



8 February 2023

Ms Sarah Cremin  
Clerk  
Committee of Public Accounts  
Dáil Éireann  
Leinster House

Dear Ms Cremin,

I refer to your letter of 12 January 2023 with regard to Tribunals of Inquiry and Commissions of Investigation, with particular reference to the costs of these legal means of inquiry since 1997 and whether consideration is being given to alternative ways of carrying out such inquiries.

As you will be aware, these means of inquiry and investigation are established under the Tribunals of Inquiry (Evidence) Act 1921, as amended, or the Commissions of Investigations Act 2004, as amended, respectively. The purpose of establishing inquiry mechanisms under these Acts is to inquire into definite matters of urgent public importance or to investigate matters considered to be of significant public concern. The inquiry mechanisms may only be established following Resolutions of both Houses of the Oireachtas.

The length of time that such inquiries or investigations may take and the costs that are associated with them have been matters of concern of long-standing and, over time, successive Governments have taken a variety of measures to seek address these concerns. The costs arising from the payment of third-party legal costs have been a particular aspect of concern.

The establishment in law in 2004 of Commissions of Investigation was a significant step in seeking to reduce the duration and cost of necessary inquiries by providing for an alternative structure of enquiry to that provided for by the Tribunals of Inquiry (Evidence) Act 1921, that is to say, the Act requires, with limited exceptions, that the Commission of Investigation's investigation should be in conducted in private.

The Commissions of Investigation Act 2004 also makes explicit provision with regard to legal costs. The Act provides that the specified Minister must prepare guidelines for the payment of legal costs to witnesses before commissions of investigation and that these guidelines must be prepared in consultation with the Commission and require the consent of the Minister for Public Expenditure, NDP Delivery and Reform.

Sections 23(2)(a) and (b) of the 2004 Act also provide that legal costs are only paid where they are "*necessarily incurred*", this is where "*the good name or conduct of the witness is called into question by any evidence received by the commission*", or "*other personal or property rights of the witness are at risk of being jeopardized as a result of any evidence received by the commission*".

Section 23(3) of the 2004 Act also provides that the guidelines may restrict the types of legal services or fees for which payment may be made and otherwise limit the extent to which costs may be paid.

However, a number of matters should be recalled with regard to inquiries or investigations that are conducted under the Tribunals of Inquiry (Evidence) Act 1921, as amended, or the Commissions of Investigations Act 2004, as amended.

The function of these inquiries and investigations is to enquire into facts identified in the terms of reference and to draw conclusions which are justified by the evidence. A foremost consideration, therefore, must be to ensure that the constitutional and other legal rights of persons and other entities who are engaged with or subject to an inquiry or investigation are respected. In this context, it must be anticipated that persons and entities who are co-operating with an inquiry or investigation would be entitled to legal representation and to have the costs that are necessarily incurred in this regard covered.

It can be the case that the matters to be inquired into by the inquiry mechanism are, of themselves, complicated, wide-ranging, sensitive or detailed and this is necessarily reflected in the time that must be taken to examine them fully and the consequent expense that may arise.

In all cases such inquiries and investigations are conducted with an independence that is provided for in law and which is essential for their proper conduct and for public confidence. It is, therefore, a matter for the sole member or the chairperson to conduct the inquiries or investigations as expeditiously as possible while at the same time allowing for the matters at hand to be properly considered.

While these matters are kept under continuing review in the context of the work of particular Tribunals of Inquiry or Commissions of Investigation, there are currently no particular proposals being considered in this Department along the lines referenced in your letter. You will wish to note, however, that responsibility for policy and legislation in this general area rests with the Department of Justice.

I trust this information will be of assistance to you.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'John Callinan', written over a horizontal line.

John Callinan  
Secretary General