



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

14 November 2023

Catherine Smyth  
Committee Secretariat  
Committee of Public Accounts  
Leinster House  
Dublin 2  
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Your Ref: S1477 PAC33

Our Ref: 2023/00586

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**Re:** Request for information from CSSO

Dear Ms Smyth,

I refer to your letter dated 31 October 2023 regarding the Committee's request for an overview of and estimate of the number of State organisations that are involved in litigation with another State body at any one time.

The Chief State Solicitor's Office (CSSO) provides litigation, advisory and conveyancing services to Government departments and offices and to a small number of certain other State agencies. The CSSO also provides solicitor services at Tribunals of Inquiry and Commissions of Investigation and represents Ireland at the Court of Justice of the European Union. It should be noted that the CSSO does not represent all State Bodies or Offices, including local authorities, commercial semi-State bodies, and a wide range of other State bodies, such as An Bord Pleanála and the State Claims Agency. Our reply therefore relates solely to our experience and is not a response in respect of all State organisations.

In respect of the Committee's query, we reviewed our caseload for the years 2021, 2022 and to date in 2023. Our experience is that there are a very small number of cases where the State bodies we represent are involved in litigation with another State body at any one time. To give you some context, in 2021 we opened a total of 2,449 litigation files. Of this total only 10 cases might be considered to fall into the category to which you refer. In 2022 we opened a total of 2,363 litigation files. Of this total only 7 cases might be considered to fall into the category to which you refer. In 2023 we have opened a total of 2,577 litigation files to date. Of this total only 3 cases might be considered to fall into the category to which you refer.

The majority of the cases referenced are judicial reviews, i.e. applications challenging the underlying process of decision-making by the State or one of its emanations. In other cases, typically a State body brings proceedings to seek clarification from the Superior Courts on the proper interpretation of a legislative provision (in relation to areas such as adoption, for example), or brings proceedings to challenge a determination made affecting their property rights which they believe to be erroneous, or a complaint is made to a professional body by

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someone unhappy with a Medical Officer assessment. They include cases where a decision is being challenged and, by and large, where only the clarification of a Court ruling will settle the matter. There are no examples of Ministers suing Ministers.

Whilst the number of cases according to our records is a very small percentage of the overall cases that we handle, the State has taken measures to reduce and minimise the likelihood of such cases occurring. In May of this year, the Government approved the adoption of the State Litigation Principles, which will serve as guidelines in the conduct of litigation by the State. The Principles recognise the imperative that the State should act in the public interest, broadly construed, in pursuing litigation and should consider the broader public interest before taking certain procedural steps in litigation.

The Principles (copy enclosed) apply where the State, through the Government, a Minister of the Government, a Department of State or an agency or authority accountable to a Minister engages in litigation. In such cases, the Government and the Attorney General (through the Office of the Attorney General and the Office of the Chief State Solicitor) shall endeavour to act in accordance with the Principles.

Principle 13 provides that where legal issues arise between public bodies, the State will endeavour, where possible, to resolve such disputes without recourse to litigation. This may not apply where the State has a right of appeal under Statute against a decision of an independent agency or authority and where an appeal may be the appropriate course of action.

Furthermore, there are many other public authorities and agencies who conduct litigation independently of the Attorney General and to which the Principles will not apply.

I hope the above is of assistance.

Yours sincerely,



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**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](http://www.lobbying.ie) for further detail.*



Rialtas na hÉireann  
Government of Ireland



# STATE LITIGATION PRINCIPLES



## INTRODUCTION

Article 30 of the Constitution provides that the Attorney General shall be the adviser to the Government in matters of law and legal opinion.

The role of the Attorney General is to act as litigator for the Government but it is the Government who is the litigant.

When the State engages in litigation, the Government and the Attorney General (through the Office of the Attorney General and the Office of the Chief State Solicitor) shall endeavour to act in accordance with these Principles.

These Principles shall serve as guidelines to assist the State in maintaining high standards of ethics and integrity in the conduct of litigation. It is also hoped that they will serve as a positive example to other litigants.

These Principles do not have, and are not intended to have, any binding legal effect. In particular, a failure to comply with these Principles cannot in itself defeat a claim or defence advanced by the State in any set of legal proceedings.

The State shall endeavour to conduct litigation in accordance with the following principles:

### 1. Avoid legal proceedings where possible

While the State may institute proceedings, it is more frequently the defendant or respondent in proceedings.

Nonetheless, the State will endeavour to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings, in line with the provisions of Section 14(1) of the Mediation Act, 2017 and in other cases, by participating in alternative dispute resolution processes where appropriate.

### 2. Deal with claims promptly

In order to facilitate the proper administration of justice, the State will seek to avoid any unnecessary delay in the management of claims and litigation.

Where possible the State will take a pragmatic approach to procedural applications and will use all reasonable endeavours to ensure that timelines imposed by legislation, rules of court, court orders or court directions are complied with.

### 3. Deal with litigation efficiently

The State will endeavour to conduct litigation efficiently, with an emphasis on narrowing the issues truly in controversy between the parties, and not requiring unnecessary proofs or evidence.

The State will support case management procedures that assist with the efficient progress of litigation.

### 4. Identify lead cases when multiple sets of proceedings on same legal issue

When defending mass claims or multiple sets of legal proceedings on the same or similar questions, the State will endeavour to assist the court and litigants by identifying appropriate lead cases with a view to facilitating the efficient and effective administration of justice.



## **5. Minimise legal costs for all parties**

The State will seek to reduce the legal costs incurred by all parties to litigation by streamlining processes, narrowing the issues in proceedings and settling proceedings at an early stage where appropriate.

## **6. Make settlement offers, tenders or lodgments**

Where appropriate, the State will encourage the settlement or compromise of proceedings by the making of settlement offers, tenders or lodgments.

## **7. Act honestly**

The State will act honestly and will seek to assist the court by providing full and accurate explanations of all relevant matters of which the court requires to be aware, on affidavit, in witness statements, and in oral evidence as appropriate, depending on the nature of the proceedings.

## **8. Make discovery in compliance with best practice**

Once ordered by a court, or once agreed by the parties, the State will seek to comply with best practice in how it makes and manages discovery.

## **9. Be consistent across claims**

With due regard for differences between individual cases, or classes of cases, the State shall endeavour to be consistent in how similar proceedings are managed and settled.

## **10. Not to take advantage of the less well-resourced litigant**

The State shall be conscious of the difficulties faced by under-resourced and lay litigants and shall endeavour to assist the court to manage these types of cases as fairly and expeditiously as possible.

### **11. Defend proceedings in accordance with the interests of justice**

The State is entitled to rely on the same defences as any other litigant, but where consideration of different defences arises, the State shall consider where the interests of justice lie for all parties before relying on the defence.

### **12. Not to appeal unless there is a reasonable prospect of success or in the public interest**

The State should not ordinarily appeal against adverse decisions unless there are valid legal or policy reasons for doing so.

The State may appeal where it is considered that the appeal has a reasonable prospect of success; clarification of the law or legal certainty is required; the appeal is supported by valid legal or policy reasons or the appeal is otherwise in the public interest.

### **13. Avoid bringing proceedings against another State Department or State body**

Where legal issues arise between public bodies, the State will endeavour where possible to resolve such disputes without recourse to litigation. This may not apply where the State has a right of appeal under Statute against a decision of an independent agency or authority.

### **14. Seek to agree claimant's costs without the requirement for formal adjudication**

Where a litigant has obtained a costs order against the State (that is not stayed pending an appeal or pending the conclusion of the proceedings), or the State has agreed as part of a settlement to discharge a claimant's costs, the State will seek to engage constructively on the issue with a view to consensually agreeing the legal costs, without the requirement for the costs to be formally adjudicated.



### **15. Apologise where the State has acted unlawfully**

The State should apologise in appropriate cases and, in particular, where (a) the court has found that the State has acted unlawfully, or (b) prior to any such judicial finding, it has emerged in the course of litigation that the State has acted unlawfully.

For the avoidance of doubt, these Principles do not preclude the State from, in an appropriate case:

- (a) Contesting litigation;
- (b) Appealing a decision;
- (c) Settling proceedings, with or without admission of liability;
- (d) Relying on the entitlement to assert legal professional privilege; and
- (e) Applying, where appropriate, for recovery of the State's legal costs.

**21 June 2023**  
**ROSSA FANNING**  
**ATTORNEY GENERAL**