tribunal has been added to this list and the total amount of agreed third party costs to date for claims coming under the SCA's management for the period 2013, to date, across the five named Tribunals of Inquiry, is €67.4M. It is important to qualify this information by emphasising that a substantial number of the third party costs' orders arising from the Tribunals predate the setting up of the SCA's Legal Costs Unit and are not recorded in the Agency's data. For Example, Orders for costs were made in respect of the 2nd and 3rd interim reports of the Tribunal into Planning matters in 2004 and most of the costs orders made in respect of the Donegal Garda Complaints/Morris Tribunal were made in or about 2006. The majority of the claims for third party costs arising from these orders were resolved, thus, prior to 2013.

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The relevant details for costs orders managed are more fully set out, as follows:-

Tribunal of Inquiry into payments made to certain named named politicians otherwise known as " <i>The Moriarty Tribunal</i> " 92 files closed by SCA from February 2013 to date	€14.8
Tribunal of Inquiry into Planning Matters otherwise known as " <i>the Mahon Tribunal</i> " 295 files closed by SCA from February 2013 to date	€32.7
Tribunal of Inquiry into complaints concerning Gardai in the Donegal Division or otherwise known as " <i>the Morris Tribunal</i> " 17 files closed	€1.9
Tribunal of Inquiry into Cavan Dundalk otherwise known as " <i>the Smithwick Tribunal</i> " 9 files closed	€7.0
Tribunal of Inquiry into Protected Disclosures made under the Protected Disclosures Act 2014 and Certain Other Matters otherwise known as " <i>the Disclosures Tribunal</i> " 37 files closed	€11.0
Total Agreed Costs of Tribunals of Inquiry	€67.4M

In relation to Commissions of Inquiry, third party costs are limited by guideline or scale fees which are set out in the Commissions of Investigation Act, 2004. The SCA's role has been largely advisory and fixed awards of costs have been made in compliance with the amounts allowable by Statute. The SCA's records for third party orders managed under this category show agreed costs of less than €500,000.00, in total, for the period 2013 to date. Vast amounts of discovery documentation was a unique feature of the recently completed IBRC Commission of Inquiry and this is an area of third party costs which inevitably gives rise to increased legal costs liability. We are currently managing the first section of legal costs claims in this Commission.

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In conclusion, a very substantial element of third party costs of the Tribunals has been managed by the SCA from 2013, to date, leading to agreed costs of €67.4M. There is a cohort of legal costs claims which were made prior to that date and which, perforce, are not captured by the SCA's records. It is very difficult to be precise in terms of undischarged liabilities for third party costs orders and in the case of the Disclosures Tribunal it would be premature since final costs' orders have not yet been made. The third party costs incurred in respect of the various Commissions of Inquiry set up over the past decade have been the subject matter of fixed scale costs and in respect of which the SCA's role has been largely one of a supervisory nature. The discovery costs incurred in connection with the IBRC Commission of Inquiry are likely to be substantial and are an exception to the statutory fixed fee provisions. Allowing for increased discovery costs, the third party costs of the IBRC Commission are likely to run to approximately €8M.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Breen', with a long horizontal flourish extending to the right.

**Ciarán Breen,
Director.**