

# **APPENDIX 11**

## **GUIDELINES ON LEGAL COSTS**



Coimisiún Imscrúdacháin  
ar Earnáil na Baincéireachta in Éirinn

Commission of Investigation  
into the Banking Sector in Ireland

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## **General Guidelines on Payment of Legal Costs and Other Expenses to Persons Who Become Involved with the Commission of Investigation**

### **Purpose of General Guidelines**

1. These General Guidelines have been made by the Minister for Finance, as the specified Minister, following consultation with the Commission, as required by the Commissions of Investigation Act 2004.
2. These Guidelines should be read in conjunction with that Act<sup>2</sup>.
3. The Commission operates in accordance with these guidelines on costs but is independent in the performance of its functions as set out in the Commissions of Investigation Act 2004.

### **What Expenses (Other Than Legal Costs) Can A Person Expect To Recover?**

4. A person who attends as a witness before the Commission of Investigation is entitled to payment of the expenses incurred by reason of that attendance<sup>3</sup>.
5. The expenses to be covered are travel and transport costs, accommodation, meals and any other expenses that are necessarily incurred as a direct result of attendance before the Commission, subject to the conditions below.

Expenses related to loss of earnings will not be paid, unless the person concerned can show to the satisfaction of the Commission that s/he has suffered undue hardship by reason of his/her attendance.

Expenses will not be paid to any serving public servant whose expenses have been met by his/her employer.

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<sup>2</sup> **In the event of any dispute, the terms of the Act shall prevail.**

<sup>3</sup> **Section 16(3) of the Act refers.**

Payment in respect of accommodation and meals will only be made on the basis of vouched expenses, provided the individual is at least 100 kilometres from their home or place of work, and subject to the following upper limits:

- a maximum of €108.99 in respect of an overnight stay
- a maximum of €33.61 in respect of a period of 10 hours or more
- a maximum of €13.71 in respect of a period of 5 hours or more

Where possible, public transport (bus or rail) should be used. Taxis should only be used where another reasonable alternative does not exist. In the event that use of a private car is necessary, expenses will be met at the rate of 26.76 cents per mile / 16.64 cents per kilometre.

6. A person may also request the Commission of Investigation to pay “heavy expenses”<sup>4</sup> (other than legal costs) incurred because of
- the nature, volume or location of the documents produced by the witness
  - the location outside the State from which the witness travelled to attend before the Commission
  - any other factor not within the control of the witness.

It is a matter for the Commission to decide what constitutes “heavy expenses” on a case-by-case basis. The Commission may, on being satisfied that they were necessary in the circumstances, direct that such amount of those expenses as it considers reasonable be paid to the witness.

### **What Legal Costs Can a Person Expect to Recover?**

7. A witness may request recovery of legal costs necessarily incurred.<sup>5</sup>
8. Legal costs shall not be paid except where
- a) the good name or conduct of the witness are called into question by any evidence received by the Commission, or
  - b) other personal or property rights of the witness are at risk of being jeopardized as a result of any evidence received by the Commission.

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<sup>4</sup> Section 24(5) of the Act refers.

<sup>5</sup> Sections 23 and 24 of the Act refer.

9. 'Legal costs' means fees, disbursements, charges and expenses included in a bill of costs in respect of a barrister or solicitor.
10. Discovery costs may be included as legal costs for a party who has been granted legal representation before the Commission, in which case payment of costs of discovery will be decided in the context of payment of overall legal costs.
11. The amount of legal costs to be paid by the Minister for Finance, as the specified Minister, shall be assessed by the Commission in the light of the relevant provisions of the Act<sup>6</sup>.

These Guidelines do not place any restriction on the number or type of legal representatives that may be engaged by a party who has been granted legal representation by the Commission of Investigation.

The Commission may, in its discretion, limit the amount of legal costs recoverable in respect of such representation (including the number of those representatives).

These Guidelines specify a maximum daily rate for Senior Counsel, Junior Counsel and Solicitor in respect of their appearance before the Commission (see paragraph 13 below).

12. The Commission is to be satisfied that any legal costs to be paid were necessarily incurred and that the level and amount of those costs are reasonable and constitute no more than would be levied by a competent and efficient professional.
13. The amounts payable in respect of appearance by a legal representative before the commission are:

Senior Counsel	A maximum of <b>€900</b> per day (excluding VAT)
Junior Counsel	A maximum of <b>€500</b> per day (excluding VAT)
Solicitor	A maximum of <b>€500</b> per day (excluding VAT)

14. The amounts payable in respect of the following affidavits that may be furnished to the Commission are:

An affidavit of documents	A maximum of <b>€750</b> subject to the exemption set out below
An affidavit verifying evidence	A maximum of <b>€375</b> per affidavit

<sup>6</sup> Sections 23 and 24 of the Act refer.

	(to cover payment to all legal representatives)
An affidavit	A maximum of <b>€375</b> per affidavit (to cover payment to all legal representatives)

These maximum limits may only be exceeded in respect of an affidavit of documents that requires discovery costs in excess of that limit and where, in the Commission's view:

- the volume of documents discovered is substantial
- the documents disclosed were relevant to the commission's terms of reference
- the legal normalities in relation to the swearing of the affidavit of documents was properly and promptly complied with, and
- these costs were necessarily incurred.

15. To the extent possible, legal representation shall be granted on a joint basis to parties with similar interests, and in any event, the costs incurred by such parties shall be assessed by reference to the potential reduction in legal costs that could have been secured through such joint representation irrespective of whether such joint representation occurred, with the distribution of allowable costs to be determined by the Commission by reference to the criteria in the Act.<sup>7</sup>
16. These Guidelines are definitive as to all legal costs or expenses (including heavy expenses) that may be recoverable by a person who seeks to recover such costs or expenses from the commission. No payment shall be made in respect of brief fees, instruction fees or any other legal costs or expenses, other than those legal costs and expenses expressly specified in these Guidelines.

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<sup>7</sup> Sections 23 and 24 of the Act refer.